

Understanding the Role of Sanctions Under the Iran Deal

Mark Dubowitz
Executive Director
Foundation for Defense of Democracies
FDD's Center on Sanctions and Illicit Finance

**Hearing before the
Senate Committee on Banking, Housing, and Urban Affairs**

Washington, DC
May 24, 2016



Chairman Shelby, Ranking Member Brown, members of the Committee, on behalf of the Foundation for Defense of Democracies and its Center on Sanctions and Illicit Finance, thank you for the opportunity to testify.

INTRODUCTION

Iran is engaged in a robust effort to legitimize its financial sector despite a decades-long rap sheet of financial crimes and illicit financial activities that it shows no sign of curbing. Since the conclusion of the JCPOA, the Obama administration has missed numerous opportunities to push back against Iran's legitimization campaign. Instead of insisting on an end to Iran's continuing malign activities (terrorism, human rights violations, and other destabilizing activities in Syria, Iraq, Yemen, Lebanon, and other countries across the Middle East), and using non-nuclear sanctions to deter and punish these activities, the administration is now effectively acting as Iran's trade promotion and business development authority. Indeed, the administration may be departing from its original JCPOA negotiating position that it would only suspend or lift so-called U.S. "nuclear sanctions" under its executive authority. Rather, the administration is allowing Iran to hold the U.S. responsible for delivering financial and economic outcomes.

Iran complains that it has not received the sanctions relief it was promised. But the regulatory and economic realities are very different. The administration honored its commitments on Implementation Day in lifting or suspending the entire "nuclear-related" sanctions architecture. Iran already has received an economic windfall: The JCPOA (as well as the interim agreement in place during the negotiations) provided Iran with substantial economic relief that helped Tehran avoid a severe economic crisis and even return to a modest recovery path. The lifting of restrictions on Iran's use of frozen overseas assets of about \$100 billion gives it badly needed hard currency to settle its outstanding debts, repair its economy, build up its diminished foreign exchange reserves, and ease a budgetary crisis, which has actually freed up funds for the regime to increase its financing of terrorism.

The nuclear deal also did nothing to address the full range of Iran's other illicit activities, including ballistic missile development, support for terrorism, regional destabilization, and human rights abuses. Indeed, the weakening of missile language in the key UN Security Council Resolution coupled with the lifting of a conventional arms embargo after five years and the missile embargo after eight will undermine international efforts to combat these activities. Meanwhile, Iran's domestic repression has intensified with a record number of executions in 2015.¹ When President Rouhani was elected in June 2013, there was a widespread assumption that he would shepherd in an era of greater freedoms in Iran. Yet, domestic repression has intensified. As United Nations Special Rapporteur on human rights in the Islamic Republic of Iran Ahmed Shaheed reports, there has been no "meaningful change on the ground."²

¹ UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Press Release, "Zeid calls for an end to executions for drug offences in Iran," April 14, 2016. (<http://shaheedoniran.org/english/human-rights-at-the-united-nations/human-rights-monitoring-mechanisms/high-commissioner-office/zeid-calls-for-an-end-to-executions-for-drug-offences-in-iran/>)

² UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, "Press Conference Statement," March 10, 2016. (<http://shaheedoniran.org/english/dr-shaheeds-work/press-releases/press-conference-statement-on-10-march-2016/>)

During last summer's congressional review period, Obama administration officials pledged that the United States would continue to enforce non-nuclear sanctions and oppose the full range of Iran's illicit and dangerous activities. This was a very logical approach. While the JCPOA lifts sanctions on Iran's nuclear activities, it does not preclude the United States from using these non-nuclear sanctions – despite Iranian threats that it would view any imposition of sanctions as a violation of the deal and grounds to “snapback” its nuclear program.³

Congress should reject the Iranian position – which amounts to nuclear blackmail – and hold the administration to its commitments. Sanctions need to target Iran's support for terrorism, ballistic missile program, support for the Assad regime in Syria and designated Shiite militias in Iraq, and human rights abuses. These steps are not a violation of the JCPOA, but rather an affirmation of stated U.S. policy to “oppose Iran's destabilizing policies with every national security tool available.”⁴

Sadly, since the JCPOA was reached, the administration has only issued a handful of new designations; only nine individuals and nine entities have been added to Treasury's sanctions list.⁵ These designations include ineffectual sanctions targeting Iran's missile procurement networks. Tehran can easily reconstitute these networks, and therefore the designations do not impose the kind of economic costs needed to change Tehran's calculus. Discussions at the UN Security Council are unlikely to lead to any meaningful response to Iran's repeated ballistic missile tests,⁶ and the administration has backed away from language of “violations,” instead arguing that missile activities are “inconsistent” with UN Security Council Resolution 2231.⁷

The administration also has failed to enforce human rights sanctions against Iran. Indeed, since the JCPOA was concluded last summer, the administration has designated no individuals or entities for human rights abuses. In fact, only one individual and two entities have been sanctioned for human rights violations since Rouhani came to power in the summer of 2013.⁸ This is a sharp drop from the 34 individuals and entities designated between 2009 and 2013.⁹

³ Column Lynch, “Iran to United Nations; New Sanctions Could Kill Nuclear Deal,” *Foreign Policy*, July 28, 2015. (<https://foreignpolicy.com/2015/07/28/john-kerry-obama-administration-terrorism-human-rights-iran-to-united-nations-new-sanctions-could-kill-nuclear-deal/>)

⁴ John Kerry, “Remarks on Nuclear Agreement With Iran,” *National Constitution Center*, September 2, 2015. (<http://www.state.gov/secretary/remarks/2015/09/246574.htm>)

⁵ U.S. Department of the Treasury, Office of Foreign Assets Control, “Counter Terrorism Designations; Non-proliferation Designations,” March 24, 2016. (<https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20160324.aspx>); U.S. Department of the Treasury, Office of Foreign Assets Control, “Non-proliferation Designations,” January 17, 2016. (<https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20160117.aspx>)

⁶ Julian Pecquet, “U.S. Looks to Sidestep U.N. on New Iran Sanctions,” *Al-Monitor*, March 29, 2016. (<http://www.usnews.com/news/articles/2016-03-29/us-looks-to-sidestep-united-nations-on-iran-missiles-sanctions>)

⁷ Louis Charbonneau, “Exclusive: Iran missile tests were 'in defiance of U.N. resolution - U.S., allies,” *Reuters*, March 30, 2016. (<http://www.reuters.com/article/us-iran-missiles-idUSKCN0WV2HE>)

⁸ U.S. Department of the Treasury, Press Release, “Treasury Sanctions Iranian Official for Human Rights Abuses,” May 23, 2014. (<https://www.treasury.gov/press-center/press-releases/Pages/j12411.aspx>); U.S. Department of the Treasury, Press Release, “Treasury Designates Additional Individuals and Entities Under Iran-related Authorities,” December 30, 2014. (<https://www.treasury.gov/press-center/press-releases/Pages/j19731.aspx>)

⁹ Information available via the U.S. Department of the Treasury's “Sanctions List Search” database, accessed on May 4, 2016 at <https://sanctionssearch.ofac.treas.gov/>.

And even this is a relatively dismal record compared to the European Union, which designated 84 individuals and one entity between 2009 and 2015.¹⁰

Meanwhile, the administration is touring Western capitals to encourage banks to re-enter the Iranian market and is reportedly mulling a new unilateral concession that Iran did not negotiate as part of the JCPOA: Iranian use of dollarized financial transactions through offshore dollar-clearing, intra-bank book transfers and conversions, or some other kind of mechanism that would allow Iran access to the dollar. This concession, a response to threats from Iran's Supreme Leader Ali Khamenei,¹¹ undercuts the efficacy of future non-nuclear sanctions, which depend on the private sector's perception of the severe financial risks involved in transactions with Iran. Easing dollarized transaction restrictions also aids an Iranian push to legitimize its financial sector without halting the terror, nuclear, and missile financing, not to mention the money-laundering and sanctions evasion that violate international norms of responsible financial activities.

In remarks before the Carnegie Endowment for International Peace, Treasury Secretary Jack Lew argued that sanctions are an effective instrument to address illicit activities, but they must be lifted when the illicit behavior changes.¹² This is an important principle, but the commentary surrounding these remarks misses a crucial detail: Iran has not addressed the underlying behavior that prompted many of the U.S. sanctions.

GREEN-LIGHTING THE GREENBACK FOR AN ILLICIT FINANCIAL ACTOR

While U.S. and European diplomats celebrated the conclusion of the Joint Comprehensive Plan of Action last summer, Iran's Supreme Leader Ali Khamenei and his government saw that deal not as the end of the negotiations, but as the beginning. This has become increasingly clear in their criticism of sanctions relief and demand for more.¹³

Some of this additional sanctions relief will flow to the coffers of terrorist groups and rogue actors. While President Obama claimed that the JCPOA's sanctions relief would not be a "game-

¹⁰ The Council of the European Union, "Council Regulation No 359/2011 of 12 April 2011," *Official Journal of the European Union*, as amended April 7, 2015. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02011R0359-20150409>)

¹¹ Ali Khamenei, "Islamic Republic Has Destroyed Enemy Trenches Inside Iran," *Remarks in the city of Mashhad*, March 20, 2016. (<http://english.khamenei.ir/news/3550/Islamic-Republic-Has-Destroyed-Enemy-Trenches-Inside-Iran>)

¹² Jacob Lew, "The Evolution of Sanctions and Lessons for the Future," *Remarks before the Carnegie Endowment for International Peace*, March 30, 2016. (<https://www.treasury.gov/press-center/press-releases/Pages/jl0398.aspx>)

¹³ Guy Faulconbridge, "Iran calls on U.S. to reassure European banks over trade with Tehran," *Reuters*, February 4, 2016. (<http://www.reuters.com/article/us-iran-britain-trade-idUSKCN0VD2K2>); "Iran's Supreme Leader says U.S. lifted sanctions only on paper," *Reuters*, April 27, 2016. (<http://www.reuters.com/article/us-iran-economy-khamenei-idUSKCN0X00RK>); Robin Wright, "Iran's Javad Zarif on the Fraying Nuclear Deal, U.S. Relations, and Holocaust Cartoons," *The New Yorker*, April 25, 2016. (<http://www.newyorker.com/news/news-desk/irans-javad-zarif-on-the-fraying-nuclear-deal-u-s-relations-and-holocaust-cartoons>); Jay Solomon, Asa Fitch, and Benoit Faucon, "Iran's Central Bank Chief Warns Banking-Access Issues Jeopardize Nuclear Deal," *The Wall Street Journal*, April 15, 2016. (<http://www.wsj.com/articles/irans-central-bank-chief-warns-banking-access-issues-jeopardize-nuclear-deal-1460745930#:ZHcJ-dQfzyZaA>)

changer” for Iran,¹⁴ Supreme Leader Ali Khamenei 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.”¹⁵ The infusion of cash and other assets as a result of the JCPOA is relieving budgetary challenges for a country that had only an estimated \$20 billion in fully accessible foreign exchange reserves prior to November 2013¹⁶ but was spending at least \$6 billion annually to support Assad.¹⁷

In January 2016, Secretary of State John Kerry admitted that Iran would use some of the funds from sanctions relief to aid its nefarious activities and support terrorism. Referring to the previously frozen assets to which Iran now has access, he noted, “Some of it will end up in the hands of the IRGC or other entities, some of which are labeled terrorists.”¹⁸

Even against this backdrop, Iran is pressing for additional concessions. Supreme Leader Ali Khamenei has argued that the United States has “removed the sanctions in paper only” and blames the U.S. for the fact that global banks are keeping Iran at arm’s length.¹⁹ Foreign financial institutions rightly assess that there are too many counter-party risks from Iran’s continuing illicit financial activities and are hesitant about re-engaging with Iran.²⁰

Assess to the Dollar and Dollarized Transactions

Iran wants direct – or, at a minimum, indirect – access to the U.S. dollar because the dollar is the preferred currency for global trade. The overwhelming majority, 87 percent,²¹ of international trade is conducted in U.S. dollars; 43 percent of international financial transactions are denominated in dollars;²² and more than 60 percent of total allocated global foreign exchange

¹⁴ Barack Obama, Press Briefing, “Press Conference by the President,” *The White House*, July 15, 2015.

(<https://www.whitehouse.gov/the-press-office/2015/07/15/press-conference-president>)

¹⁵ “Iran Press Review 20 July,” *Foundation for Defense of Democracies*, July 20, 2015.

(<http://www.defenddemocracy.org/iran-press-review-20-july>)

¹⁶ Mark Dubowitz and Rachel Ziemba, “When Will Iran Run Out of Money?” *Foundation for Defense of Democracies and Roubini Global Economics*, October 2, 2013.

(http://www.defenddemocracy.org/content/uploads/documents/Iran_Report_Final_2.pdf)

¹⁷ Eli Lake, “Iran Spends Billions to Prop Up Assad,” *Bloomberg*, June 9, 2015.

(<http://www.bloombergvew.com/articles/2015-06-09/iran-spends-billions-to-prop-up-assad>)

¹⁸ Elise Labott, “John Kerry: Some sanctions relief money for Iran will go to terrorism,” *CNN*, January 21, 2016.

(<http://www.cnn.com/2016/01/21/politics/john-kerry-money-iran-sanctions-terrorism/>)

¹⁹ Aresu Egbali and Margherita Stancati, “Iran’s Supreme Leader Says Sanctions Still Affecting Country’s Economy,” *The Wall Street Journal*, March 20, 2016. (<http://www.wsj.com/articles/irans-supreme-leader-says-sanctions-still-affecting-countrys-economy-1458502695>)

²⁰ Annie Fixler, “Global Banks Wrestle with Iran’s Return,” *Foundation for Defense of Democracies*, February 12, 2016. (<http://www.defenddemocracy.org/media-hit/annie-fixler-global-banks-wrestle-with-irans-return/>); Martin Arnold, Geoff Dyer, and Najmeh Bozorgmehr, “European banks resist calls to increase business ties with Iran,” *The Financial Times* (UK), May 12, 2016. (<http://www.ft.com/intl/cms/s/0/aca21f2-1796-11e6-bb7d-ee563a5a1cc1.html#axzz48S96I671>)

²¹ John Mauldin, “China’s Renminbi Is Well on Its Way to Becoming a Global Reserve Currency,” *Business Insider*, September 29, 2013. (<http://www.businessinsider.com/renminbi-soon-to-be-a-reserve-currency-2013-9>)

²² Greg Ip, “U.S. Influence Hinges on Future of Dollar, Yuan,” *The Wall Street Journal*, April 15, 2015. (<http://www.wsj.com/articles/u-s-influence-hinges-on-future-of-dollar-yuan-1429120648>)

reserves are denominated in U.S. dollars.²³ However, beginning in 2008, Iran began demanding crude oil payments in euros and yen.²⁴ Nothing is prohibiting Iran from doing this now.

In 2008, Treasury banned Iran's last access point to the U.S. financial system by prohibiting what are referred to as "U-turn" transactions, which are transactions between a foreign bank and an Iranian bank that briefly transit the U.S. financial system in order to dollarize the transaction.²⁵ At the time, Treasury's Office of Foreign Assets Control noted that the purpose of the action was "to further protect the U.S. financial system from the threat of illicit finance posed by Iran and its banks."²⁶

Since that time, Iran's illicit financial activities have continued. In November 2011, Treasury issued a finding under Section 311 of the USA PATRIOT Act that Iran (and its entire financial sector, including its central bank) was a "jurisdiction of primary money laundering concern."²⁷ 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."²⁸ The entire country's financial system posed "illicit finance risks for the global financial system."²⁹

Despite Iran's ongoing illicit financial activities, the Obama administration appears ready to comply with Tehran's demands for more relief. News reports indicate that Washington is examining deal sweeteners to encourage greater foreign investment in Iran. Specially, the administration reportedly is looking for ways to dollarize Iranian transactions.³⁰ This is intended to encourage large European and other banks to return to business with Iran and help alleviate their concerns about the legal risks associated with engaging with a country still under U.S. sanctions for money laundering, terrorism and missile proliferation, and human rights abuses.³¹

²³ "Currency Composition of Official Foreign Exchange Reserves (COFER)," *International Monetary Fund*, March 31, 2016. (<http://data.imf.org/?sk=E6A5F467-C14B-4AA8-9F6D-5A09EC4E62A4>)

²⁴ "Iran Ends Oil Transactions In U.S. Dollars," *Associated Press*, April 30, 2008. (<http://www.cbsnews.com/news/iran-ends-oil-transactions-in-us-dollars/>)

²⁵ U.S. Department of the Treasury, Press Release, "Fact Sheet: Treasury Strengthens Preventive Measures Against Iran," November 6, 2008. (<https://www.treasury.gov/press-center/press-releases/Pages/hp1258.aspx>)

²⁶ U.S. Department of the Treasury, Office of Foreign Assets Control, "Iranian Transactions Regulations," *Federal Register*, November 10, 2008. (<https://www.gpo.gov/fdsys/pkg/FR-2008-11-10/pdf/E8-26642.pdf>)

²⁷ 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>)

²⁸ 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>)

²⁹ 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>)

³⁰ Bradley Klapper, "Republicans worry Obama is opening door to new Iran relief," *Associated Press*, March 24, 2016. (<http://bigstory.ap.org/article/b2c1eb1820154a518deb12b85882536e/gop-worries-obama-leaving-door-open-new-iran-relief>)

³¹ Eric B. Lorber, "Treasury Prepares to Take Dollarized Transactions with Iran Offshore," *Foundation for Defense of Democracies*, March 31, 2016. (<http://www.defenddemocracy.org/media-hit/eric-b-lorber-treasury-prepares-to-take-dollarized-transactions-with-iran-offshore/>)

In March, in a hearing before the House Financial Services Committee, Secretary of the Treasury Jack Lew avoided answering direct questions posed by Chairman of the House Foreign Affairs Committee, Rep. Ed Royce, on whether the U.S. administration is “considering permitting Iranian banks to clear transactions in dollars with U.S. banks or foreign financial institutions including offshore clearing houses.”³² Secretary Lew responded by stating that the administration continues to explore ways “to make sure Iran gets relief” from sanctions. Congress is rightfully concerned.

Permitting Iran access to the U.S. dollar would contradict repeated administration promises to Congress, and goes beyond any commitments made to Iran under the JCPOA.³³ During the weeks of intense congressional debate about the nuclear agreement and in the months following, administration officials repeatedly pledged that Iran would not be granted access to the U.S. financial system. Treasury Secretary Lew was adamant during a congressional grilling last July. “Iranian banks will not be able to clear U.S. dollars through New York,” he told both the Senate Foreign Relations Committee and House Foreign Affairs Committee, or “hold correspondent account relationships with U.S. financial institutions, or enter into financing arrangements with U.S. banks.”³⁴

In August before this committee, Treasury’s Acting Under Secretary for Terrorism and Financial Intelligence Adam Szubin similarly testified that Iran will not “be able to clear U.S. dollars through New York” or have correspondent accounts or financing arrangements with U.S. banks.³⁵ Most explicitly, Szubin publicly committed:

Iran will not be able to open bank accounts with U.S. banks, nor will Iran be able to access the U.S. banking sector, even for that momentary transaction to, what we call, dollarize a foreign payment. It was once referred to as a U-turn license, and Iran was allowed to make such offshore-to-offshore payments that cross U.S. banking sector thresholds for just a second. That is not in the cards.³⁶

On Implementation Day (January 16, 2016), even as the administration suspended many of the most impactful secondary sanctions on Iran under the terms of the JCPOA, it vowed that the Islamic Republic would never get the ultimate prize: access to the U.S. financial system or dollar

³² “The Annual Testimony of the Secretary of the Treasury on the State of the International Financial System,” *Hearing before the House Financial Services Committee*, March 22, 2016. (<http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=400462>)

³³ U.S. Department of the Treasury, “Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day,” issued January 16, 2016, updated March 24, 2016. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf)

³⁴ Jacob Lew, “Written Testimony of the Secretary of the Treasury,” *Hearing before the Senate Foreign Relations Committee*, July 23, 2015. (<http://www.foreign.senate.gov/imo/media/doc/07-23-15%20Lew%20Testimony.pdf>); Jacob Lew, “Written Testimony of the Secretary of the Treasury,” *Hearing before House Foreign Affairs Committee*, July 28, 2016. (<http://docs.house.gov/meetings/FA/FA00/20150728/103823/HHRG-114-FA00-Wstate-LewJ-20150728.pdf>)

³⁵ Adam Szubin, “Written Testimony,” *Hearing before the Senate Banking, Housing, and Urban Affairs Committee*, August 5, 2015. (<https://www.treasury.gov/press-center/press-releases/Pages/jl0144.aspx>)

³⁶ Adam Szubin, “Beyond the Vote: Implications for the Sanctions Regime on Iran,” *Keynote Address before The Washington Institute for Near East Policy*, September 16, 2015. (<http://www.washingtoninstitute.org/uploads/Documents/other/SzubinTranscript20150916-v2.pdf>)

transactions. Treasury's guidance about sanctions relief stated that U-turn transactions remain banned. It explained that, despite the suspension of sanctions, "foreign financial institutions need to continue to ensure they do not clear U.S. dollar-denominated transactions involving Iran through U.S. financial institutions." Treasury emphasized: "The clearing of U.S. dollar- or other currency-denominated transactions through the U.S. financial system or involving a U.S. person remain prohibited." Treasury noted that the JCPOA "does not impact the November 2011 finding by the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) that Iran is a Jurisdiction of Primary Money Laundering Concern."³⁷

News reports indicate that the administration now may permit dollarized transactions as long as: 1) no Iranian banks are involved in the transactions; 2) no Iranian rials enter into the transaction at the dollar clearing facility; and 3) the payment does not start or end with U.S. dollars.³⁸ The transaction would be temporarily converted into dollars allowing the European (or other foreign) bank to conduct at least part of the exchange in dollars, which banks prefer because the dollar is a stable currency with less fluctuations and therefore less risk.

Any authorization of dollarized transactions would likely need to make it clear that U.S. banks would be shielded from liability for providing dollars to the offshore transaction facility (potential liability could exist for U.S. persons indirectly providing services to a prohibited Iranian person otherwise). Further, it would also need to make clear that foreign banks are only permitted to engage in transactions in dollars received via the facility so long as those transactions are consistent with the relief provided under the JCPOA.

Foreign financial institutions would still face significant due diligence challenges to ensure that none of the parties to the transaction remain under U.S. sanctions or are owned or controlled by a sanctioned entity. As I have detailed in prior testimony before this Committee, the pervasive influence of the IRGC throughout Iran's economy means that this due diligence will be critical in order to ensure that foreign companies and foreign banks are not complicit in Iran's terror finance or the range of other illicit financial activities in which Iranian entities regularly engage. Reportedly, U.S. banks are drafting their own blacklists of companies with connections to the Iranian government – beyond those the designations Treasury has imposed – to protect themselves from transacting with an agent of Iranian financial institutions or the government of Iran.³⁹

Whether or not, the administration moves ahead with a blanket license or some other measure authorizing all Iran-related dollarized transactions, specific classes of dollarized transactions are already permitted. In general, U.S. banks are permitted "to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran or the Government of Iran, if the transfer arises from, and is ordinarily incident and necessary to give effect to, an underlying transaction that has been authorized by a specific or general license," according to Treasury's

³⁷ U.S. Department of the Treasury, "Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day," issued January 16, 2016, updated March 24, 2016. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf)

³⁸ "New U.S. sanctions concession to Iran may be in works: AP," *Associated Press*, March 31, 2016. (<http://www.cbsnews.com/news/new-us-sanctions-concession-to-iran-may-be-in-works-ap/>)

³⁹ Colby Adams, "Banks Draft 'Shadow' Blacklists of Iranian Firms No Longer Cited by OFAC," *MoneyLaundering.com*, May 3, 2016. (<http://www.moneylaundering.com/News/Pages/138074.aspx>)

Iranian Transactions and Sanctions Regulations.⁴⁰ U.S. financial institutions are permitted (with some restrictions) to process transactions related to food, medicines, and medical supplies and personal remittances.⁴¹ Treasury also issued a general license allowing U.S. persons to engage in transactions related to negotiating contracts with Iran’s airline industry, provided the execution of the contract is contingent on receiving a specific license,⁴² and a general license for trade in certain goods and services related to personal communications.⁴³

During the interim agreement, the U.S. government worked directly with foreign financial institutions to facilitate the repatriation of \$11.9 billion in Iranian assets held abroad.⁴⁴ It is not clear how much of those assets – if any – were released or returned as dollar-denominated funds or dollarized through related conversions out of or into other currencies at some point in the transaction. Now, the administration may be poised to permit the dollarization of Iran’s previously frozen assets, worth approximately \$100 billion, in response to Iranian complaints that they are not able to use these funds.⁴⁵ Additionally, the administration will likely route the \$8.6 million payment for 32 metric tons of Iranian heavy water through a foreign financial institution, although administration officials have not provided specific details about whether this payment will use dollars.⁴⁶

There appears to be no regulation expressly permitting foreign financial institutions to use offshore dollars to transact with Iran. Treasury’s guidance notes that it is prohibited for foreign financial institutions to “clear U.S. dollar-denominated transactions involving Iran *through U.S. financial institutions*”⁴⁷ (emphasis added), but it is not clear if the transactions are permitted if they do not transit a U.S. bank. European banks, however, have received substantial fines from the U.S. government as well as from New York regulators.⁴⁸ This is giving those with a global

⁴⁰ “Title 31: Money and Finance: Treasury, Part 560—Iranian Transactions and Sanctions Regulations,” §560.516 Transfers of funds involving Iran, *Electronic Code of Federal Regulations*, May 5, 2016. (<http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=116314f3fa7cc31c414670ca6ab97006&mc=true&n=pt31.3.560&r=PART&ty=HTML>)

⁴¹ U.S. Department of the Treasury, Office of Foreign Assets Control, “Clarifying Guidance: Humanitarian Assistance and Related Exports to the Iranian People,” February 6, 2013. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/hum_exp_iran.pdf)

⁴² U.S. Department of the Treasury, Office of Foreign Assets Control, “General License I,” March 24, 2016. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_gli.pdf)

⁴³ U.S. Department of the Treasury, “OFAC FAQs: Iran Sanctions,” Iranian General License D-1, updated February 7, 2014. (https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx#gld1)

⁴⁴ U.S. 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 Islamic Republic of Iran,” November 25, 2014. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_ext_faq_11252014.pdf)

⁴⁵ Barbara Slavin, “Central Bank governor: Iran expects access to US financial system,” *Al-Monitor*, April 15, 2016. (<http://www.al-monitor.com/pulse/originals/2016/04/iran-expects-limited-access-us-financial-system.html>)

⁴⁶ Adam Kredo, “Obama Admin Withholding Details of ‘Potentially Illegal’ Deal to Buy Iranian Nuke Materials,” *Washington Free Beacon*, April 27, 2016. (<http://freebeacon.com/national-security/obama-admin-withholding-deal-iran-nuclear/>)

⁴⁷ U.S. Department of the Treasury, “Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day,” issued January 16, 2016, updated March 24, 2016. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf)

⁴⁸ David Enrich, Noémie Bissérbe, and Madeleine Nissen, “Potential BNP Penalty Worries European Banks,” *The Wall Street Journal*, June 24, 2014. (<http://www.wsj.com/articles/potential-bnp-penalty-worries-european-banks-1403638199>)

presence and with substantial U.S. operations pause until they are certain that they will not be on the wrong side of a future enforcement action.

Congress is rightly concerned about the dollarized transaction issue and how the administration could provide Iran with such access. In addition to simply reinstating the U-turn general license that was in place prior to November 2008, there are a number of different mechanisms the United States could employ.

First, the United States could allow Iran to use what are known as offshore “large-value payment systems.”⁴⁹ Currently, offshore clearing houses and individual banks themselves have dollars within their holdings. Alternatively, the United States may permit dollar clearance through the Asian Clearing Union (which Iran had been using in 2009 to evade sanctions⁵⁰) or allow banks to conduct what are known as “book transfers.”⁵¹

If the U.S. government wants to allow dollarized transactions, Treasury could issue a general license permitting – or a statement of guidance allowing – U.S. banks to provide dollars for an offshore clearing facility overseen by a foreign government or foreign bank.⁵² When transmitting payments between Iranian companies and European companies, for example, the foreign financial institution would use this offshore clearing facility to convert the transaction into dollars. Treasury would issue similar licenses or guidance vis-à-vis the Asian Clearing Union or book transfers.

Congress should reject all of these attempts to give Iran direct or indirect access to the U.S. dollar. Iran did not explicitly negotiate this concession as part of the JCPOA and should not now be given a unilateral concession of this magnitude – particularly given its continued record of illicit behavior.

Arguments and Counterarguments

Ahead of any action by Treasury to allow dollarized transactions, it is important for Congress to understand the counterpoints to arguments that the administration is likely to put forward.⁵³

Better Intelligence: The White House may argue that allowing dollar transactions could yield better intelligence. In 2008, when Treasury banned U-turn transactions, it determined that the

⁴⁹ For an in-depth look at large-value payment systems, see Morten L. Bech, Christine Preisig, and Kimmo Soramäki, “Global Trends in Large-Value Payments,” *Federal Reserve Bank of New York Economic Policy Review*, September 2008. (<https://www.newyorkfed.org/medialibrary/media/research/epr/08v14n2/0809prei.pdf>)

⁵⁰ Avi Jorisch, “How Iran Skirts Sanctions,” *The Wall Street Journal*, November 4, 2009. (<http://www.wsj.com/articles/SB10001424052748703298004574457322960633830>)

⁵¹ Katherine Bauer, “Potential U.S. Clarification of Financial Sanctions Regulations,” *The Washington Institute for Near East Policy*, April 5, 2016. (<http://www.washingtoninstitute.org/policy-analysis/view/potential-u.s.-clarification-of-financial-sanctions-regulations>)

⁵² Eric B. Lorber, “Treasury Prepares to Take Dollarized Transactions with Iran Offshore,” *Foundation for Defense of Democracies*, March 31, 2016. (<http://www.defenddemocracy.org/media-hit/eric-b-lorber-treasury-prepares-to-take-dollarized-transactions-with-iran-offshore/>)

⁵³ The following counterarguments are outlined in Mark Dubowitz and Jonathan Schanzer, “Dollarizing the Ayatollah,” *The Wall Street Journal*, March 27, 2016. (<http://www.wsj.com/articles/dollarizing-the-ayatollahs-1459115248>)

risks simply outweighed the intelligence benefits. Four years later, Treasury pushed to ban several Iranian banks, including the central bank, from the SWIFT financial messaging system. The threat to the integrity of the global financial system from Iranian banks, it again determined, was too grave, despite the intelligence that could be gathered.

Assets vulnerable to future sanctions: The administration might claim that Treasury could capture dollar-denominated assets when Iran violates the nuclear agreement or uses the greenback to finance terrorism or ballistic missiles. This wouldn't be realistic. Iran knows the U.S. can freeze transactions that are even temporarily converted to dollars, making it unlikely that the regime would hold registered dollar accounts in sufficient quantities in banks where U.S. authorities have reach. If anything, Iran is likely to keep its dollar holdings in offshore accounts or in pallets of cash out of the reach of U.S. authorities. Indeed, after the Supreme Court issued its decision affirming the ability of victims of Iranian terrorism to seize certain assets of the Central Bank of Iran, Iranian officials stated that allowing assets to remain in dollar accounts was "poor planning" and "clear negligence."⁵⁴ Having learned this lesson, if the regime contemplates a nuclear violation or gets wind of new sanctions, it is likely to quickly dump whatever traceable dollar assets it holds.

Iranian economic recovery: The administration may also argue that providing dollarized transactions is necessary in order to ensure that Iran's economy grows, and Tehran sees the economic benefits of the deal. And yet, this also contradicts the evidence: Tehran has already received substantial sanctions relief, which has provided a major "stimulus package."

In 2012 and 2013, Iran's economy was crashing. It had been hit with an asymmetric shock from sanctions, including those targeting its central bank, oil exports, and access to the SWIFT financial messaging system. The economy shrank by six percent in the 2012-13 fiscal year, and bottomed out the following year, dropping another two percent.⁵⁵ Accessible foreign exchange reserves were estimated to be down to only \$20 billion.⁵⁶

This changed during the nuclear negotiations. During the 18-month period starting in late 2013, interim sanctions relief⁵⁷ and the lack of new shocks enabled Iran to move from a severe recession to a modest recovery.⁵⁸ During that time, the Islamic Republic received \$11.9 billion

⁵⁴ Arash Karami, "Who's to blame for US seizure of \$2 billion in Iranian assets?" *Al-Monitor*, April 28, 2016. (<http://www.al-monitor.com/pulse/originals/2016/04/ahmadinejad-us-supreme-court-iran-terror-2-billion.html>)

⁵⁵ Mark Dubowitz, Annie Fixler, and Rachel Ziemba, "Iran's Economic Resilience Against Snapback Sanctions Will Grow Over Time," *Foundation for Defense of Democracies and Roubini Global Economics*, June 2015. (http://www.defenddemocracy.org/content/uploads/publications/Iran_economy_resilience_against_snapback_sanctions.pdf)

⁵⁶ Mark Dubowitz and Rachel Ziemba, "When Will Iran Run Out of Money?" *Foundation for Defense of Democracies and Roubini Global Economics*, October 2, 2013. (http://www.defenddemocracy.org/content/uploads/documents/Iran_Report_Final_2.pdf)

⁵⁷ U.S. 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 Islamic Republic of Iran," November 25, 2014. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_ext_faq_11252014.pdf)

⁵⁸ Mark Dubowitz and Rachel Ziemba, "Early Signs of an Iranian Economic Recovery," *Foundation for Defense of Democracies*, January 9, 2016. (<http://www.defenddemocracy.org/media-hit/early-signs-of-an-iranian-economic-recovery/>); Jennifer Hsieh, Rachel Ziemba, and Mark Dubowitz, "Iran's Economy: Out of the Red, Slowly

through the release of restricted assets, while sanctions on major sectors of its economy were suspended. This facilitated strong imports that supported domestic investment, especially from China. The Obama administration also de-escalated the sanctions pressure by blocking new congressional legislation.⁵⁹ Jointly, these forces rescued the Iranian economy and its leaders, including the Revolutionary Guard, from an imminent and severe balance of payments crisis. In the 2014-15 fiscal year, the Iranian economy rebounded and grew at a rate of 3 to 4 percent.⁶⁰

Now, under the JCPOA, Iran has received access to an additional \$100 billion in previously frozen foreign assets, significantly boosting its accessible foreign exchange reserves, and permitting it to pay off outstanding debts.⁶¹ Sanctions were also lifted on Iran's crude oil exports and upstream energy investment and on key sectors of the economy, and hundreds of Iranian banks, companies, individuals, and government entities were removed from sanctions lists. The additional access of Iranian institutions to global financial payments systems has reduced transaction costs and the need for intermediaries.

In the current fiscal year – with declining oil prices and a tight monetary policy to rein in inflation – Iran's economy grew only slightly, and may have even experienced a modest contraction.⁶² But in the coming fiscal year, its economy is projected to grow at a rate of 3 to 6 percent, according to estimates from the International Monetary Fund, World Bank, and private analysts.⁶³ Assuming that Iran continues to make modest economic reforms to attract investment, the country's economic growth is projected to stabilize around 4 to 4.5 percent annually over the next five years.⁶⁴

Growing,” *Foundation for Defense of Democracies and Roubini Global Economics*, October 2014.

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

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

⁵⁹ Mark Landler, “Senate Bill to Impose New Sanctions on Iran Spurs Veto Threat From White House,” *The New York Times*, December 19, 2013. (http://www.nytimes.com/2013/12/20/world/middleeast/senate-bill-to-impose-new-sanctions-on-iran-spurs-veto-threat-from-white-house.html?_r=1)

⁶⁰ International Monetary Fund, “Iran Faces Multiple Challenges as Growth Prospects Brighten,” *IMF Survey*, January 20, 2016. (<http://www.imf.org/external/pubs/ft/survey/so/2016/new012016a.htm>)

⁶¹ Brian Murphy, “Iran claims \$100 billion now freed in major step as sanctions roll back,” *The Washington Post*, February 1, 2016. (https://www.washingtonpost.com/world/iran-claims-100-billion-now-freed-in-major-step-as-sanctions-roll-back/2016/02/01/edfc23ca-c8e5-11e5-a7b2-5a2f824b02c9_story.html); Mark Dubowitz, Annie Fixler, and Rachel Ziemba, “Iran’s Mysterious Shrinking Reserves: Estimating the Value of Tehran’s Foreign Assets,” *Foundation for Defense of Democracies and Roubini Global Economics*, September 2015.

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

⁶² Saeed Ghasseminejad, “Rouhani’s abysmal economic record and the West’s dilemma,” *Business Insider*, March 30, 2016. (<http://www.businessinsider.com/rouhanis-abysmal-economic-record-and-the-west-dilemma-2016-3>);

International Monetary Fund, “Iran Faces Multiple Challenges as Growth Prospects Brighten,” *IMF Survey*, January 20, 2016. (<http://www.imf.org/external/pubs/ft/survey/so/2016/new012016a.htm>)

⁶³ International Monetary Fund, “IMF Country Report No. 15/349: Islamic Republic of Iran,” December 2015. (<http://www.imf.org/external/pubs/ft/scr/2015/cr15349.pdf>); World Bank, “Global Economic Prospects: Spillovers amid Weak Growth,” January 2016. (<http://www.worldbank.org/content/dam/Worldbank/GEP/GEP2016a/Global-Economic-Prospects-January-2016-Spillovers-amid-weak-growth.pdf>); Additional data available upon request.

⁶⁴ International Monetary Fund, “IMF Country Report No. 15/349: Islamic Republic of Iran,” December 2015. (<http://www.imf.org/external/pubs/ft/scr/2015/cr15349.pdf>)

Going beyond the spirit of the deal: The administration might also argue that the West needs to provide economic incentives for Tehran to comply with the nuclear deal. Given its post-deal record of missile activities, hostage taking, terrorism, regional aggression, and illegal arms deals, as well as a financial sector that remains rotten to the core, Tehran is hardly in a position to complain that the “spirit” of the deal now requires more American generosity. President Obama explicitly acknowledged that Iran is not keeping to the spirit of the agreement,⁶⁵ and yet administration officials have stated that it is America’s responsibility to go beyond its commitments under the agreement to ensure that Iran “get[s] the benefits that they are supposed to get,” according to Secretary Kerry.⁶⁶ During last summer’s debate, administration officials claimed that denying Iran access to the dollar and the U.S. financial system would provide Washington with leverage after the deal was done. Providing a unilateral concession now would have far-reaching consequences. Not only would it throw away U.S. leverage, but it would also undermine the West’s ability to address Iran’s other nefarious activities.

If the United States provides dollarized access now, and six months from now, Iran conducts more ballistic missile tests or executes more dissidents or provides more weapons to the Assad regime in Syria, Washington won’t be able to revoke Iran’s access to dollarized transactions. Iran will argue, convincingly, that the U.S. provided this sanctions relief under the JCPOA, so it can’t re-impose this sanction for non-nuclear reasons later.⁶⁷ Iran will threaten to walk away from the deal and deploy its own “nuclear snapback,” where it will threaten to walk away from the deal and reconstitute its nuclear program.

As I have warned in prior testimonies, Iran will use this threat to deter the use of both nuclear and non-nuclear sanctions by dividing the United States and Europe. Once European companies are sufficiently invested in Iran’s lucrative markets, any Iranian violations of the deal are likely to provoke disagreements between Washington and its European allies. Indeed, why would the Europeans agree to new sanctions when they have big money on the line? Their arguments against new nuclear sanctions will include questions about the credibility of evidence, the seriousness of the nuclear infractions, the appropriate level of response, and likely Iranian retaliation.

The same dynamics apply to the imposition of non-nuclear sanctions, such as terrorism or human rights sanctions. On July 20, 2015, Iran informed the UN Security Council, stating that it may “reconsider its commitments” under the agreement if “new sanctions” are imposed “irrespective of whether such new sanctions are introduced on nuclear related or other grounds.”⁶⁸ Would Europe agree to Washington’s plan to withdraw U.S. dollar access if, for example, the Central

⁶⁵ Julian Hattam, “Obama: Iran not following ‘spirit’ of deal,” *The Hill*, April 1, 2016.

(<http://thehill.com/policy/national-security/274954-obama-iran-has-followed-letter-but-not-spirit-of-uke-deal>)

⁶⁶ John Kerry, “Remarks After Meeting Iranian Foreign Minister Zarif,” *United Nations*, April 19, 2016.

(<http://www.state.gov/secretary/remarks/2016/04/255977.htm>)

⁶⁷ Example derived from analysis of my colleague at FDD’s Center on Sanctions and Illicit Finance, Eric Lorber. Eric B. Lorber, “FPI Conference Call on Implications of Granting Iran Access to U.S. Financial Market,” *Foreign Policy Initiative*, April 7, 2016. (<http://www.foreignpolicyi.org/content/transcript-fpi-conference-call-implications-granting-iran-access-us-financial-market>)

⁶⁸ Column Lynch, “Iran to United Nations; New Sanctions Could Kill Nuclear Deal,” *Foreign Policy*, July 28, 2015. (<https://foreignpolicy.com/2015/07/28/john-kerry-obama-administration-terrorism-human-rights-iran-to-united-nations-new-sanctions-could-kill-nuclear-deal/>)

Bank of Iran was found – once again – to be financing terrorism? This is doubtful given that Tehran would threaten to return to its nuclear activities including large-scale uranium enrichment, putting not just European investments but the entire nuclear deal in jeopardy.

Instead of granting such a significant unilateral concession of Iranian access to dollarized transactions, the United States should require major reciprocal steps by Tehran. Iran must start to address all of its non-nuclear malign activities – indeed, the very concerns that administration officials promised that they were going to address using the remaining non-nuclear sanctions. It would be a mistake to provide unilateral concessions and diminish America’s leverage at the very time that Washington ought to be cracking down on Iran’s missile activity, terrorism, regional aggression and human rights abuses.

U.S. policy to date can be summed up this way: We did not want bad Iranian banks touching our financial sector, and we did not want our dollar directly or indirectly touching the rial, even through dollarized transactions. But the next president’s ability to target Iran’s malign activities with non-nuclear sanctions will be much more difficult if billions of dollarized transactions are green-lighted. The next administration won’t easily be able to reverse this once it is in motion, made even more difficult by inevitable European and Asian pushback.

If the Obama administration grants Iran access to the world’s most important currency, U.S. sanctions will be severely undermined without any reciprocity. Tehran will receive yet another significant and unilateral concession. And Washington will have lost critical leverage to target Iran’s terror finance, missile activities, destabilizing regional aggression, systemic human rights abuses, and the financial and military backing of the Assad regime.

BUILDING INTERNATIONAL LEGITIMACY WITHOUT CHANGING BEHAVIOR

The Joint Comprehensive Plan of Action has turned Iran from a nuclear pariah to nuclear partner without requiring Iran to come clean on its decades-long track record of nuclear mendacity. The December 2015 International Atomic Energy Agency decision to “close” the file on outstanding concerns about the possible military dimensions of Iran’s program⁶⁹ means that, without ever admitting to weaponization activities, Iran has convinced the international community to wipe its slate clean.

These schemes continue. With reports that Iran exceeded limits on its heavy water production⁷⁰ and worked out a deal to sell 32 tons to the United States,⁷¹ Iran has created a clever plan: Produce too much heavy water so as to break the nuclear agreement, then get the United States to pay Tehran to get rid of it so that it can continue to produce an essential element for a plutonium-bomb making capability. This is of particular concern as the key restrictions on Iran’s nuclear

⁶⁹ Laurence Norman, “IAEA Board Agrees to Close File on Iran’s Past Nuclear Activities,” *The Wall Street Journal*, December 15, 2015. (<http://www.wsj.com/articles/iaea-board-agrees-to-close-iran-past-nuclear-activities-file-1450195869>)

⁷⁰ “Iran briefly overstepped a limit set by nuclear deal, IAEA says,” *Reuters*, February 26, 2016. (<https://www.yahoo.com/news/iran-overstepped-limit-set-nuclear-deal-iaea-report-171008398.html?ref=gs>)

⁷¹ Jay Solomon, “U.S. to Buy Material Used in Iran Nuclear Program,” *The Wall Street Journal*, April 22, 2016. (<http://www.wsj.com/articles/u-s-to-buy-material-used-in-iran-nuclear-program-1461319381>)

program, including on both its uranium and plutonium paths to a bomb, begin to sunset during an eight- to fifteen-year period.

We are also witnessing Iran's attempts to play the same game with the international financial and business community. The government has mounted a full-court press to persuade the global financial community to overlook its long rap sheet of financial crimes⁷² and to persuade the United States to green-light Iran's access to U.S. dollar transactions,⁷³ an action that goes beyond the sanctions relief promised by the nuclear agreement.⁷⁴

Iranian Central Bank Governor Valiollah Seif has publicly criticized the U.S. for “not honor[ing its] obligations” and explicitly called for the U.S. to change its laws to allow Iran to access the U.S. financial system.⁷⁵ Deliberately sidestepping Iran's record of illicit financial activities, he and Foreign Minister Javad Zarif regularly dismiss concerns about Iran's support for terrorism and provocative ballistic missile launches.⁷⁶ The Supreme Leader has accused the United States of scaring business away from Iran and creating “Iranophobia.”⁷⁷

Tehran's record of illicit financial activities and the central role of the Central Bank of Iran (CBI) in these efforts require scrutiny. Between 2006 and 2011, as the U.S. sanctioned Iranian banks, the CBI facilitated transactions for designated banks involved in proliferation and terror financing and, according to Treasury, helped them evade sanctions.⁷⁸ As a result, Treasury took the necessary step in November 2011 of designating Iran and its entire financial sector – including its central bank – a “jurisdiction of primary money laundering concern.”⁷⁹ The following year, Congress statutorily designated the CBI for its support of nuclear and missile proliferation, terrorism, and money laundering, and banned all transactions with it beyond limited crude oil sales and humanitarian trade.⁸⁰

⁷² U.S. Department of the Treasury, Press Release, “Fact Sheet: New Sanctions on Iran,” November 21, 2011.

(<https://www.treasury.gov/press-center/press-releases/Pages/tg1367.aspx>)

⁷³ “New U.S. sanctions concession to Iran may be in works: AP,” *Associated Press*, March 31, 2016.

(<http://www.cbsnews.com/news/new-us-sanctions-concession-to-iran-may-be-in-works-ap/>)

⁷⁴ U.S. Department of the Treasury, “Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day,” issued January 16, 2016, updated March 24, 2016. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf)

⁷⁵ Valiollah Seif, “A Conversation With Valiollah Seif,” *Council on Foreign Relations*, April 15, 2016.

(<http://www.cfr.org/global/conversation-valiollah-seif/p37733>)

⁷⁶ Eli Lake, “Show Iran a Little Disrespect,” *Bloomberg*, April 26, 2016.

(<http://www.bloombergview.com/articles/2016-04-26/show-iran-a-little-disrespect>); Robin Wright, “Iran's Javad Zarif on the Fraying Nuclear Deal, U.S. Relations, and Holocaust Cartoons,” *The New Yorker*, April 25, 2016.

(<http://www.newyorker.com/news/news-desk/irans-javad-zarif-on-the-fraying-nuclear-deal-u-s-relations-and-holocaust-cartoons>)

⁷⁷ “Iran's Supreme Leader says U.S. lifted sanctions only on paper,” *Reuters*, April 27, 2016.

(<http://www.reuters.com/article/us-iran-economy-khamenei-idUSKCN0XOORK>)

⁷⁸ U.S. Department of the Treasury, Financial Crimes Enforcement Network, Advisory, “Update on the Continuing Illicit Finance Threat Emanating from Iran,” June 22, 2010.

(https://www.fincen.gov/statutes_regs/guidance/html/fin-2010-a008.html)

⁷⁹ 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>)

⁸⁰ National Defense Authorization Act For Fiscal Year 2012, Pub. L. 112-81, U.S.C. § 1245.

(https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ndaa_publaw.pdf)

The CBI continues to deny its role as Iran's central bank for terror finance. The bank had appealed to the U.S. Supreme Court to overturn the seizure of nearly \$2 billion of its assets to settle outstanding judgments won by victims of Iranian-backed terrorism.⁸¹ When the Supreme Court issued its ruling last month affirming the lower court's decision to award the funds to these victims,⁸² Iran denounced it as a theft of Iranian property.⁸³ Tehran still owes other terrorism victims another \$53 billion in outstanding judgments.⁸⁴

Washington's Actions Go Beyond its JCPOA Commitments

Since the JPCOA, the Obama administration has missed the opportunity to push back against Iran's legitimization campaign. Instead of insisting on an end to Iran's continuing malign activities, the administration is now dangerously close to becoming Iran's trade promotion and business development authority.

Last month, the administration sent letters to all 50 states urging them to reconsider any Iran sanctions legislation they had previously passed.⁸⁵ Thirty states and the District of Columbia have some form of Iran divestment legislation or policy.⁸⁶ Starting about a decade ago, individual states began passing legislation requiring state pension funds to divest from companies that engaged in specific sanctionable activities and made investments in the Iranian energy sector. Many state laws tied the imposition of sanctions to both Iran's pursuit of weapons of mass destruction and its support for terrorism.⁸⁷ Many of these measures contain termination clauses linked to Iran's removal from the state sponsors of terrorism list or similar certifications that Iran is no longer engaged in the support of international terrorism.

The JCPOA in paragraph 25 commits the federal government to "actively encourage officials at the state or local level to take into account the changes in the U.S. policy reflected in the lifting of sanctions under this JCPOA and to refrain from actions inconsistent with this change in

⁸¹ Lawrence Hurley, "Iran central bank takes Beirut bombing case to U.S. Supreme Court," *Reuters*, January 13, 2016. (<http://www.reuters.com/article/us-usa-court-iran-idUSKCN0UR0IT20160113>)

⁸² *Bank Markazi aka Central Bank of Iran v. Peterson et al.*, Decision, No. 14-770, (Supreme Court of the United States, April 20, 2016). (http://www.supremecourt.gov/opinions/15pdf/14-770_9o6b.pdf)

⁸³ Rick Gladstone, "Iran Accuses U.S. of Theft in \$2 Billion Court Ruling for Terror Victims," *The New York Times*, April 21, 2016. (http://www.nytimes.com/2016/04/22/world/middleeast/iran-accuses-us-of-theft-in-2-billion-court-ruling-for-terror-victims.html?_r=1)

⁸⁴ Orde Kittrie, "After Supreme Court Decision, Iran Still Owes \$53 Billion in Unpaid U.S. Court Judgments to American Victims of Iranian Terrorism," *Foundation for Defense of Democracies*, May 2016. (http://www.defenddemocracy.org/content/uploads/documents/Kittrie_After_SCOTUS_Iran_Owes.pdf)

⁸⁵ Eli Lake, "Obama Administration Urges States to Lift Sanctions on Iran," *Bloomberg*, April 19, 2016. (<https://www.bloomberg.com/view/articles/2016-04-18/obama-administration-urges-states-to-lift-sanctions-on-iran>)

⁸⁶ "State Legislation," *United Against Nuclear Iran*, accessed July 6, 2015. (<http://www.unitedagainstnucleariran.com/state-legislation>)

⁸⁷ For example, see Florida State Legislature, Committee Substitute for Senate Bill No. 2142, Protecting Florida's Investments Act, 2007. (http://laws.flrules.org/files/Ch_2007-088.pdf); California Legislature, Assembly Bill 221, January 29, 2007. (http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0201-0250/ab_221_bill_20071014_chaptered.html); Illinois General Assembly, Public Act 095-0616, September, 2007. (<http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=095-0616>); General Assembly of Pennsylvania, Senate Bill 928, Protecting Pennsylvania's Investments Act, 2009. (<https://legiscan.com/PA/text/SB928/2009>)

policy.”⁸⁸ The Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, among other measures, affirms the authority of states to impose sanctions or divest from Iran if they wish to do so.⁸⁹ This provision is unaffected by the JCPOA, however, the administration’s actions to-date raise serious questions. Will the White House try to force individual states to lift their divestment measures, even as the termination criteria for the legislation have not been met? Congress should pay particular attention to any actions by the federal government that go beyond simply informing states and local authorities about the nuclear deal.

In recent weeks, Secretary of State John Kerry has been on an international “road show”⁹⁰ to encourage large European banks to return to business with Iran and help alleviate their concerns about the legal risks associated with engaging with a country still under U.S. sanctions for money laundering, terrorism and missile proliferation, and human rights abuses. Under the JCPOA in paragraph 29, the United States committed to “refrain[ing] from any policy specifically intended to directly and adversely affect the normalisation of trade and economic relations.”⁹¹ There is a big difference, however, between not interfering with the normalization of trade and commercial relations and actively advocating for banks and companies to enter the Iranian market.

But international banks are not taking the bait.⁹² Notably, HSBC Chief Legal Officer and former Treasury Under Secretary Stuart Levey stated that the decisions of his bank are “driven by the financial-crime risks and the underlying conduct,” and there have been no assurances that Iran’s financial institutions have addressed the illicit conduct for which they were sanctioned in the first place.⁹³ Indeed, the International Monetary Fund (IMF)’s David Lipton noted on a visit to Tehran, “The best thing the government can do, and the banks can do, is to bring those standards up to international levels and try to reassure foreign partners, banks and otherwise that Iran’s banks are safe to deal with.”⁹⁴ Former Treasury spokesperson Hagar Hajjar Chemali noted, “The

⁸⁸ Joint Comprehensive Plan of Action, Vienna, July 14, 2015, paragraph 25. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

⁸⁹ U.S. Department of State, “Fact Sheet: Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA),” May 23, 2011. (<http://www.state.gov/e/eb/esc/iransanctions/docs/160710.htm>); Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Pub. L. 111-195, 124 Stat. 1332-1333, codified as amended at 111 U.S.C. § 202. (<https://www.congress.gov/111/plaws/publ195/PLAW-111publ195.pdf>)

⁹⁰ David Brunnstrom, “Kerry seeks to soothe European bank nerves over Iran trade,” *Reuters*, May 12, 2016. (<http://www.reuters.com/article/us-iran-banks-kerry-idUSKCN0Y300J>); Felicia Schwartz, “Kerry Tries to Drum Up Some Business in Europe for Iran,” *The Wall Street Journal*, May 10, 2016. (<http://www.wsj.com/articles/kerry-tries-to-drum-up-some-business-in-europe-for-iran-1462902185>)

⁹¹ Joint Comprehensive Plan of Action, Vienna, July 14, 2015, paragraph 29. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

⁹² Martin Arnold, Geoff Dyer, and Najmeh Bozorgmehr, “European banks resist calls to increase business ties with Iran,” May 12, 2016. (<http://www.ft.com/intl/cms/s/0/aca21f2-1796-11e6-bb7d-ee563a5a1cc1.html>)

⁹³ Stuart Levey, “Kerry’s Peculiar Message About Iran for European Banks,” *The Wall Street Journal*, May 12, 2016. (<http://www.wsj.com/articles/kerrys-peculiar-message-about-iran-for-european-banks-1463093348>)

⁹⁴ Golnar Motevalli, “Iran Must Fix Own Banks to Win Overseas Business, IMF Says,” *Bloomberg*, May 17, 2016. (<http://www.bloomberg.com/news/articles/2016-05-17/iran-must-fix-own-banks-to-win-business-from-overseas-imf-says>)

only move that could help bring on the business is for Tehran to change its foreign policy and improve its financial transparency measures.”⁹⁵

Counteracting Iran’s Narrative

Economic forecasters argue that Iran’s ability to take advantage of sanctions relief depends not primarily on additional American concessions but on Iran’s own economic policies. Specifically, Iran needs to implement policies to attract foreign investment and to address systemic illicit finance risks. The IMF explained in a December 2015 report:

Bolstering the AML/CFT framework would facilitate the re-integration of the domestic financial system into the global economy, lower transaction costs, and reduce the size of the informal sector. It will also help better detection of illegal proceeds, including those related to tax evasion and corruption. Staff urged the authorities to adopt a comprehensive CFT law that properly criminalizes terrorist financing (TF) and contains mechanisms for the implementation of United Nations Security Council Resolutions related to terrorism and TF.⁹⁶

The future success of Iran’s economy depends on foreign investment and on Tehran’s ability to alleviate the concerns of international banks and companies that Iran is committed to ending its support for terrorism, missile development, and destabilizing regional activities, and to reducing the economic power of the Islamic Revolutionary Guard Corps and the supreme leader’s business empire. All of these issues increase the risks of investing in the Islamic Republic, regardless of what deal sweeteners the White House provides.

But Iranian leaders are attempting to persuade the global financial community to overlook these risks and to treat Iran as a member of the international community in good standing. The global anti-money laundering and anti-terror finance standards body the Financial Action Task Force (FATF) regularly warns members that they should “apply effective counter-measures to protect their financial sectors” from illicit finance risks emanating from Iran.⁹⁷ As recently as February 2016, FATF warned that Iran’s “failure to address the risk of terrorist financing” poses a “serious threat ... to the integrity of the international financial system.”⁹⁸ So now, Iran has begun to engage with FATF in order to get itself off the blacklist.⁹⁹ Tehran also expressed its intention to join the FATF-style regional body the Eurasian Group,¹⁰⁰ which is dominated by Russia.

⁹⁵ Hagar Hajjar Chemali, “If Iran Wants Business, It’s Up to Iran to Change,” *The Huffington Post*, May 15, 2016. (http://www.huffingtonpost.com/entry/if-iran-wants-business-its-up-to-iran-to-change_us_57392bbfe4b06dede18b941c)

⁹⁶ International Monetary Fund, “IMF Country Report No. 15/349: Islamic Republic of Iran,” December 2015. (<http://www.imf.org/external/pubs/ft/scr/2015/cr15349.pdf>)

⁹⁷ For example, see 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>)

⁹⁸ The Financial Action Task Force, Public Statement, “FATF Public Statement – 19 February 2016,” February 19, 2016. (<http://www.fatf-gafi.org/countries/d-i/iran/documents/public-statement-february-2016.html>)

⁹⁹ Michelle Caruso-Cabrera, “Iran pushes for acceptance in global banking system,” *CNBC*, April 30, 2016. (<http://www.cnbc.com/2016/04/30/iran-pushes-for-acceptance-in-global-banking-system.html>)

¹⁰⁰ Irene Madongo, “Iran to Gain Observer Status in Eurasian Group by Summer, Says FIU Chief,” *MoneyLaundering.com*, April 27, 2016. (<http://www.moneylaundering.com/News/Pages/138005.aspx>)

In order to get off of FATF's blacklist, Iran will need to make substantial changes to its anti-money laundering regulation and fulfill a FATF action plan, but Iran will also attempt to use this process as part of its narrative and efforts to normalize its place in the international community. Iran needs to change its notorious illicit financial activities, but step-by-step, Iran will try to legitimize itself in the global financial and business community without fundamentally changing its financial practices. Just as it went from nuclear pariah to nuclear partner under the JCPOA without admitting to its nuclear weaponization work, Tehran will use this same strategy of coupling a denial of wrongdoing with demands for more and more concessions.

Congress can play an important role working with Treasury to counteract this narrative and maintain the market's understanding of the risks by exposing Iran's ongoing deceptive conduct and illicit activities in ways that illuminate for markets the risks involved in doing business with Iran. Commercial actors are currently hesitating because Iran's behavior is not conducive to effective risk management.¹⁰¹ As Jarrett Blanc, assistant coordinator of the State Department's nuclear deal implementation team, noted in remarks before business leaders in Zurich, "Business decisions, not surprisingly, in fact take into account concerns well beyond sanctions."¹⁰² Congress can keep the pressure on by exposing Iran's illicit networks and deceptive conduct that heightens the private sector's risk management concerns.

RECOMMENDATIONS

Addressing the Iranian threat requires a coherent strategy deploying all tools of American statecraft, including deploying covert, military, economic, and cyber resources. As requested by this Committee, I focused my recommendations on sanctions, but I urge that these measures not be considered in isolation. Sanctions are most effective when combined with other tools of coercive statecraft.

As I have explained, the JCPOA permits sanctions on Tehran for non-nuclear activities such as missile tests, terrorism, regional aggression and human rights abuses. Iran is likely to protest these non-nuclear sanctions and may even threaten to walk away from the nuclear agreement. Congress should not let these threats dissuade it from taking action. If Iran does walk away, Washington can rightfully argue that Iran is to blame for the dissolution of the deal. The United States then will be better positioned to take other coercive steps with more international support.

¹⁰¹ "The over-promised land," *The Economist*, April 23, 2016.

(<http://www.economist.com/news/business/21697276-it-proving-harder-expected-investors-make-start-over-promised-land>); Fabio Benedetti Valentini, "Europe's Banks Are Staying Out of Iran," *Bloomberg*, May 2, 2016. (<http://www.bloomberg.com/news/articles/2016-05-03/europe-s-banks-haunted-by-u-s-fines-forgo-iran-deals-amid-boom>); Patrick Clawson, "Misleading Claims About U.S. Barriers to Iran-Europe Financial Ties," *The Washington Institute for Near East Policy*, April 27, 2016. (<http://www.washingtoninstitute.org/policy-analysis/view/misleading-claims-about-u.s.-barriers-to-iran-europe-financial-ties>); Lawrence Franklin, "Iran Comes Clean on Banking Problems," *Gatestone Institute*, May 5, 2016. (<http://www.gatestoneinstitute.org/7958/iran-bank-problems>)

¹⁰² John Miller, "Don't blame our sanctions, U.S. tells nervous Iran investors," *Reuters*, May 4, 2016. (<http://www.reuters.com/article/us-iran-economy-sanctions-idUSKCN0XV1X1>)

Congress can take the lead in enhancing non-nuclear sanctions, increasing the enforcement of remaining sanctions, and defending the threat that Iran's illicit financial activities pose to the integrity of the U.S. financial system in the following eleven ways:

1. Protect the integrity of the U.S. dollar from Iranian illicit finance.

After Treasury revoked the U-turn general license and designated Iran as a jurisdiction of primary money laundering concern, Congress included in Section 1245(c) of the National Defense Authorization Act of 2012 a prohibition stipulating, "The President shall, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), block and prohibit all transactions in all property and interests in property of an Iranian financial institution if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person."¹⁰³ Section 1245(b) also codified the Section 311 finding that Iran is a jurisdiction of primary money laundering concern.

Congress can underline that Section 1245(c) codifies the U-turn ban by stating that it is prohibited for any U.S. financial institution to process any transactions for Iranian entities, even when such "transfer was by order of a non-Iranian foreign bank from its own account in a domestic bank to an account held by a domestic bank for a non-Iranian foreign bank."¹⁰⁴

To prevent the use of offshore clearing, Congress also can state that it is prohibited for a U.S. financial institution to provide dollars for clearing facilities if any party to the transaction anywhere in the financial chain is an Iranian entity.

Congress furthermore should authorize mandatory sanctions on any offshore large value payment system that provides dollar-clearing services in any transactions involving an Iranian party. The termination of these prohibitions should be linked to a certification from the president that Iran is no longer involved in supporting terrorism and illicit missile development as well as addressing its outstanding obligations to compensate victims of Iranian terrorism.

Finally, Congress should require the Treasury Department to report on all financial institutions involved in giving Iran direct or indirect access to the U.S. dollar with details on institutions, transactions, counterparties, and mechanisms. This reporting requirement will be useful in identifying entities for further government or non-governmental action. The Government Accountability Office (GAO) or a similar governmental or quasi-government body should verify this list and add any additional persons or entities not identified by Treasury.

2. Reauthorize the Iran Sanctions Act, a critical foundation of the sanctions architecture

While the Obama administration has suspended sanctions on key segments of the Iranian economy according to the JCPOA, only Congress can formally lift many of these sanctions. The

¹⁰³ National Defense Authorization Act for Fiscal Year 2012, Pub. L. 112-81, U.S.C. § 1245, page 351.

(https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ndaa_publaw.pdf)

¹⁰⁴ U.S. Department of the Treasury, Office of Foreign Assets Control, "Iranian Transactions Regulations," *Federal Register*, November 10, 2008. (<https://www.gpo.gov/fdsys/pkg/FR-2008-11-10/pdf/E8-26642.pdf>)

administration has also pledged to “snap” sanctions back into place if Tehran violates the terms of the agreement. At the end of this year, however, the Iran Sanctions Act (ISA) is set to expire unless lawmakers act to reauthorize it. ISA is a critical foundation of the Iran sanctions architecture and should be reauthorized. As a distinguished member of this committee, Senator Robert Menendez (D-NJ) has noted, if ISA is not reauthorized, there will be nothing “to snapback to.”¹⁰⁵

Reauthorizing ISA would not violate the JCPOA, as no new sanctions would be imposed. Iran may voice objection to the reauthorization, perhaps even threatening to walk away from the agreement, but Congress should call Iran’s bluff and not allow the regime to have veto power over American laws. Furthermore, the justification for ISA is not only Iran’s nuclear program, but also its support for international terrorism. Indeed, when the bill (which at the time also authorized sanctions against Libya) was signed into law in 1996, President Bill Clinton stated that it would “help to deny those countries the money they need to finance international terrorism ... [and] limit the flow of resources necessary to obtain weapons of mass destruction.”¹⁰⁶

3. Strengthen sanctions against the IRGC by targeting its support for terrorism and expanding non-proliferation sanctions and designations.

To date, the administration has refused to impose terrorism sanctions against the Islamic Revolutionary Guard Corps by either designating it under Executive Order 13224 or by declaring the entity to be a Foreign Terrorist Organization. If the administration refuses to designate the IRGC for terrorism, Congress should impose the same penalties provided under the FTO designation or Executive Order 13224 through other means. Such sanctions would reinforce existing secondary sanctions against companies engaged in business with IRGC companies. They would also provide another warning to foreign companies contemplating illicit business in Iran.

In the missile arena, numerous companies owned or controlled by the IRGC and MODAFL and high-ranking Iranian officials involved in the program have not been sanctioned. Congress should require the administration to provide a list of all of the individuals and entities involved in Tehran’s ballistic missile development. GAO or a similar governmental or quasi-government body should verify this list and add any additional persons or entities not identified by Treasury. Congress should require Treasury to add all of those identified on this list to the Specially Designated Nationals list under its counter-proliferation authorities. These should also include any entities owned or controlled by designated entities.

¹⁰⁵ Robert Menendez, Press Release, “Menendez Delivers Remarks on Iran Nuclear Deal at Seton Hall University’s School of Diplomacy and International Relations,” August 18, 2015. (<https://www.menendez.senate.gov/news-and-events/press/menendez-delivers-remarks-on-iran-nuclear-deal-at-seton-hall-universitys-school-of-diplomacy-and-international-relations>)

¹⁰⁶ Bill Clinton, “Remarks on Signing the Iran and Libya Sanctions Act of 1996 and an Exchange With Reporters,” *The White House*, August 5, 1996. (<http://www.presidency.ucsb.edu/ws/index.php?pid=53160&st=iran&st1>)

4. Require updated reporting on IRGC penetration in sectors of the Iranian economy, along with reporting on the sectors involved in Iran's ballistic missile development.

The Iran Freedom and Counter-Proliferation Act of 2012 requires the president to provide a report to Congress every 180 days on “which sectors of the economy of Iran are controlled directly or indirectly by Iran’s Revolutionary Guard Corps.”¹⁰⁷ Congress can update this reporting requirement so that the president must provide not only an assessment of which sectors are controlled by the IRGC, but also a determination of the nature and extent of the IRGC’s penetration into key sectors of Iran’s economy. This report should include an analysis of the contribution of the most significant sectors to Iran’s GDP, a list of the largest companies in that sector, and their links to the Revolutionary Guards (whether or not they meet the ownership or IRGC Watch List thresholds). The report should also provide a qualitative and quantitative assessment of the IRGC’s involvement in each sector. Congress should then create sector-based sanctions targeting any sector of the Iranian economy with a significant IRGC presence.

Congress also should require a similar report on the sectors of Iran’s economy that are contributing directly or indirectly to the development of the country’s ballistic missile program. The report should list all foreign investors in the sectors and all foreign persons engaging in business with these sectors. Much of this is available through open source information. Indeed, FDD’s research has revealed that metallurgy and mining; chemicals, petrochemicals, and energy; construction; automotive; and electronic, telecommunication, and computer science sectors are involved in Iran’s ballistic missile program.¹⁰⁸ These sectors are a good starting point. From there, Congress can then authorize sanctions on sectors identified in the study. These sanctions could build on the precedent that Congress and Treasury have set of targeting sectors connected to Iran’s nuclear program.

5. Require the administration to report on Iran’s deceptive conduct and illicit activities, as well as the role of the IRGC and other rogue actors in Iran’s networks.

As Iran engages with FATF and seeks to restore its status at this global terrorism finance standards body, Tehran will attempt to further the narrative that it is a responsible global actor. Congress should counter the Iranian narrative and explain to markets the ongoing compliance and business risks involved in transactions with Iran. Congress should expose Iran’s ongoing deceptive conduct and illicit activities through both open source data and declassified evidence to build on the already-existing market concerns of doing business with Iran. Congress should underscore that responsible actors have an obligation to keep Iran at arm’s length unless and until Iran’s behavior becomes conducive to effective risk management.

Congress should require the administration to provide detailed reporting on Iran’s deceptive conduct and illicit activities. Unlike the reports mentioned in the previous recommendation, these

¹⁰⁷ National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112-239, 126 Stat. 1632, codified as amended at 112 U.S.C. § 1245. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/pl112_239.pdf)

¹⁰⁸ Saeed Ghasseminejad, “Iran’s Ballistic Missile Program and Economic Sanctions,” *Foundation for Defense of Democracies*, March 17, 2016. (http://www.defenddemocracy.org/content/uploads/documents/Ballistic_Missile_Sanctions.pdf)

reports should focus on exposing Iran's shadow networks and the role of the IRGC and other designated Iranian actors in "legitimate" businesses.

6. Require the U.S. Treasury to create an IRGC Watch List.

Congress should consider a legislative requirement that Treasury create an "IRGC Watch List" of entities that do not meet the threshold for designation but have demonstrable connections to the IRGC. Treasury or another government agency such as the GAO should maintain the list and evaluate both public and classified information on companies that may be used as fronts for the IRGC. As the IRGC continues to evolve, and as its influence and control in the Iranian economy becomes increasingly sophisticated and hidden, enforcement of IRGC-related sanctions must also evolve. The criteria for inclusion on the IRGC Watch List should be flexible to account for the IRGC's evolving use of deceptive business practices.

Even in the post-JCPOA environment, the exposure of the links between Iranian companies and the Revolutionary Guards can still discourage business ties and protect the unwitting complicity of foreign companies in the IRGC's illicit behavior. Exposing the links between the IRGC and seemingly legitimate Iranian enterprises can go a long way to reducing the IRGC's ability to fund terrorism, human rights violations, and other malign activities. This Watch List would also be a critical resource for risk compliance officers at financial institutions who want to limit their company's exposure to bad actors. Again, this information can be gleaned through open sources. My colleagues Emanuele Ottolenghi and Saeed Ghasseminejad have already identified about 230 companies over which the IRGC exercises significant influence either through equity shares or positions on the board of directors.¹⁰⁹

7. Require the U.S. Treasury to designate companies with IRGC or MODAFL beneficial ownership.

Currently, Treasury uses the 50-percent threshold to determine IRGC ownership (or ownership by any other designated entity); however a 25-percent threshold would better reflect global standards and Treasury's own recommendations.¹¹⁰ At the beginning of this month, Treasury announced the final rule on customer due diligence and proposed beneficial ownership legislation requiring financial institutions in the United States to "identify and verify the identity of any individual who owns 25 percent or more of a legal entity, and an individual who controls

¹⁰⁹ Data available upon request; Emanuele Ottolenghi, "The Iran Nuclear Deal and its Impact on Iran's Islamic Revolutionary Guards Corps, Appendix I and II," *Testimony before the House Foreign Affairs Middle East and North Africa Subcommittee*, September 17, 2015. (<http://docs.house.gov/meetings/FA/FA13/20150917/103958/HHRG-114-FA13-Wstate-OttolenghiE-20150917-SD001.pdf>)

¹¹⁰ Financial Action Task Force, "International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation," February 2012, page 60. (http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf); U.S. Department of the Treasury, "Treasury Issues Proposed Rules to Enhance Financial Transparency," July 30, 2014. (<http://www.treasury.gov/press-center/press-releases/Pages/j12595.aspx>); Samuel Rubinfeld, "Proposed Rule to Force Banks to Identify Beneficial Owners," *The Wall Street Journal*, July 30, 2014. (<http://blogs.wsj.com/riskandcompliance/2014/07/30/u-s-treasury-proposes-rule-forcing-banks-to-identify-beneficial-owners/>)

the legal entity.”¹¹¹ Congress should require the Treasury Department to lower the threshold for designation to the 25-percent beneficial ownership threshold rather than majority ownership and also include “board of directors’ criteria.” The latter criteria takes into account not only equity shares but also seats on the board of directors or an ability “to otherwise control the actions, policies, or personnel decisions” used to determine ownership.¹¹² Under new criteria, many additional IRGC- and MODAFL- controlled entities would likely be eligible for sanctions. Lowering the threshold would likely also generate greater public scrutiny and enhanced due diligence procedures by the private sector.

8. Require reporting to the Securities and Exchange Commission regarding any transactions with IRGC Watch List companies or joint ventures with IRGC entities.

The Iran Threat Reduction and Syria Human Rights Act of 2012 requires companies publicly traded in the U.S. to file reports with the Securities and Exchange Commission (SEC) on any transactions or dealings with sanctioned entities or the government of Iran (unless the company received specific authorization from the U.S. government).¹¹³ To address the IRGC’s role in Iran’s economy, Congress can amend this report to require companies to include: 1) any business in sectors with significant IRGC penetration; 2) any joint ventures with public or private Iranian companies (as even so-called private companies are often heavily influenced or controlled by the IRGC); 3) any transactions with companies on the IRGC Watch List; and 4) any transactions with the sectors connected to Iran’s ballistic missile program.

Congress should mandate that any company that does not provide timely and accurate reports – and does not amend previous reports when new information comes to light about potential IRGC-linked partners – would be penalized.

9. Require Treasury to explain the qualitative and quantitative effects of individual designations against Iranian entities.

In the wake of Iran’s October and November 2015 ballistic missile tests in violation of UN Security Council resolutions,¹¹⁴ the U.S. Treasury designated 11 individuals and companies

¹¹¹ U.S. Department of the Treasury, Press Release, “Treasury Announces Key Regulations and Legislation to Counter Money Laundering and Corruption, Combat Tax Evasion,” May 5, 2016. (<https://www.treasury.gov/press-center/press-releases/Pages/jl0451.aspx>)

¹¹² For example, see Legal Information Institute, “U.S. Code § 8725 - Liability of Parent Companies for Violations of Sanctions by Foreign Subsidiaries,” *Cornell University Law School*, accessed October 29, 2015. (<https://www.law.cornell.edu/uscode/text/22/8725>)

¹¹³ Iran Threat Reduction and Syria Human Rights Act of 2012, 112 U.S.C. § 219. (https://www.treasury.gov/resource-center/sanctions/Documents/hr_1905_pl_112_158.pdf)

¹¹⁴ Sam Wilkins, “Iran tests new precision-guided ballistic missile,” *Reuters*, October 11, 2015. (<http://www.reuters.com/article/2015/10/11/us-iran-military-missiles-idUSKCN0S505L20151011>); “U.S.: Iran missile test “clear violation” of U.N. sanctions,” *CBS*, October 16, 2015. (<http://www.cbsnews.com/news/iran-ballistic-missile-test-un-sanctions-us-ambassador-samantha-power/>); Bradley Klapper, “US official says Iran tested ballistic missile last month, at least 2nd time since nuke deal,” *Associated Press*, December 8, 2015. (<http://www.usnews.com/news/politics/articles/2015/12/08/us-official-iran-tested-ballistic-missile-last-month>); Louis Charbonneau, “Iran’s October missile test violated U.N. ban: expert panel,” *Reuters*, December 16, 2015. (<http://www.reuters.com/article/us-iran-missiles-un-exclusive-idUSKBN0TY1T920151216>)

involved in a proliferation network.¹¹⁵ In March, Treasury designated another two entities related to Iran's ballistic missile program.¹¹⁶ These designations have a minimal tangible impact on Iran's ballistic missile development as Iran will likely simply reconstitute procurement networks using new front companies and middlemen and establish new subsidiaries. With an eye toward improving the current system, Congress should require the Treasury Department to provide a qualitative and quantitative explanation of the projected effects of designations. This assessment would include an economic analysis as well as a policy assessment about whether or not the designation is likely to change Iran's calculations about specific actions.

10. Expand human rights sanctions by imposing sanctions on Iranian state organs responsible for institutionalized human rights abuses and by linking sanctions concessions to improvements in human rights conditions.

With a few exceptions, U.S. sanctions against Iranian human rights abusers have primarily targeted individuals. Congress should expand these sanctions and impose human rights sanctions on state organs responsible for institutionalized human rights abuses, as well as individuals who work for these state organs. This will help Washington target the people, companies, and sources of revenue that facilitate and embolden Iran's vast system of domestic repression and single out the institutions, such as prisons or military bases, at which abuses like torture and arbitrary detention occur and the Iranians responsible for those abuses. Many of these institutions, including the notorious Evin prison's Ward 2A for political prisoners,¹¹⁷ are controlled by the Revolutionary Guards.

Congress should also consider the creation of a new authority to designate an entity or even an entire country as a "jurisdiction of human rights concern." Using the model of Section 311 of the USA PATRIOT Act, the finding would carry regulatory implications in the United States but would also send a strong signal to foreign companies, even if they are not directly affected by the finding. The goal of this policy would be to encourage the private sector to sever ties with institutions that perpetrate human rights abuses. It could also prompt the private sector to end trade relations with other entities in Iran that have been publicly accused of committing abuses but have not yet been sanctioned.

The United States should also build on its global human rights leadership by linking any further sanctions relief concessions to Iran with an improvement in Tehran's atrocious human rights record. During the Cold War, Western negotiators linked certain arms control agreements with the Soviet Union to demands for Moscow's adherence to the civil rights portion of the 1975 Helsinki Accords. By contrast, the JCPOA did not require Tehran to make any improvements in its human rights record. This is a mistake: It would be much easier to monitor Iran's nuclear program in a relatively freer and more transparent Iran.

¹¹⁵ U.S. Department of the Treasury, Press Release, "Treasury Sanctions Those Involved in Ballistic Missile Procurement for Iran," January 17, 2016. (<https://www.treasury.gov/press-center/press-releases/Pages/jl0322.aspx>)

¹¹⁶ U.S. Department of the Treasury, Press Release, "Treasury Sanctions Supporters of Iran's Ballistic Missile Program and Terrorism-Designated Mahan Air," March 24, 2016. (<https://www.treasury.gov/press-center/press-releases/Pages/jl0395.aspx>)

¹¹⁷ "A Tour of Ward 2A of Evin Prison," *Iran Human Rights Documentation Center*, accessed February 17, 2016. (<http://www.iranhrdc.org/english/news/features/1000000578-a-tour-of-ward-2a-of-evin-prison.html>)

11. Target corruption and kleptocracy for reasons related to terrorism and human rights issues.

The Revolutionary Guards and the ruling elite (including the Supreme Leader) have enriched themselves at the expense of the Iranian people. The United States can lead efforts to develop new policy tools, including financial sanctions tools, to combat corruption in Iran as well as in other authoritarian governments. Congress can help develop a mechanism to facilitate the sharing of intelligence between international partners on illicit or suspicious financial activities to protect the integrity of the global financial system and prevent corrupt officials from using the world's banking systems.

Congress should consider legislation targeting corruption in all state sponsors of terrorism. The link between the funds generated from corruption and the sponsorship of terrorism by these regimes is well documented. The pending Global Magnitsky Human Rights Accountability Act is one mechanism that could be used to target corruption in Iran. That legislation authorizes sanctions not only against human rights violators but also against government officials and their associates responsible for or complicit in significant corruption.¹¹⁸

Focusing on corruption is crucial because authoritarian leaders paint civil society groups as foreign agents, pass laws to regulate these groups, and cast themselves as defenders of traditional values against a decadent and deviant West. They have a more difficult time, however, using ideological, cultural, or nationalist arguments to justify thievery. Most ordinary people believe that international action against “crooks and thieves” in their countries is legitimate. Targeting corrupt individuals and institutions will not only impose economic costs, but it will also demonstrate to the Iranian people that the United States and the international community oppose the enrichment of oligarchs at the expense of ordinary people.

Conclusion

Congress is well positioned to assist the current and future administrations in stemming the tide of Iranian aggression in the region and its repression at home. Over the next decade, Iran could very easily and faithfully comply with the JCPOA and still emerge in ten to fifteen years as a threshold nuclear power with an industrial-size, advanced centrifuge-powered enrichment program; an ICBM program; access to advanced heavy weaponry; and a more powerful economy that would be immune to Western sanctions. To prevent this from happening, the United States needs a comprehensive strategy to sharpen its tools of economic coercion. It is my hope that these recommendations will assist Congress in that endeavor.

Thank you for the opportunity to testify today. I look forward to your questions.

¹¹⁸ Global Magnitsky Human Rights Accountability Act, S.284, 114th Congress (2015).
(<https://www.congress.gov/bill/114th-congress/senate-bill/284>)