

SMART RELIEF AFTER AN IRAN DEAL

How Congress Can Build a Post-Agreement Sanctions Architecture of Effective Enforcement and Relief

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SUMMARY

Iran's record of nuclear deception does not inspire confidence in Tehran's commitment to honor any final nuclear agreement with the P5+1. If a final nuclear agreement between the P5+1 and Iran does not meet a series of parameters that already has strong bipartisan support in Congress, the House and Senate should defend American sanctions against Iran and resist pressure to trade sanctions relief for a bad deal. However, should an acceptable agreement be reached that fully addresses Iran's nuclear and ballistic missile programs, Congress must play a role, in cooperation with the Obama administration, to construct and oversee a smart sanctions architecture of effective enforcement and relief. This architecture should deter and punish Iranian non-compliance with such an agreement; provide a vital enforcement mechanism to support a monitoring, verification, and inspection regime; and curb Iran's support for terrorism and its abuse of human rights.

This flexible and limited sanctions relief framework should be based on: (1) the final agreement meeting a series of parameters that already has strong bipartisan Congressional support; (2) the careful sequencing of sanctions relief tied to Iran meeting its obligations under an agreement; (3) the creation of a permissible financial channel through which trade and financial transactions can occur; (4) temporary suspension of only those sanctions which can quickly be "snapped-back" should Iran fail to comply with the agreement;

(5) the maintenance of all conduct-based sanctions until Treasury can certify that the behavior which prompted the designation has ceased; and, (6) a series of Presidential certifications that Iran has changed its behavior in critical areas of concern.

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Regardless of the sanctions relief offered, press reports indicate that the terms of any final agreement are unlikely to address outstanding concerns regarding Iran's support for terrorism, threatening and destabilizing behavior towards its neighbors, and systematic human rights abuses. As such, no sanctions relief should go to Iran's Islamic Revolutionary Guard Corps (IRGC). Terrorism and human rights sanctions should be strengthened and expanded if the behavior underlying these sanctions continues. This is in keeping with the Obama administration's insistence that the negotiations only cover "nuclear-related sanctions," and that as a matter of policy, terrorism and human rights sanctions will continue to be enforced.

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INTRODUCTION

If there is a final agreement reached between Iran and the P5+1, Congress can justifiably claim credit for its role in designing many of the toughest sanctions that forced Tehran to the negotiation table. Congress therefore must play a role in helping to design and oversee a post-agreement sanctions architecture that preserves key sanctions leverage to enforce an agreement while providing a sanctions relief pathway for Iran to secure the deal.

Iran's decades-long track record of nuclear deception and other illicit activities does not inspire confidence in Tehran's commitment to honor any final agreement. Furthermore, even with a nuclear and ballistic missile agreement, Iran seems likely to remain the world's leading state sponsor of terrorism and one of the worst abusers of human rights. As a result, sanctions must remain a critical instrument of deterrence and punishment for Iranian non-compliance; a vital enforcement mechanism to support a monitoring, verification, and inspection regime; and a diplomatic tool to curb Iran's support for terrorism and its abuse of human rights.

No sanctions relief should be provided to Iran unless a final deal verifiably and permanently prevents the regime from pursuing both the uranium and plutonium pathways to a nuclear weapon. Key parameters for what should constitute an acceptable agreement are outlined in the Nuclear Weapon Free Iran Act of 2013 (S.1881), bipartisan legislation which has 60 co-sponsors, and is discussed below.

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If a final agreement meets these key parameters, policymakers should craft limited sanctions relief, based on the following principles, where the relief:

- preserves core elements of the financial and energy sanctions architecture until Iran has ended all forms of illicit activity since rebuilding that architecture and regaining international buy-in would be extremely challenging;
- recognizes the inherent asymmetry between the reciprocal concessions provided as part of a comprehensive agreement. Indeed, it may be more difficult for the P5+1 to re-impose sanctions in a timely manner in the event of Iranian non-compliance than it will be for Iran to re-start or construct key elements of its nuclear and ballistic missile infrastructure;
- provides the United States and its P5+1 partners with sufficient economic leverage through the maintenance of specific sanctions after an agreement is signed to deter and commensurately punish Iranian non-compliance. This will provide leverage to support a monitoring, verification, and inspection regime, and to include snap-back components that provide a mechanism for U.S. unilateral and third-party sanctions to be expeditiously re-imposed if Iran violates the terms of a long-term agreement;
- maintains the original-stated rationale for the sanctions against Iran, particularly the financial sanctions designed to protect the integrity of the global financial system from the illicit activities of Iranian entities; and,
- reaffirms sanctions related to terrorism and human rights to support the Obama administration's stated policy that terrorism and human rights sanctions are distinct from "nuclear-related sanctions" and therefore not precluded as a result of any agreement. This will ensure that, after a long-term agreement on the status of Iran's nuclear program is reached, the United States continues to pressure Iran to end its support for global terrorism, active support for the Bashar al-Assad regime in Syria, and its vast system of domestic repression at home.

Based on an agreement meeting acceptable terms on the scope of Iran’s nuclear and ballistic missile programs, what follows are recommendations on the U.S. sanctions and sanctions relief terms that should be part of a final agreement. This does not include U.N. Security Council sanctions or the sanctions regimes of other countries.

TERMINATION CRITERIA FOR IRAN SANCTIONS

Currently, U.S. law ties the termination of many of the most punitive financial and energy sanctions to specific termination criteria set out in the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA).¹ These criteria were modified by the Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRA).² They require the President to certify to Congress that:

- “the Government of Iran has ceased providing support for acts of international terrorism and no longer satisfies the requirements for designation as a state sponsor of terrorism;” and,
- “Iran has ceased the pursuit, acquisition, and development, and verifiably dismantled its, nuclear, biological, and chemical weapons and ballistic missiles and ballistic missile launch technology.”

There are also additional termination criteria that maintain sanctions on upstream oil and natural gas sector investment, and the provision of refined petroleum to Iran. They require the President to determine and certify to the appropriate congressional committees that Iran:

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1. U.S. House of Representatives, 111th Congress, 2nd Session, P.L. 111-195, “Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010,” Section 401, *Government Printing Office*, 2010, page 40. (<http://www.treasury.gov/resource-center/sanctions/Documents/hr2194.pdf>)
2. U.S. House of Representatives, 112th Congress, 2nd Session, H.R. 1905, “Iran Threat Reduction and Syria Human Rights Act of 2012,” *Government Printing Office*, 2012. (<http://www.gpo.gov/fdsys/pkg/BILLS-112hr1905enr/pdf/BILLS-112hr1905enr.pdf>)

- “has ceased its efforts to design, develop, manufacture, or acquire—
 - a nuclear explosive device or related materials and technology;
 - chemical and biological weapons; and
 - ballistic missiles and ballistic missile launch technology;
- has been removed from the list of countries the governments of which have been determined, for purposes of section 6(j) of the Export Administration Act of 1979, to have repeatedly provided support for acts of international terrorism; and
- poses no significant threat to United States national security, interests, or allies.”³

It seems highly unlikely that any deal under consideration will meet these termination criteria, which President Obama signed into law in 2010 (CISADA) and then strengthened in 2012 (ITRA). For example, press reports indicate that Iran’s sponsorship of terrorism is not within the scope of the deal being negotiated.

It also seems improbable that any final agreement regarding Iran’s nuclear program will resolve all of the money laundering and illicit finance concerns regarding the Central Bank of Iran. Sanctions were imposed on the Central Bank of Iran pursuant to Section 1245 of the National Defense Authorization Act of 2012. According to the findings section of the statute, these sanctions were premised on the Central Bank’s involvement in money laundering and terror- and proliferation-related financing.⁴ To date, the

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3. “Sec. 8. Termination of Sanctions, Iran Sanctions Act of 1996 as Amended,” 50 *U.S. Code* §1701 note, 1996. (http://www.treasury.gov/resource-center/sanctions/Programs/Documents/isa_1996.pdf)
4. U.S. House of Representatives, 112th Congress, 1st Session, P.L. 112-81, “National Defense Authorization Act for Fiscal Year 2012,” Section 1245: Imposition of Sanctions With Respect to the Financial Sector of Iran, *Government Printing Office*, 2011, page 350. (<http://www.gpo.gov/fdsys/pkg/BILLS-112hr1540enr/pdf/BILLS-112hr1540enr.pdf>)

administration has not rescinded its PATRIOT Act 311 finding with respect to the Central Bank of Iran, which found the Iranian financial system, including its Central Bank, to be a threat to the international financial system due to money laundering and terror- and proliferation-related financing.⁵

Treasury determined that the Iranian financial system, including its Central Bank, is a threat to the international financial system due to money laundering, and terror and proliferation-related financing.

The U.S. administration and Congress will need to work together to develop and refine a very limited and flexible sanctions relief framework that enforces a final nuclear agreement with Iran and maintains pressure on the regime to comply with international laws and norms.

The recommendations in this memo assume that a nuclear agreement will address Iran's ballistic missile program, which the U.S. Department of Defense has determined is advancing in the range, lethality, and accuracy of these systems.⁶ This memo's recommendations assume that no final deal will address Iran's long-standing position as the world's leading state-sponsor of terrorism, according to multiple State Department annual reports,⁷ and its ongoing and accelerating human rights abuses, as detailed by the U.N. Special Rapporteur on Iranian Human Rights,⁸ State Department reports,⁹ and open source data from

5. David S. Cohen, "The Entire Iranian Banking Sector," *U.S. Department of the Treasury*, November 22, 2011. (<http://www.treasury.gov/connect/blog/Pages/The-Entire-Iranian-Banking-Sector.aspx>)

6. U.S. Department of Defense, "Annual Report on Military Power of Iran," April 2012. (<http://www.fas.org/man/eprint/dod-iran.pdf>)

7. "State Sponsors of Terrorism," *U.S. Department of State Website*, accessed June 13, 2014; (<http://www.state.gov/j/ct/list/c14151.htm>) & "Chapter 3: State Sponsors of Terrorism Overview," *U.S. Department of State*, April 2014. (<http://www.state.gov/j/ct/rls/crt/2013/224826.htm>)

8. United Nations Human Rights Council, "Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran," March 13, 2014. (<http://shaheedoniran.org/wp-content/uploads/2014/03/A-HRC-25-61-updated.pdf>)

9. "Country Reports on Human Rights Practices for 2013," *U.S.*

human rights NGOs and press reporting. Sanctions are designed to not only to coerce changes in Iran's behavior but also to constrain Iran's capacities to support terrorism and violate human rights.

ACCEPTABLE PARAMETERS OF A FINAL AGREEMENT

As outlined in S.1881,¹⁰ an acceptable agreement should, among other things:

- "dismantle Iran's illicit nuclear infrastructure, including enrichment and reprocessing capabilities and facilities, the heavy water reactor and production plant at Arak, and any nuclear weapon components and technology, so that Iran is precluded from a nuclear breakout capability and prevented from pursuing both uranium and plutonium pathways to a nuclear weapon;
- bring Iran into compliance with all United Nations Security Council resolutions related to Iran's nuclear program, including Resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), and 1929 (2010), with a view toward bringing to a satisfactory conclusion the Security Council's consideration of matters relating to Iran's nuclear program;
- resolve all issues of past and present concern with the International Atomic Energy Agency, including possible military dimensions of Iran's nuclear program;
- permit continuous, around the clock, on-site inspection, verification, and monitoring of all suspect facilities in Iran, including installation and use of any compliance verification equipment requested by the International Atomic Energy Agency, so that any effort by

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Department of State, February 27, 2014. (<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220352#wrapper>)

10. U.S. Senate, 113th Congress, 1st Session, S. 1881, "Nuclear Weapon Free Iran Act of 2013," *Government Printing Office*, 2013. (<http://beta.congress.gov/bill/113th-congress/senate-bill/1881>)

Iran to produce a nuclear weapon would be quickly detected;

- require Iran's full implementation of and compliance with the Agreement between Iran and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons, done at Vienna June 19, 1973, including modified Code 3.1 of the Subsidiary Arrangements to that Agreement and ratification and implementation of the Protocol Additional to that Agreement, done at Vienna December 18, 2003; and,
- require Iran's implementation of measures in addition to the Protocol Additional that include verification by the International Atomic Energy Agency of Iran's centrifuge manufacturing facilities, including raw materials and components, and Iran's uranium mines and mills."

If a final agreement meets these key parameters – fully addressing Iran's nuclear and ballistic missile programs – policymakers should craft limited sanctions relief, while maintaining a sanctions architecture to 1) effectively deter and respond to any evidence of Iranian non-compliance, and 2) curb Iran's sponsorship of terrorism and abuse of human rights.

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FINANCIAL SANCTIONS

U.S. Treasury Under Secretary David Cohen has explained that a primary goal of the strictures on Iran

is to “protect the integrity of the U.S. and international financial systems.”¹¹ Iran's list of financial crimes is long and well-established. According to the Financial Action Task Force (FATF), an international body comprised of 34 members plus the European Commission and the Gulf Co-operation Council,¹² “FATF remains particularly and exceptionally concerned about Iran's failure to address the risk of terrorist financing and the serious threat this poses to the integrity of the international financial system.”¹³

Beginning in 2007, the Treasury Department designated 23 Iranian and Iranian-allied foreign financial institutions as “proliferation supporting entities” under Executive Order 13382.¹⁴ Of these, at least eight banks were designated for their ties to Iran's Islamic Revolutionary Guard Corps (IRGC) or because they were controlled by banks with IRGC links.¹⁵ Treasury in 2006 also sanctioned Bank Saderat as a “terrorism supporting entity” under Executive Order 13224 for facilitating fund transfers to Hezbollah, Hamas, Palestinian Islamic Jihad, and other terrorist organizations.¹⁶

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11. David Cohen, “Remarks of Under Secretary for Terrorism and Financial Intelligence David Cohen Before the New York University School of Law on “The Law and Policy of Iran Sanctions,” *New York University School of Law*, September 12, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1706.aspx>)

12. A list of the members of FATF can be found FATF's website. “FATF Members and Observers,” *Financial Action Task Force Website*, accessed June 23, 2014. (<http://www.fatf-gafi.org/pages/aboutus/membersandobservers/>)

13. 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>)

14. 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>)

15. Bank Sepah (Iran); Bank Melli (Iran); Arian Bank (Iran); Bank Kargoshaee (Iran), controlled by Bank Melli; Future Bank (Bahrain), controlled by Bank Melli; Post Bank of Iran (Iran), controlled by Bank Sepah; Ansar Bank (Iran); Mehr Bank (Iran).

16. 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>)

In 2011, invoking Section 311 of the PATRIOT Act, Treasury found the entire “Islamic Republic of Iran as a jurisdiction of primary money laundering concern.” Treasury cited Iran’s “support for terrorism,” “pursuit of weapons of mass destruction,” and “the illicit and deceptive financial activities that Iranian financial institutions... engage in to facilitate Iran’s illicit conduct and evade sanctions.” Treasury targeted the Central Bank of Iran and made it clear that the entire country’s financial system posed “illicit finance risks for the global financial system.”¹⁷

“A primary goal of the strictures on Iran is to ‘protect the integrity of the U.S. and international financial systems.’”

The goal was to push Iran to cease its illicit financial activity. Treasury’s finding led to the “Menendez-Kirk amendment,” Congressional sanctions under Section 1245 of the National Defense Authorization Act of 2012 against foreign financial institutions conducting transactions with the Central Bank of Iran (with certain humanitarian and crude oil exceptions).¹⁸ Thereafter, a partial ban on Iranian banks’ use of the SWIFT interbank communication system was established in ITRA, which the banking cooperative itself justified on the basis of protecting the integrity of the formal financial sector.¹⁹

The ban from SWIFT was not total, however. The Treasury Department, in an attempt to leave open

17. 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>)

18. U.S. Department of the Treasury, Press Release, “Fact Sheet: Treasury Amends Iranian Financial Sanctions Regulations to Implement the National Defense Authorization Act,” February 27, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1434.aspx>)

19. U.S. House of Representatives, 112th Congress, 2nd Session, H.R. 1905, “Iran Threat Reduction and Syria Human Rights Act of 2012,” Sec. 220: Reports on, and Authorization of Imposition of Sanctions With Respect to, the Provision of Specialized Financial Messaging Services to the Central Bank of Iran and Other Sanctioned Iranian Financial Institutions, *Government Printing Office*, 2012, page 24. (<http://www.gpo.gov/fdsys/pkg/BILLS-112hr1905enr/pdf/BILLS-112hr1905enr.pdf>)

a channel for humanitarian funds to reach Iran and to avoid measures that would unduly harm the Iranian people, intentionally left a handful of Iranian banks undesignated and, therefore, not targeted for SWIFT disconnection. While the expulsion from SWIFT of most Iranian banks was ultimately a direct consequence of EU regulations,²⁰ the threat of U.S. sanctions played an important role in persuading the EU to “de-SWIFT” a number of these banks.²¹ Treasury and EU regulators assured the international community it would keep an eye on both designated and undesignated banks, and prevent illicit funds from moving through the SWIFT system.

Despite these assurances, a recent corruption scandal in Turkey revealed Iranian banks using SWIFT for illicit financial transactions. According to a leaked prosecutor’s report,²² Iran’s Pasargad Bank, Parsiyan Bank, Sarmaye Bank, Bank Tos-e-Sadarat, Karafarin Bank, and Saman Bank processed sanctions-busting transactions for the network of Iranian businessman Reza Zarrab,²³ who stands accused of having processed more than €87 billion in illicit transactions between 2012 and 2013.²⁴ The prosecutor’s report shows actual SWIFT transaction receipts.

The episode underscores the dangers of giving even one bad bank access to the formal financial sector.

20. 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)

21. Rachele Younglai & Roberta Rampton, “U.S. Pushes EU, SWIFT to Eject Iran Banks,” *Reuters*, February 15, 2012. (<http://www.reuters.com/article/2012/02/16/us-iran-usa-swift-idUSTRE81F00I20120216>)

22. The full text of the Turkish prosecutor’s report can be accessed online. Istanbul Cumhuriyet Bassavciligi, “Sorusturma No: Istanbul CBS 2012/120653,” December 18, 2013. (http://www.cumhuriyet.com.tr/haber/turkiye/50525/Fezlekeleri_indirmek_icin_tiklayin.html)

23. Jonathan Schanzer & Emanuele Ottolenghi, “Turkey’s Teflon Don,” *Foreign Policy*, March 31, 2014. (http://www.foreignpolicy.com/articles/2014/03/31/turkey_teflon_don_erdogan_elections_corruption)

24. “87 Billion Euros in Suspicious Transfers From Iran,” *Today’s Zaman*, December 17, 2013. (<http://www.todayzaman.com/news-334277-87-billion-euros-in-suspicious-transfers-from-iran.html>)

Indeed, no Iranian bank is truly an independent financial institution. None escapes the control of the regime. In its 311 finding of the country of Iran as a “jurisdiction of primary money laundering concern,” Treasury made it clear that the country’s entire financial system posed “illicit finance risks for the global financial system.”²⁵ FATF reaffirmed this concern by warning its members that they should, “advise their financial institutions to give special attention to business relationships and transactions with Iran, including Iranian companies and financial institutions,”²⁶ and to, “apply effective countermeasures to protect their financial sectors from money laundering and financing of terrorism (ML/FT) risks emanating from Iran.”²⁷

Washington knows all too well the dangers of giving bad banks access to the global financial system. Wielding its PATRIOT Act Section 311 authorities, Treasury targeted Macau-based Banco Delta Asia in 2005 as a primary money laundering concern as part of its campaign against North Korea’s illicit financial activities.²⁸ Within days, North Korean accounts and transactions were frozen or blocked in banking capitals around the world—including Beijing, the lifeline for North Korean capital.

But, as former Treasury official Juan Zarate explains, that action was later undercut by U.S. diplomats whose priority was securing a nuclear deal with North Korea at all costs.²⁹ Facing a North Korean

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25. 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>)

26. 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>)

27. 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>)

28. 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>)

29. Juan Zarate, *Treasury’s War: The Unleashing of a New Era of*

negotiating team that refused to make concessions before sanctions relief and a North Korean regime which had defiantly conducted its first nuclear test,³⁰ Foggy Bottom advocated for the release of frozen North Korean funds on good faith. They ultimately prevailed, and Chinese banks renewed their financial relationships with Pyongyang. Washington lost its leverage and its credibility by divorcing the 311 finding from the illicit conduct that had prompted the designation in the first place. Undeterred, North Korea moved forward with its nuclear weapons program and its money laundering, counterfeiting, and other financial crimes.

U.S. diplomats currently negotiating with Iran should take heed. Compromising the integrity of the U.S. and global financial system in order to conclude a limited, long-term agreement with North Korea neither sealed the deal nor protected the system.

“Unless Iran demonstrably changes its financial conduct, a nuclear deal, regardless of its terms, should not expunge Tehran’s long rap sheet of financial crimes in support of terrorism and proliferation...”

Until the Islamic Republic renounces and ceases its support of terrorism, ends its military-nuclear and ballistic missile programs, and cleans up the illicit financial activities that have funded this behavior for decades, there is no such thing as a clean Iranian bank. Unless Iran demonstrably changes its financial conduct, a nuclear deal, regardless of its terms, should not expunge Tehran’s long rap sheet of financial crimes in support of terrorism and proliferation since 1984, when the Islamic Republic was first listed by the State Department as a State Sponsor of Terrorism.³¹

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Financial Warfare, (New York: Public Affairs, 2013).

30. 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>)

31. “State Sponsors of Terrorism,” *U.S. Department of State Website*, accessed June 13, 2014. (<http://www.state.gov/j/ct/list/c14151.htm>)

The Treasury Department, in consultation with Congress, should develop a “Sanctions Action Relief Plan” that is incorporated into law. The plan should include the following elements:

DESIGNATED IRANIAN FINANCIAL INSTITUTIONS

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

The rehabilitation program should include statute-mandated benchmarks governing any decision by Treasury to suspend the designations of qualifying banks and include snap-back provisions that will immediately re-designate banks that re-engage in illicit financial transactions. Any re-designated banks will lose permanently the right to qualify for rehabilitation and be permanently banned from the U.S. financial system and SWIFT (assuming EU agreement). CISADA and Section 1245 of the FY2012 NDAA should be amended to ensure that any foreign financial institution transacting with a permanently banned Iranian bank will be automatically subject to penalties under such statutes, including losing correspondent banking relationships with U.S. financial institutions. Treasury should be required to include a certification that will be published in the Federal Register at the conclusion of the rehabilitation process which will be subject to periodic reviews.

2. Carefully select a handful of banks, which are not designated by the United States or any other jurisdiction, and have no record of engaging in deceptive financial practices, as a channel for permissible financial transactions.

These banks can be permitted to use SWIFT but must be carefully monitored and scrutinized for any illicit conduct. Any finding of illicit or deceptive financial conduct will lead to the automatic expulsion of the bank from SWIFT, its immediate designation under U.S. Executive Orders, and disqualification from Treasury’s rehabilitation program. Such a finding

would also trigger an automatic snap-back of SWIFT sanctions and the expulsion of all other “permissible channel” Iranian banks from SWIFT until Treasury certifies that these banks are not facilitating illicit financial transactions on behalf of the offending bank or any other illicit Iranian financial activity. *Treasury should consider using European and/or American banks with an established presence in Tehran as a “permissible channel” instead of any Iranian banks. These Western banks have a great deal more to lose in terms of credibility, will be more fearful of U.S. penalties, and thus will have a stronger incentive to police this channel. They could also make significant profits by providing this channel to compensate for these risks.*

3. The President should be required to provide a certification to Congress before the Treasury Department can rescind its PATRIOT Act Section 311 finding with respect to Iran’s financial system.

The report should certify that Iran is no longer a “jurisdiction of primary money laundering concern,” no longer engaged in “support for terrorism,” “pursuit of weapons of mass destruction,” or any “illicit and deceptive financial activities.” To make this certification, Treasury must be confident that the entire country’s financial system no longer poses “illicit finance risks for the global financial system.”³² Legislation should be passed to enable Congress to affirm or reject this certification.

THE CENTRAL BANK OF IRAN

In its 2011 finding under Section 311 of the PATRIOT Act, Treasury designated the *entire* “Islamic Republic of Iran as a jurisdiction of primary money laundering concern.” In its finding, Treasury determined that Iranian financial institutions, including the Central Bank of Iran (CBI), and other state-controlled entities, willingly engage in deceptive practices to disguise illicit conduct, evade international sanctions,

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32. 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>)

and undermine the efforts of responsible regulatory agencies around the world.”³³

In that finding, Treasury’s Financial Crimes Enforcement Network wrote, “The Central Bank of Iran, which regulates Iranian banks, has assisted designated Iranian banks by transferring billions of dollars to these banks in 2011. In mid-2011, the CBI transferred several billion dollars to designated banks, including Saderat, Mellat, EDBI and Melli, through a variety of payment schemes. In making these transfers, the CBI attempted to evade sanctions by minimizing the direct involvement of large international banks with both CBI and designated Iranian banks.”³⁴

Treasury’s designation of the country came after the President signed into law CISADA³⁵ in July 2010, which imposed sanctions on any foreign financial institution engaged in money laundering or facilitating efforts by the Central Bank of Iran or any other financial institution with respect to proliferation, terrorism, or providing financial services to the IRGC.

In 2011, the President signed into law Section 1245 of the National Defense Authorization Act for Fiscal Year 2012,³⁶ which blocked the property of all

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33. 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>) &

“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>)

34. 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>)

35. U.S. House of Representatives, 111th Congress, 2nd Session, P.L. 111-195, “Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010,” Section 401, Government Printing Office, 2010, page 40. (<http://www.treasury.gov/resource-center/sanctions/Documents/hr2194.pdf>)

36. U.S. House of Representatives, 112th Congress, 1st Session, P.L. 112-81, “National Defense Authorization Act for Fiscal Year 2012,” Section 1245: Imposition of Sanctions With Respect to the Financial Sector of Iran, Government Printing Office, 2011.

designated Iranian financial institutions, including the CBI. Section 1245 also prohibited the opening or maintenance of any correspondent or payable-through accounts for any foreign financial institution that the President determined has conducted or facilitated any significant financial transaction with the Central Bank of Iran or any other designated Iranian financial institution. The only exceptions were humanitarian transactions or qualified petroleum transactions by foreign financial institutions from countries granted exceptions. These exceptions were given every 180 days, and were based on whether or not a country had significantly reduced its imports of Iranian crude.

Notably, Section 1245 of the FY2012 NDAA stated that “the financial sector of Iran, including the Central Bank of Iran, is designated as a primary money laundering concern for purposes of section 5318A of title 31, United States Code, because of the threat to government and financial institutions resulting from the illicit activities of the Government of Iran, including its pursuit of nuclear and ballistic weapons, support for international terrorism, and efforts to deceive responsible financial institutions and evade sanctions.”³⁷

4. The President should be required to certify, before suspending or lifting sanctions against the Central Bank of Iran, that Iran is no longer a jurisdiction of primary money laundering concern and the CBI is no longer engaged in any of the illicit activities specified under U.S. law.

The finding regarding the CBI under Section 311 of the PATRIOT Act and the statutory designation of the CBI under Section 1245 of the FY2012 NDAA

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(<http://www.gpo.gov/fdsys/pkg/BILLS-112hr1540enr/pdf/BILLS-112hr1540enr.pdf>)

37. U.S. House of Representatives, 112th Congress, 1st Session, P.L. 112-81, “National Defense Authorization Act for Fiscal Year 2012,” Section 1245: Imposition of Sanctions With Respect to the Financial Sector of Iran, Government Printing Office, 2011, page 350. (<http://www.gpo.gov/fdsys/pkg/BILLS-112hr1540enr/pdf/BILLS-112hr1540enr.pdf>)

should be maintained until such time as the President can certify to Congress that Iran is no longer a “jurisdiction of primary money laundering concern”³⁸ 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,” or any “illicit and deceptive financial activities.”³⁹ To make this certification, Treasury must be confident that the entire country’s financial system no longer poses “illicit finance risks for the global financial system.” Legislation should be passed to enable Congress to affirm or reject this certification.

ENERGY SANCTIONS

Iran is under four main types of energy sanctions:

- (1) Refined petroleum sanctions related to the domestic production and import of refined petroleum products (pursuant to CISADA);
- (2) Investment and technology-related sanctions that have reduced Iran’s petroleum production capacity (pursuant to the Iran Sanctions Act as modified by CISADA and provisions of ITRA);
- (3) Financial sanctions that curtail its ability to export its crude oil (pursuant to Section 1245 of the FY2012 NDAA) and access the crude oil revenues generated from those sales (pursuant to the “February 6” escrow provisions of ITRA⁴⁰).
- (4) Sector-based sanctions (pursuant to the Iran Freedom and Counter Proliferation Act in the FY2013 NDAA).

The “Sanctions Action Relief Plan” should include the following elements relating to energy sanctions:

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38. 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>)

39. 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>)

40. Kenneth Katzman, “Iran Sanctions,” Congressional Research Service, May 7, 2014, page 22. (<http://fas.org/sgp/crs/mideast/RS20871.pdf>)

5. Temporarily suspend refined petroleum sanctions.

In order to test the Iranian government’s intentions, and provide average Iranians with immediate benefits from a nuclear deal, refined petroleum sanctions should be immediately and temporarily suspended for twelve months pursuant to the President’s national security interest waiver (note: twelve months is permissible under CISADA if the “government with primary jurisdiction over the person is closely cooperating with the United States in multilateral efforts to prevent Iran from acquiring weapons of mass destruction or advanced conventional weapons.”⁴¹). This would have an impact on Iran’s ability to import higher quality refined petroleum products from foreign suppliers, instead of relying on domestic substitutes that have contributed to pollution. The sanctions are also easier to suspend and snap-back, in the event of Iranian nuclear non-compliance, than investments in Iran’s energy sector, which are more difficult to start, suspend, and restart. As discussed in the next paragraph, Congress can and should legislate conditions for such a “snap-back” to deter or punish Iranian non-compliance with the final agreement. The President and Congress should also define through legislation a sunset provision for when these temporary suspensions will become permanent, which should include a Presidential certification that Iran is no longer a state sponsor of terrorism and the Central Bank is not a money laundering concern.

6. Temporarily suspend investment, technology-related, and sector-based energy sanctions.

Certain investments, technology-related sanctions, and sector-based energy sanctions can already be suspended for 180 days pursuant to the President’s national security interest waiver authority – either

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41. U.S. House of Representatives, 111th Congress, 2nd Session, P.L. 111-195, “Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010,” Section 102, Government Printing Office, 2010, page 14. (<http://www.treasury.gov/resource-center/sanctions/Documents/hr2194.pdf>)

through the Iran Sanctions Act or the Iran Freedom and Counter-Proliferation Act (IFCA)⁴² which was enacted as part of the FY2013 National Defense Authorization Act. Rather than repeal or terminate these sanctions, the President should use the national security waivers to certify every 180 days that Iran is fulfilling its commitments under the comprehensive nuclear agreement and that no energy-related monies, technologies, goods, or services are being used in Iran's energy sector to support illicit proliferation activities or terrorism. If the President cannot make this certification, all energy sanctions should snap back into effect. The President and Congress should agree to automatically renew the provisions of the Iran Sanctions Act for an additional five-year period when it ceases to be effective on December 31, 2016, and define through legislation a sunset provision for when these temporary suspensions will become permanent. This should include a Presidential certification that Iran is no longer a state sponsor of terrorism and the Central Bank is not a money laundering concern.

7. Maintain imports of Iranian crude oil at current levels until Iran is no longer a state sponsor of terrorism and the CBI is no longer a primary money laundering concern.

The significant reduction requirement under FY2012 NDAA Section 1245 should be amended to allow for the maintenance of current levels of crude oil imports from Iran so long as Iran complies with the terms of the final nuclear agreement. Under this formulation, Iran will be receiving substantial sanctions relief by not mandating further significant reductions in crude oil imports and also will be permitted to sell its condensates without restrictions. The Obama administration has permitted Iran unrestricted sales of condensates despite Congressional interpretation of Section 1245 that condensates were also subject to the significant reduction requirements.⁴³ The

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42. U.S. Department of State, "Fact Sheet: Iran Freedom and Counter-Proliferation Act of 2012," accessed June 25, 2014. (<http://www.state.gov/documents/organization/208111.pdf>)

43. Arshad Mohammed & Timothy Gardner, "Why Higher Iran

President and Congress should define through legislation a sunset provision for when these temporary suspensions will become permanent. Since Section 1245 is linked to the Central Bank of Iran's role in supporting terrorism and other financial crimes, Iran's oil buyers should not be permitted to increase their imports of crude oil from Iran until the President can certify that Iran is no longer a state sponsor of terrorism and the CBI is no longer a primary money laundering concern.

8. Maintain escrow on oil revenues and prohibition on repatriation of funds but move funds to other jurisdictions when Iran prefers to purchase goods and services.

Oil revenues are currently accumulating in escrow accounts subject to the "February 6" restrictions of ITRA.⁴⁴ Under current law, Iran can only spend these escrow funds on non-sanctionable goods, as defined under U.S. law, in the countries where they are accumulating (China, India, Japan, South Korea, Turkey, and Taiwan) or on humanitarian goods from a third country. These escrow funds have been effectively locked up since Iran cannot find enough products to buy in these countries (though the recent "gas-for-gold" scandal involving Iran and Turkey demonstrates the limitations of these escrow restrictions). Under a sanctions relief plan, these escrow funds could be made available for transfer to a select few "qualified foreign banks" (for example, in Europe from where Iran would prefer to import its goods and services), as determined by the Treasury Department. Iran would then have access to these oil revenues for the purposes of purchasing unlimited amounts of non-sanctionable goods, as defined under U.S. law, from the country where the qualifying bank is domiciled. These funds cannot be used for third-country non-humanitarian trade,

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Oil Exports Are Not Roiling Nuclear Deal," *Reuters*, June 12, 2014. (<http://www.reuters.com/article/2014/06/12/us-iran-nuclear-oil-insight-idUSKBN0EN2GL20140612>)

44. Kenneth Katzman, "Iran Sanctions," Congressional Research Service, May 7, 2014, page 22. (<http://fas.org/sgp/crs/mideast/RS20871.pdf>)

but can be used to purchase humanitarian goods from any trading partner. None of these escrowed oil funds can be repatriated back to Iran, including through “permissible-channel” banks until Treasury certifies that Iran has met the conditions for the lifting of the PATRIOT Act Section 311 finding, is no longer a “primary money laundering concern,” and is no longer a state sponsor of terrorism. Iran would only have access to these funds through a payment plan tied to Iran’s implementation of its nuclear and ballistic missile commitments under the agreement. Failure to comply with any of these commitments would lead to Iran losing access to these funds until it takes steps to come back into compliance. To qualify, banks which have a past track record of sanctions busting or money laundering must have resolved their legal liabilities with the U.S. and EU with respect to these illicit activities and put in sufficient compliance mechanisms to prevent the recurrence of these activities.

SECTOR-BASED PROLIFERATION SANCTIONS

In addition to imposing sector-wide energy sanctions, the Iran Freedom and Counter-Proliferation Act of 2012 (FY13 NDAA) designated Iran’s shipping, shipbuilding, and port operator sectors as well. The Act further prohibited the transfer of goods and services to such sectors, and the sale, supply, or transfer of various metals and materials to blacklisted sectors, individuals, and any sector determined to be linked to the IRGC. Additionally, the Act flatly prohibited the sale, supply, or transfer of gold or other precious metals to Iran.⁴⁵

9. Temporarily Suspend Sector-Based Sanctions Based on Presidential Certifications.

Congressional legislation should amend IFCA to allow temporary suspensions of sector-based sanctions if the President can regularly certify that such sectors are not linked to the IRGC or involved

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⁴⁵ U.S. Department of State, “Fact Sheet: Iran Freedom and Counter-Proliferation Act of 2012,” accessed June 25, 2014. (<http://www.state.gov/documents/organization/208111.pdf>)

in supporting terrorism or other illicit activities as stipulated under U.S. law. If the President cannot make this certification for a given sector, that sector’s sanctions should snap back into effect.

10. Tie Gold Sanctions Relief to Money Laundering Certifications.

The recent “gas-for-gold” corruption scandal in Turkey revealed how Iran exploited the use of precious metals to evade energy and financial sanctions. As previously noted, Iran’s money laundering and sanctions evasion activities will remain a concern even after a nuclear agreement is reached. Therefore, rather than suspend gold sanctions based on the nuclear agreement, Congressional legislation should amend IFCA to allow temporary suspensions of precious metals sanctions if the President can certify that the Iranian financial sector, including the CBI, is no longer a jurisdiction of primary money laundering concern – and define a sunset provision for when these temporary suspensions will become permanent. This should include a Presidential certification that Iran is no longer a state sponsor of terrorism subject to Congressional affirmation or rejection.

TERRORISM SANCTIONS

Iran’s continued support for global terrorism and the Assad regime in Syria requires U.S. terrorism sanctions to be maintained and expanded, notwithstanding any nuclear deal.

The Obama administration appears to be committed to enhancing terrorism and human rights sanctions if the Iranian regime’s terrorist activities and human rights abuses continue after a nuclear and ballistic missile agreement. Jake Sullivan, national security adviser to Vice President Biden and deputy assistant to President Obama, who co-led the secret bilateral negotiations with Iran that paved the way for the Joint Plan of Action, recently endorsed this policy:

The wording of the Joint Plan of Action ... speaks to the issue of nuclear-related sanctions. And that word was chosen very carefully, nuclear-

*related, because we have made clear that sanctions relating to terrorism and sanctions relating to human rights violations are not covered by the discussions that we are having on the nuclear file and that we are prepared to continue to follow through on that ... I can tell you, as a matter of policy this administration is committed to continuing to enforce and follow through on that set of sanctions.*⁴⁶

Currently, Iran is subject to a wide range of terrorism related sanctions imposed through both Executive Orders and legislation. The main target of these sanctions is Iran's IRGC, including its overseas terrorist arm, the Quds Force, designated by the United States for terrorism since 2007.⁴⁷ Bank Saderat is specifically designated for supporting Iran's terrorist activities and at least eight of Iran's other banks are designated for providing financial services to the IRGC, the Basij, and/or the Quds Force. Additionally, the PATRIOT Act Section 311 finding of Iran as a "jurisdiction of primary money laundering concern," highlights the role of the Central Bank of Iran in facilitating illicit financial activity, including, but not limited to, terrorist financing.

11. Maintain all IRGC sanctions until the President certifies that Iran is no longer a state sponsor of terrorism and that the IRGC is no longer involved in the full range of illicit activities that form the basis for its designation under U.S. law.

No sanctions, whether based on the IRGC's nuclear, ballistic missile, or terrorism activities, should be

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46. Jake Sullivan, "Washington Forum: A Conversation with Jake Sullivan, Deputy Assistant to President Obama and National Security Adviser to Vice President Joe Biden," Foundation for Defense of Democracies Washington Forum 2014, May 1, 2014. (http://www.defenddemocracy.org/stuff/uploads/documents/SullivanFinal_transcript_WF14.pdf)

47. U.S. Department of State, Press Release, "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>)

lifted against any entity or financial institution specifically designated because of its connection to the IRGC unless, and 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. This includes sector-based sanctions connected to the IRGC passed pursuant to Executive Order or legislation. In addition to these thresholds, all sanctions connected to the IRGC would be subject to the sanctions relief guidelines as discussed under the "Sanctions Action Relief Plan" in this memo. An administration determination would be required with respect to each Iranian bank and its continued ties to the IRGC.

HUMAN RIGHTS SANCTIONS

The Obama administration appears to be committed to enhancing human rights sanctions if the Iranian regime's human rights abuses continue after a nuclear and ballistic missile agreement. In the same speech quoted above, Jake Sullivan also endorsed enhanced human rights sanctions:

*We must continue to speak out against the gross violations of human rights and fundamental freedoms in Iran and the hateful anti-Semitic rhetoric from some of its leaders, and we must keep providing support and assistance to those brave Iranians seeking to have their voices heard ... we've got to stand up for our values, and we need to stand against the human rights abuses and violations of fundamental freedom, including religious freedom, happening in Iran. And we have to provide real support to those voices on the ground who want to be heard, who want to push for a better future ... this is an important line of effort that has to continue regardless of what is happening on the nuclear file or on any other issue.*⁴⁸

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48. Jake Sullivan, "Washington Forum: A Conversation with Jake Sullivan, Deputy Assistant to President Obama and National Security Adviser to Vice President Joe Biden," Remarks to the Foundation for Defense of Democracies Washington Forum 2014, Washington Forum, Mandarin Hotel, Washington D.C., May 1, 2014. (<http://www.defenddemocracy.org/stuff/uploads/>)

To support this stated policy of the Obama administration:

12. Enforce and expand human rights sanctions.

No human rights sanctions should be lifted pursuant to a comprehensive nuclear agreement with Iran. Indeed, the President and Congress should significantly expand U.S. human rights sanctions against any and all Iranian officials, entities, or instrumentalities engaged in human rights abuses. These are not economic sanctions against the Iranian economy but targeted sanctions imposing travel bans and asset freezes on human rights abusers and stiff penalties against those who provide support to these abusers. These sanctions should be imposed on the following Iranian persons and entities, along with any other persons or entities conducting transactions for or on behalf of these individuals or entities:

- the Supreme Leader of Iran;
- the President of Iran;
- a current or former key official of, manager or director of an entity that may be owned or controlled by, or senior adviser to:
 - the Supreme Leader of Iran;
 - the Office of the Supreme Leader of Iran;
 - the President of Iran;
 - the Office of the President of Iran;
 - the Islamic Revolutionary Guard Corps;
 - the Basij-e Motaz'afin;
 - the Guardian Council;
 - the Ministry of Intelligence and Security of Iran;
 - the Atomic Energy Organization of Iran;
 - the Islamic Consultative Assembly of Iran;
 - the Assembly of Experts of Iran;
 - the Ministry of Defense and Armed Forces Logistics of Iran;
 - the Ministry of Justice of Iran;

- the Ministry of Interior of Iran;
- the prison system of Iran;
- the judicial system of Iran; or
- any citizen of Iran included on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury;
- a citizen of Iran indicted in a foreign country for or otherwise suspected of participation in a terrorist attack; or
- a family member of an individual described above who is not a United States person.

Congress should direct the U.S. intelligence community to establish an interagency task force dedicated to finding and seizing assets of these human rights abusers. Congress should further require regular reporting on the progress being made by this “regime asset task force.” All of these sanctions should be expanded beyond asset blocking and visa bands and include, for example, sanctions against financial institutions that conduct transactions with persons sanctioned for human rights violations.

CONCLUSION

The Sanctions Action Relief Plan discussed in this memorandum is only the beginning of a discussion that will require intense discussion and debate in the House and Senate. This plan should be adopted and implemented only if a final agreement between the P5+1 and Iran fully addresses Iran’s nuclear and ballistic missile programs in a way that permanently removes this threat to global peace and security. Congressional leaders must remain clear-eyed about the nature of the Iranian regime in order to structure any sanctions relief in a way that ensures compliance with international agreements and pressures the regime to end all other illicit activities. Congress can justifiably claim credit for its role in designing many of the toughest sanctions that forced Tehran to the negotiation table – it should now assert its prerogative in helping to defend the core sanctions architecture it built.

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[documents/SullivanFinal transcript WF14.pdf](#)



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