

Key Legislative Principles to Uphold the U.S.'s JCPOA Commitments

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The Joint Comprehensive Plan of Action (JCPOA) imposes long-term restrictions on Iran's nuclear program in return for the United States' lifting of all nuclear-related sanctions targeting Iran, as well as taking steps to ensure Iran's access in areas of trade, technology, finance, and energy.¹

Some have nevertheless adopted the false belief that the United States can impose broad new sanctions on Iran or re-impose those that were lifted under the JCPOA – nullifying the benefit of Iran's bargain – without upsetting the broader agreement. Such a view is estranged from realities on the ground: the JCPOA is a political accord that will either succeed or fail depending on whether it proves a positive-sum deal for all parties involved. If the nuclear accord's benefits do not accrue to all, then the JCPOA will erode to each party's detriment.

For this reason, the United States must show sophistication in how it addresses Iranian activities anathema to U.S. interests, such as Iran's continued development of its ballistic missile program and its support for U.S.-designated terror groups. Several pending legislative proposals, as well as policy intimations from the new Trump administration, risk severely undermining the nuclear accord by either imposing

broad-based sectoral sanctions on Iran's economy or re-imposing sanctions that were lifted as part of the JCPOA. In undermining the JCPOA, such legislation poses serious damage to core U.S. interests, while also threatening the security of U.S. global allies and partners.

Efforts aimed at responding to Iran's non-nuclear activities must recognize that Iran's nuclear program posed the most significant and enduring threat to U.S. interests. As a result, any proposed legislation must be carefully tailored to conform to the U.S.'s JCPOA commitments. Below, we identify key principles for U.S. legislators to consider when analyzing any proposed sanctions legislation targeting Iran.

Broad-based sanctions – including those targeting whole sectors of Iran's economy – violate the U.S.'s JCPOA commitments and fatally undermine the nuclear deal.

Pursuant to the JCPOA, the United States is obligated to abstain from steps that adversely affect the normalization of trade and economic relations with Iran consistent with the JCPOA or interfere with Iran's realization of the full benefit of the JCPOA's sanctions-lifting.² Even if Congress targets Iran's non-nuclear activities, the imposition

¹ See JCPOA Main Text ¶ 33.

² JCPOA Main Text ¶¶ 26 and 29.

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of broad-based sectoral sanctions on Iran would fatally undermine the practical value to Iran of the sanctions-lifting and, in so doing, constitute a violation of the JCPOA.

The imposition of new nuclear-related sanctions on Iran or the re-imposition of those sanctions lifted under the JCPOA is a violation of the nuclear accord.

The United States is committed to refrain from imposing new nuclear-related sanctions targeting Iran or re-imposing the sanctions lifted pursuant to Annex II of the JCPOA. Iran has stated that it would view the re-imposition of sanctions lifted under the nuclear accord as grounds to cease performing its own nuclear-related commitments under the JCPOA.³ In order to act consistent with the U.S.'s JCPOA obligations, proposed legislation must not re-impose the sanctions outlined in Annex II of the JCPOA. That means, as an example, that Congress could not seek to limit Iran's ability to repatriate its overseas oil revenues, as doing so would be a re-imposition of a sanction that was lifted pursuant to the JCPOA.

Re-imposition of sanctions on Iran-related individuals and entities whose designations were rescinded pursuant to the JCPOA violates the nuclear deal.

Under the nuclear accord, the United States removed hundreds of Iranian individuals and entities from the Specially Designated Nationals and Blocked Persons List ("SDN List") administered by the United States Department of the Treasury's Office of Foreign Assets Control (OFAC). This

includes almost all of Iran's major financial institutions. In so doing, the U.S. lifted most sanctions on such parties, including on foreign parties' ability to engage in transactions or other dealings with them. Proposed legislation must refrain from re-imposing sanctions on such Iran-related parties, as failure to do so would constitute a clear violation of the JCPOA and risk the broader nuclear accord.

Legislation must avoid reversing policy decisions undertaken pursuant to or coincident with implementation of U.S.'s JCPOA commitments.

Pursuant to the JCPOA, the United States is obligated to "take adequate administrative and regulatory measures to ensure clarity and effectiveness with respect to the lifting of sanctions..."⁴ Such measures includes the publication of "relevant guidelines" and "publicly accessible statements on the details of the sanctions...[that] have been lifted under [the] JCPOA." In accordance with this, OFAC has published extensive guidance on the lifting of sanctions, including scores of Frequently Asked Questions (FAQs) that have been updated as OFAC receives feedback from the private sector. For example, OFAC's FAQs note that U.S. sanctions do not reach non-U.S., non-Iranian financial institutions processing U.S. dollar-denominated transactions involving Iranian parties, so long as those Iranian parties are not otherwise designated on OFAC's SDN List. Legislative proposals that seek to reverse this guidance – such as a prohibition on non-U.S., non-Iranian banks providing U.S. dollars to Iranian parties, even when the provision of such

³ JCPOA Main Text ¶¶ 26.

⁴ JCPOA Main Text ¶ 27.

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dollars does not touch the United States or involve designated Iranian persons – would be viewed as a violation of the U.S.'s JCPOA commitments.

Legislation must avoid revoking or unduly impeding license authorizations that were issued pursuant to the nuclear accord.

Pursuant to the JCPOA, OFAC issued several licenses: (1) a general license authorizing U.S.-owned or -controlled foreign parties to engage in all transactions involving Iran that had been otherwise prohibited under 31 C.F.R. § 560.215; (2) a general license for the import of Iranian-origin carpets and certain foodstuffs; and (3) specific licenses to U.S. and foreign aircraft manufacturers – such as Boeing and Airbus – for the export or re-export of commercial passenger aircraft and related parts.⁵ Several legislative proposals have specifically sought to limit the Executive's ability to issue specific licenses for the sale of aircraft to Iran. These proposals, if enacted, would uniformly violate the nuclear deal, as they would prohibit the U.S. government from implementing its express obligations under the JCPOA. Moreover, legislative proposals that add onerous conditions to the specific licenses – e.g., that Iran provides full payment for the aircraft in an escrow account under U.S. or U.S. person control – would also violate the nuclear accord insofar as such conditions are designed to effectively bar the sale of aircraft to Iran and would betray the U.S.'s good-faith implementation of the JCPOA.

Legislation must avoid interference with the U.S.'s JCPOA commitment to agree on

steps to ensure Iran's access to trade, technology, finance, and energy.

Under the JCPOA, the United States and other major powers are obligated to agree on steps with Iran to ensure Iran's access to trade, technology, finance, and energy. In other words, the JCPOA imposes an *affirmative* obligation on the United States to take steps to ensure Iran receives practical value from the JCPOA's sanctions-lifting. Sanctions legislation that would place significant burdens on Iran's ability to access the global financial system, for instance, could be construed as a violation of the JCPOA – even if such sanctions are neither nuclear-related or a re-imposition of sanctions lifted pursuant to the nuclear deal.

Legislation that is otherwise consistent with the JCPOA but that antagonizes Iran with no discernible benefit to U.S. interests should be avoided.

Even legislative proposals claiming to be consistent with the JCPOA should be closely analyzed to determine whether they are being pushed merely to provoke Iran or are instead aimed at seriously addressing issues of U.S. concern. For instance, some have proposed designating the Islamic Revolutionary Guard Corps (IRGC) a Foreign Terrorist Organization. Considering that the IRGC or its affiliates are designated under at least five U.S. sanctions program at present, designating the IRGC an FTO would have no actual value to the United States. Such a designation could, however, put at risk American lives and prevent future diplomatic contacts between the two countries, as U.S. defense and intelligence officials have long warned.

⁵ JCPOA Annex II § 5.