

Iran Terror Financing and the Tax Code

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Chairman Roskam, Ranking Member Lewis, 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.

EXECUTIVE SUMMARY

Despite the fanfare over the recently reached Iran deal, the Iranian regime remains involved in a range of destabilizing activities and illicit conduct. Recently, Iran tested a missile capable of carrying a nuclear warhead in violation of a key U.N. Security Council resolution,¹ increased its crackdown on its citizens,² and expanded its support for Syria's Assad regime and terrorist organizations like Hezbollah and Hamas.³ Meanwhile, Iran remains the leading state sponsor of terrorism,⁴ and is currently holding as hostages four Iranian-American citizens (Siamak Namazi, Jason Rezaian, Saeed Abedini, and Amir Hekmati) and refuses to give information on a missing American citizen (Robert Levinson) who vanished after traveling to Iran over eight years ago. While the Obama administration repeatedly has made it clear that the Joint Comprehensive Plan of Action (JCPOA) does not prevent the imposition of non-nuclear sanctions,⁵ the administration has done little to respond to the Iranian regime's threatening behavior.

¹ 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 News*, October 16, 2015. (<http://www.cbsnews.com/news/iran-ballistic-missile-test-un-sanctions-us-ambassador-samantha-power/>)

² Rick Gladstone, "U.N. Rights Investigator Highly Critical of Iran," *The New York Times*, October 27, 2015. (http://www.nytimes.com/2015/10/28/world/middleeast/un-rights-investigator-highly-critical-of-iran.html?_r=2); Jon Gambrell, "2 Iranian Poets Are Latest Target in Hardliners' Crackdown on Expression in Iran," *Associated Press*, October 27, 2015. (<http://www.usnews.com/news/world/articles/2015/10/27/poets-latest-to-be-snared-in-iranian-hard-liners-crackdown>); "Situation of Human Rights in the Islamic Republic of Iran," *United Nations*, October 6, 2015. (<http://shaheedoniran.org/wp-content/uploads/2015/10/SR-Report-Iran-Oct2015.pdf>)

³ Sam Dagher & Asa Fitch, "Iran Expands Role in Syria in Conjunction With Russia's Airstrikes," *The Wall Street Journal*, October 2, 2015. (<http://www.wsj.com/articles/iran-expands-role-in-syria-in-conjunction-with-russias-airstrikes-1443811030>); Ladane Nasser & Donna Abu-Nasr, "Iran's Syria Aid Deepens as It Jockey for Role in Talks," *Bloomberg News*, October 27, 2015. (<http://www.bloomberg.com/news/articles/2015-10-27/iran-says-syria-aid-deepens-to-include-army-revamp-recruitment>)

⁴ U.S. Department of State, "Country Reports on Terrorism 2014: Chapter 3: State Sponsors of Terrorism Overview," April 2015. (<http://www.state.gov/j/ct/rls/crt/2014/239410.htm>)

⁵ For example see, Mina Al-Oraibi, "John Kerry: US Will 'Push Back' Against Iran's Role in Region," *Asharq Al-Awsat*, July 22, 2015. (<http://english.aawsat.com/2015/07/article55344466/john-kerry-us-will-push-back-against-irans-role-in-region>); John Kerry, "Iran Nuclear Agreement Review," *Testimony before the Senate Foreign Relations Committee*, July 23, 2015. (<http://www.state.gov/secretary/remarks/2015/07/245221.htm>); Jacob Lew, "Iran Nuclear Agreement: The Administration's Case," *Hearing before the House Foreign Affairs Committee*, July 28, 2015. (<https://foreignaffairs.house.gov/hearing/hearing-examine-iran-nuclear-agreement>); John Kerry, "Iran Nuclear Agreement: The Administration's Case," *Testimony before the House Foreign Affairs Committee*, July 28, 2015. (<http://www.state.gov/secretary/remarks/2015/07/245369.htm>); "Iran Nuclear Agreement Review," *Testimony before the Senate Foreign Relations Committee*, July 23, 2015. (<http://www.cq.com/doc/congressionaltranscripts-4731018?3>); Jeffrey Goldberg, "John Kerry on the Risk of Congress 'Screwing' the Ayatollah," *The Atlantic*, August 5, 2015. (<http://www.theatlantic.com/international/archive/2015/08/john-kerry-interview-iran-nuclear-deal/400457/>); Wendy Sherman & Adam Szubin, "The Implications of Sanctions Relief Under the Iran Agreement," *Hearing before the Senate Banking, Housing, and Urban Affairs Committee*, August 5, 2015. (http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=66419365-b8c6-4a0d-a5ea-e143742ca9e5); Barack Obama, "Press Conference by the President," *The White House*, July 15, 2015. (<https://www.whitehouse.gov/the-press-office/2015/07/15/press-conference-president>); "Transcript: Secretary of

The JCPOA does not address the full range of Iran's record of illicit activities and lifts many of the most impactful sanctions on Iran. It also fails to achieve the stated goal of the P5+1: blocking all pathways to an Iranian nuclear bomb. Iran has merely agreed to certain limitations on its nuclear activities—a departure from the original U.S. policy goal of dismantling Iran's illicit nuclear infrastructure. Unfortunately, even these modest restrictions are fatally flawed because they disappear over time. Iran, instead, will mothball certain equipment and reduce enriched uranium stockpiles for ten to fifteen years, after which Tehran can expand its nuclear activities, build an industrial-scale infrastructure powered by easier-to-hide advanced centrifuges, and develop an intercontinental ballistic missile program.

As the United States and its partners dismantle the global sanctions regime, Iran can build greater economic resiliency against future sanctions pressure. The deal will provide extensive sanctions relief to Iran, and the impact of this relief will expand over time. Economic forecasts estimate that Iran's economic growth will expand to 4-5 percent annually for the next three years.⁶ The IMF estimates that Iran's real GDP growth may reach 5.5 percent in FY 2016/17 and FY 2017/18.⁷ This is a significant rebound from Iran's *negative* growth rate of 6 percent in FY 2012/13.⁸

Despite wishful thinking that the nuclear deal will empower the moderate forces in Iran, the deal is more likely to enrich the most dangerous elements of the regime, in particular Iran's Islamic Revolutionary Guard Corps (IRGC), as well as the massive business interests of Supreme Leader Ali Khamenei. The IRGC controls a vast business empire which is positioned to reap the benefits of sanctions relief. The IRGC directs Iran's external regional aggression, its nuclear and ballistic missile programs, and its vast system of domestic repression.

The IRGC also controls large swaths of Iran's economy. "The IRGC is Iran's most powerful economic actor," the U.S. Treasury Department explained, "dominating many sectors of the economy, including energy, construction, and banking"⁹—precisely those sectors set to receive sanctions relief under the JCPOA. Likewise, Supreme Leader Ali Khamenei controls a vast business empire estimated to be worth at least \$95 billion through a holding company called the Execution of Imam Khomeini's Order (EIKO, or Setad in Farsi). EIKO will be de-designated by the U.S. government on Implementation Day under the JCPOA. It is difficult to image a significant business transaction in these key sectors where the IRGC or EIKO won't be in on the deal. The

State John Kerry On Cuba, Nuclear Deal With Iran," *NPR*, July 20, 2015.

(<http://www.npr.org/2015/07/20/424769835/transcript-secretary-of-state-john-kerry-on-cuba-nuclear-deal-with-iran>)

⁶ Mark Dubowitz, Annie Fixler, & Rachel Ziemba, "Iran's Mysterious Shrinking Reserves: Estimating the Value of Tehran's Foreign Assets," *Foundation for Defense of Democracies & Roubini Global Economics*, September 2015. (http://www.defenddemocracy.org/content/uploads/publications/FDDRoubini_Report_Irans_mysterious_shrinking_reserves.pdf)

⁷ International Monetary Fund, "Regional Economic Outlook for the Middle East and Central Asia," October 21, 2015, page 83. (<http://www.imf.org/external/pubs/ft/reo/2015/mcd/eng/pdf/mreo1015.pdf>)

⁸ Mark Dubowitz, Annie Fixler, & Rachel Ziemba, "Iran's Economic Resilience Against Snapback Sanctions Will Grow Over Time," *Foundation for Defense of Democracies & Roubini Global Economics*, June 2015. (http://www.defenddemocracy.org/content/uploads/publications/Iran_economy_resilience_against_snapback_sanctions.pdf)

⁹ U.S. Department of the Treasury, Press Release, "Treasury Submits Report to Congress on NIOC and NITC," September 24, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1718.aspx>)

financial gains from the JCPOA will enable the IRGC and EIKO to expand their dangerous activities.

While the JCPOA lifts sanctions on Iran’s nuclear activities, it does not preclude the United States from using economic tools to address the full range of Iran’s illicit activities—despite statements from Iran that it will view any imposition of sanctions, nuclear or non-nuclear, as a violation of the deal. Giving into that interpretation would significantly undermine Washington’s ability to use non-military tools to address national security threats. Instead, Congress should take the lead and impose measures to target Iran’s support for terrorism, ballistic missile program, support for the Assad regime in Syria, human rights abuses, and systemic corruption. An important first step in this approach is to designate the IRGC as a terrorist organization and to sanction those Iranian entities like EIKO where the nexus between corruption and sponsorship of terrorism is clear. These steps are not a violation of the JCPOA, but rather an affirmation of the stated U.S. policy to “oppose Iran’s destabilizing policies with every national security tool available.”¹⁰

Congress should act to defend the sanctions architecture established to address the full range of Iran’s illicit activities. Even within the confines of the JCPOA, there are significant “non-nuclear” measures, including through the use of the tax code, that Congress should consider to prevent the enrichment of those in the Iranian regime who continue to engage in terrorism and other activities inimical to U.S. interests.

My specific recommendations in this testimony are:

1. Designate the IRGC for terrorism;
2. Designate additional IRGC entities and individuals and foreign companies that do business with the IRGC;
3. Sanction the Supreme Leader’s financial empire for its use of funds from corruption to support terrorism;
4. Prevent tax breaks for companies doing business in Iran;
5. Prevent the re-opening of the U.S. parent-foreign subsidiary loophole;
6. Develop a rehabilitation program for designated Iranian banks that relies on a change in illicit financial conduct; and,
7. Legislate criteria for the lifting of the Section 311 finding.

¹⁰ John Kerry, “Remarks on Nuclear Agreement With Iran,” *National Constitution Center, Philadelphia*, September 2, 2015. (<http://www.state.gov/secretary/remarks/2015/09/246574.htm>)

INTRODUCTION

Throughout the summer and fall, Congress held numerous, in-depth debates and discussions about the terms of the deal and the sunset clauses that over time lift restrictions on Iran's nuclear activities. Given the deeply-flawed nature of the JCPOA, it should come as no surprise that bipartisan majorities of both the House and Senate opposed the deal and that the American public overwhelmingly rejected it. Some members of Congress who ultimately decided not to vote against the deal did so after issuing lengthy—and anguished—statements outlining its serious shortcomings.

Despite congressional reservations about the deal, the Obama administration has already issued waivers suspending “nuclear-related” sanctions pursuant to this summer's agreement.¹¹ These suspensions will take effect on Implementation Day when the International Atomic Energy Agency (IAEA) verifies that Iran has fulfilled specific nuclear commitments, though the IAEA is not required to conclude that Iran's nuclear program is exclusively peaceful, another flaw in the terms of the JCPOA.

While the political debate over the JCPOA continues into the election year, the challenges for international companies are just beginning. Navigating economic sanctions on Iran—both those that will be lifted and those that will remain—will be a legal and reputational minefield for international companies.

First, major discrepancies exist between U.S. and EU “de-designation” lists. Differences between EU and U.S. sanctions have existed for years—for example, the EU has designated more than 50 high ranking Iranian human rights violators who have escaped U.S. sanction, while the U.S. has designated two dozen Iranian financial institutions that have never been sanctioned by Europe. These inconsistencies will continue, and on Implementation Day, there will be more than one hundred entities “de-listed” by the U.S. but not by the EU, or vice versa.

These discrepancies likely will create a nightmare for professionals charged with keeping international businesses in compliance with U.S. laws and global reputational standards. The problem is especially acute when it comes to foreign financial institutions. Any institution engaged in “significant financial transactions” with banks that remain under U.S. sanctions “will risk losing its access to the U.S. financial system,” warned Treasury Secretary Lew.¹²

American companies also need to be wary of doing business with entities removed from Treasury's Specially Designated Nationals (SDN) list. Despite their removal from the SDN list, more than 140 entities (including financial institutions) will remain off limits to U.S. firms and their subsidiaries.¹³ According to the JCPOA, these entities are identified by the U.S. Treasury as owned

¹¹ U.S. Department of State, Bureau of Economic and Business Affairs, “JCPOA Contingent Waivers,” October 18, 2015. (<http://www.state.gov/e/eb/rls/othr/2015/248320.htm>)

¹² Jacob J. Lew, “Iran Nuclear Agreement: The Administration's Case,” *Testimony before the House Foreign Affairs Committee*, July 28, 2015. (<http://docs.house.gov/meetings/FA/FA00/20150728/103823/HHRG-114-FA00-Wstate-LewJ-20150728.pdf>)

¹³ “Joint Comprehensive Plan of Action – Attachments,” Vienna, July 14, 2015, Attachment 3. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_attachments_en.pdf)

or controlled by the government of Iran, and U.S. persons are “prohibited from transactions with these individuals and entities, pursuant to the Iran Transactions and Sanctions Regulations.”

Next, American companies need to navigate the legal and political complexities of what business they are permitted to conduct through their foreign subsidiaries. Under the JCPOA, the U.S. government will license foreign subsidiaries to conduct business from which their parent companies are prohibited¹⁴—a loophole that Congress previously closed and one that legislators, and a future administration, may not want reopened.¹⁵

Since America’s primary trade embargo against Iran will continue, U.S. persons will continue to be banned from conducting business with most Iranian entities. Foreign companies meanwhile need to ensure that their transactions don’t transit through New York because Iran is banned from conducting the “momentary transaction to...dollarize a foreign payment,” known as a U-turn transaction, Acting Under Secretary of the Treasury Adam Szubin noted.¹⁶ As Treasury Secretary Lew explained succinctly, Iran “will continue to be denied access to the world’s largest financial and commercial market.”¹⁷

Behind all of the technical details and legal hurdles to navigate, one overarching concern should remain at the forefront of risk concerns for international firms: the IRGC’s dominant role in the Iranian economy. The IRGC controls significant companies in all major sectors of Iran’s economy. Any foreign company partnering with local Iranian businesses will likely expose itself to the IRGC or to the business interests of Supreme Leader Ali Khamenei through EIKO, his massive holding company, or both. That is, unless Congress takes steps now to mitigate this very significant problem.

In the following testimony, I will explain the problems with the structure of JCPOA’s sanctions relief and the leverage that the deal provides Iran—what I call Iran’s “nuclear snapback.” I will also elaborate on how sanctions relief is projected to enrich the most dangerous elements of the regime—the business empires of the IRGC and Supreme Leader Ali Khamenei. Congress can mitigate some of the worst effects of the sanctions relief by using non-nuclear sanctions and the tax code to raise the costs for international companies and the foreign subsidiaries of U.S. companies engaging with the IRGC, EIKO, and other dangerous Iranian elements.

¹⁴ “Joint Comprehensive Plan of Action, Annex II – Sanctions-related commitments,” Vienna, July 14, 2015, paragraph 5.1.2. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_2_sanctions_related_commitments_en.pdf)

¹⁵ U.S. House of Representatives, 112th Congress, 2nd Session, H.R. 1905, “Iran Threat Reduction and Syria Human Rights Act of 2012,” *Government Printing Office*, 2012, Section 218. (<http://www.gpo.gov/fdsys/pkg/BILLS-112hr1905enr/pdf/BILLS-112hr1905enr.pdf>)

¹⁶ 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>)

¹⁷ Jacob J. Lew, “Iran Nuclear Agreement: The Administration’s Case,” *Testimony before the House Foreign Affairs Committee*, July 28, 2015. (<http://docs.house.gov/meetings/FA/FA00/20150728/103823/HHRG-114-FA00-Wstate-LewJ-20150728.pdf>)

THE STRUCTURE OF SANCTIONS RELIEF

The Joint Comprehensive Plan of Action (JCPOA) is a fatally flawed deal because rather than block Iran's pathways, it opens a "patient path" to a nuclear weapon and intercontinental ballistic missile (ICBM) capability over the next decade and a half. Tehran has to simply abide by the agreement to emerge as a threshold nuclear power with an industrial-size enrichment program, an advanced long-range ballistic missile program, access to advanced heavy weaponry, and a more powerful economy increasingly immunized against Western sanctions.

On Implementation Day, Iran will receive substantial sanctions relief creating a major "stimulus package" for Iran's economy, with the benefits expanding and creating greater economic resiliency over time. The JCPOA front-loads sanctions relief, reconnecting Iranian banks back into the global financial system and providing Iran with access to about \$90-120 billion in previously frozen foreign assets.¹⁸ These funds could flow to the coffers of terrorist groups and rogue actors. While President Obama has claimed the money would not be a "game-changer" for Iran,¹⁹ 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."²⁰ This infusion of \$90-\$12 billion in cash and other assets will relieve budgetary challenges for a country that had only an estimated \$20 billion in fully accessible foreign exchange reserves prior to November 2013²¹ but was spending at least \$6 billion annually to support Assad.²²

Sanctions on Iran's crude oil export transactions will also be lifted, as will sanctions on key sectors of the Iranian economy. This sanctions relief will enable Iran to build economic resilience against future economic sanctions pressure—both sanctions aimed at isolating other illicit financial conduct and so-called "snapback" sanctions in the event of Iranian non-compliance with the JCPOA.

After five and eight years respectively, the arms embargo and restrictions on ballistic missile development will lapse. Already, since the July 14 JCPOA agreement, Iran tested a ballistic missile capable of carrying a nuclear warhead in violation of U.N. Security Council resolutions,²³ and yet

¹⁸ Mark Dubowitz, Annie Fixler, & Rachel Ziemba, "Iran's Mysterious Shrinking Reserves: Estimating the Value of Tehran's Foreign Assets," *Foundation for Defense of Democracies & Roubini Global Economics*, September 2015. (http://www.defenddemocracy.org/content/uploads/publications/FDDRoubini_Report_Irans_mysterious_shrinking_reserves.pdf)

¹⁹ Barack Obama, "Press Conference by the President," *Washington, D.C.*, July 15, 2015. (<https://www.whitehouse.gov/the-press-office/2015/07/15/press-conference-president>)

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

²¹ Mark Dubowitz & Rachel Ziemba, "When Will Iran Run Out of Money?," *Foundation for Defense of Democracies & Roubini Global Economics*, October 2, 2013. (http://www.defenddemocracy.org/content/uploads/documents/Iran_Report_Final_2.pdf)

²² Eli Lake, "Iran Spends Billions to Prop Up Assad," *Bloomberg*, June 9, 2015. (<http://www.bloombergview.com/articles/2015-06-09/iran-spends-billions-to-prop-up-assad>)

²³ 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 News*, October 16, 2015. (<http://www.cbsnews.com/news/iran-ballistic-missile-test-un-sanctions-us-ambassador-samantha-power/>)

the entities involved in the missile test are set to be removed from sanctions lists.²⁴ Iranian officials have also stated that they will not abide by these limitations. Following the missile test, Defense Minister IRGC Brigadier General Hossein Dehghan said, “We will not ask permission from anyone in strengthening our defensive power and missile capability,” implying, if not explicitly stating, that Iran would not refrain from this type of activity.²⁵ Deputy Foreign Minister Abbas Araghchi was more explicit:

“We will not implement [the resolution]. We are not committed to the Security Council’s armament sanction for the next five years.... We will sell weapons to whomever we want.... None of our missiles are covered by this resolution.”²⁶

After eight years, on Transition Day, the U.S., EU, and U.N. will lift additional sanctions and provide Iran with additional sanctions relief. This sanctions relief will occur whether or not the IAEA can reach a so-called “broader conclusion” that Iran’s nuclear program is entirely peaceful. Simultaneously, restrictions on Iran’s nuclear activities will begin to lapse. At that time, and especially after year 15, Iran’s nuclear program will be poised for much greater expansion, and the United States will have a greatly diminished economic sanctions capability to force the Iranian government to comply with the remaining obligations. I am deeply concerned that if Iran decides to step from a threshold nuclear weapons state to a state in possession of an arsenal of nuclear weapons, the only choice at that point may be the use of U.S. military force against a much more powerful Iran.

The deal is also fatally flawed because it dismantles international sanctions without a reciprocal dismantlement of Iran’s illicit nuclear infrastructure. The agreement neutralizes U.N. and European Union sanctions, and significantly diminishes the scope and efficacy of U.S. sanctions.

The JCPOA will lift blanket bans on commercial and financial transactions in entire sectors of Iran’s economy, including upstream energy investment and energy-related technology transfers, the auto industry, petrochemicals, and shipping, as well as the precious metals trade. Additionally, on Implementation Day, the U.S. and EU will de-list hundreds of individuals and entities designated for supporting Iran’s nuclear and ballistic missile proliferation.

The JCPOA stipulates that of the more than 650 entities that have been designated by the U.S. Treasury for their role in Iran’s nuclear and missile programs or for being owned or controlled by the government of Iran, more than 67 percent will be de-listed from Treasury’s blacklists on Implementation Day. This includes the Central Bank of Iran and most major Iranian financial institutions. After eight years, only 25 percent of the entities that have been designated by Treasury

²⁴ Behnam Ben Taleblu, “EU Set to Delist Entities Linked to Iran’s Ballistic Missile Test,” *Foundation for Defense of Democracies*, October 29, 2015. (<http://www.defenddemocracy.org/media-hit/behnam-ben-taleblu-eu-set-to-delist-entities-linked-to-irans-ballistic-missile-test/>)

²⁵ “Mooshak-e Emad’ Nasl-e Jadid-e Moushakha-ye Ballistik-e Iran ba Movafaghiyat Azmayesh Shod (Iran’s New Generation Ballistic Missile the ‘Emad Missile’ Was Successfully Tested),” *Young Journalists Club* (Iran), October 11, 2015. (<http://www.yjc.ir/fa/news/5352934/موشک-عماد-نسل-جدید-موشک-های-بالستیک-ایران-با-موفقیت-۸۰٪-E2%80%8E-آزمایش-شده-تصاویر-و-فیلم>)

²⁶ “Araghchi: Bakhshai az Ghatname ra Ejra Nakhahim Kard (We Will Not Implement Certain Sections of the Resolution,” *Tabnak* (Iran), September 11, 2015. (<http://www.tabnak.ir/fa/news/530866/آرغچی-قطعه‌نامه‌از-عراق‌چیش‌شهایی-کردنخواهیم-اجرا>)

over the past decade will remain sanctioned.

The Supreme Leader has already begun renegotiating the terms of the JCPOA. In a public letter to President Rouhani on October 21, the Supreme Leader demanded that the U.S. and the EU must commit, in writing, to completely lift all sanctions before Iran begins to implement its nuclear commitments.²⁷ While the EU and U.S. have already committed to the suspension of sanctions by issuing the necessary legal documents on Adoption Day, Khamenei's statement implies that a suspension is insufficient and a full termination of sanctions is required.

The goal of sanctions was to provide the president with the tools to stop the development of an Iranian nuclear threshold capacity and also to protect the integrity of the U.S.-led global financial sector from the vast network of Iranian financial criminals. The JCPOA, however, requires a de-listing of sanctioned entities divorced from a change in the illicit and illegal behavior that prompted the designation in the first place. The JCPOA requires the wholesale lifting of sanctions on entire sectors rather than creating a rehabilitation program (as was the case for the termination of sanctions on Myanmar) requiring that sanctioned entities demonstrate that they are no longer engaged in illicit behavior. Instead, the JCPOA's sanctions relief program creates no guarantees that these entities will, once de-listed, cease the patterns of illicit conduct that caused them to be sanctioned in the first place. Indeed, there is ample reason to believe they will redouble that activity.

The JCPOA & the Challenge to Conduct-Based Financial Sanctions

The JCPOA dismantles the international economic sanctions architecture which was designed to respond to the full range of Iran's illicit activities, not only the development of Iran's illicit nuclear program. The United States has spent the last decade building a powerful sanctions architecture to punish Iran for its nuclear mendacity, illicit ballistic missile development, vast financial support for terrorist groups, backing of other rogue states like Bashar al-Assad's Syria, human rights abuses, and the financial crimes that sustain these illicit activities. More broadly, a primary goal of the sanctions on Iran, as explained by senior Treasury Department officials over the past decade, was to "protect the integrity of the U.S. and international financial systems" from Iranian illicit financial activities.²⁸

Tranche after tranche of designations issued by Treasury, backed by intelligence that often took months, if not years, to compile, isolated Iran's worst financial criminals. And designations were only the tip of the iceberg. Treasury officials traveled the globe to meet with financial leaders and business executives to warn them against transacting with known and suspected terrorists and weapons proliferators.²⁹ This campaign was crucial to isolating Iran.

²⁷ "Iran Press Review," *Foundation for Defense of Democracies*, October 21, 2015.

(<http://fdd.cmail20.com/t/ViewEmail/r/941B907BD0F8D6F62540EF23F30FEDED/18EF3159F08F673EDDA3541AF197FE1F>)

²⁸ David Cohen, "The Law and Policy of Iran Sanctions," Remarks before the New York University School of Law, September 12, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1706.aspx>)

²⁹ Robin Wright, "Stuart Levey's War," *The New York Times*, November 2, 2008.

(http://www.nytimes.com/2008/11/02/magazine/02IRAN-t.html?pagewanted=all&_r=0)

Following years of individual designations of Iranian and foreign financial institutions for involvement in the illicit financing of nuclear, ballistic missile, and terrorist activities,³⁰ Treasury issued a finding in November 2011 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.”³¹ 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.”³² The entire country’s financial system posed “illicit finance risks for the global financial system.”³³

Internationally, the global anti-money laundering and anti-terror finance standards body the Financial Action Task Force (FATF) also warned its members that they should “apply effective counter-measures to protect their financial sectors from money laundering and financing of terrorism (ML/FT) risks emanating from Iran.”³⁴ Despite the JCPOA, in June and in October 2015, FATF again issued statements warning that Iran’s “failure to address the risk of terrorist financing” poses a “serious threat...to the integrity of the international financial system.”³⁵

The Section 311 finding was conduct-based, and it would therefore be appropriate to tie the lifting of sanctions on all designated Iranian banks (especially the legislatively-designated Central Bank of Iran) and their readmission into the global financial system to specific changes in their conduct. The JCPOA, however, requires the lifting of financial sanctions prior to a demonstrable change in Iran’s illicit financial conduct.

In the past, Washington has given “bad banks” access to the global financial system in order to secure a nuclear agreement. In 2005, Treasury issued a Section 311 finding against Macau-based Banco Delta Asia,³⁶ and within days, North Korean accounts and transactions were frozen or blocked in banking capitals around the world. North Korea refused to make nuclear concessions

³⁰ Treasury designated 23 Iranian and Iranian-allied foreign financial institutions as “proliferation supporting entities” under Executive Order 13382 and sanctioned Bank Saderat as a “terrorism supporting entity” under Executive Order 13224. U.S. Department of the Treasury, Press Release, “Treasury Cuts Iran’s Bank Saderat Off from U.S. Financial System,” September 8, 2006. (<http://www.treasury.gov/press-center/press-releases/Pages/hp87.aspx>); U.S. Department of the Treasury, Press Release, “Treasury Designates Major Iranian State-Owned Bank,” January 23, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1397.aspx>)

³¹ 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>)

³² Ibid.

³³ U.S. Department of the Treasury, Press Release, “Fact Sheet: New Sanctions on Iran,” November 21, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1367.aspx>)

³⁴ 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>)

³⁵ The Financial Action Task Force, Public Statement, “FATF Public Statement 26 June 2015,” June 26, 2015. (<http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/public-statement-june-2015.html>); The Financial Action Task Force, Public Statement, “FATF Public Statement – 23 October 2015,” October 23, 2015. (<http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-october-2015.html>)

³⁶ U.S. Department of the Treasury, Press Release, “Treasury Designates Banco Delta Asia as Primary Money Laundering Concern Under USA PATRIOT Act,” September 15, 2005. (<http://www.treasury.gov/press-center/press-releases/Pages/js2720.aspx>)

before sanctions relief and defiantly conducted a nuclear test.³⁷ The State Department advocated for the release of frozen North Korean funds on good faith,³⁸ and ultimately prevailed. As a result, however, Washington lost its leverage and its credibility by divorcing the Section 311 finding from the illicit conduct that had prompted the finding in the first place. Undeterred, North Korea moved forward with its nuclear weapons program while continuing to engage in money laundering, counterfeiting, and other financial crimes.

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

This is what is especially notable about the lifting of designations: the Obama administration has provided no evidence to suggest that these individuals, banks, and businesses are no longer engaged in the full range of illicit conduct on which the original designations were based. What evidence, for example, is there for the de-designation of the Central Bank of Iran (CBI), which is the main financial conduit for the full range of Iran's illicit activities? How does a nuclear agreement resolve the proven role of the CBI in terrorism and ballistic missile financing, money laundering, deceptive financial activities, and sanctions evasion? In other words, with the dismantlement of much of the Iran sanctions architecture in the wake of a nuclear agreement, the principle upon which Treasury created the sanctions architecture—the protection of the global financial system—appears no longer to be the standard.

Banking and Financial Provisions

On Implementation Day, the United States will terminate financial sanctions against most Iranian financial institutions. The nuclear deal lifts U.S. sanctions on 21 out of the 23 Iranian banks designated for proliferation financing—including both nuclear and ballistic missile activity.³⁹ The designation of Bank Saderat for terrorist financing will remain in place, but the sanctions against the Central Bank of Iran will be lifted. Twenty-six other Iranian financial institutions blacklisted for providing financial services to previously-designated entities or for being owned by the government of Iran will also be removed from Treasury's blacklist.⁴⁰

³⁷ David E. Sanger, "North Koreans Say They Tested Nuclear Device," *The New York Times*, October 9, 2006.

(<http://www.nytimes.com/2006/10/09/world/asia/09korea.html?pagewanted=all>)

³⁸ Juan Zarate, *Treasury's War: The Unleashing of a New Era of Financial Warfare*, (New York: Public Affairs, 2013), page 258.

³⁹ U.S. sanctions on Ansar Bank and Mehr Bank are scheduled to remain in place. Sanctions on Arian Bank, Banco Internacional de Desarrollo, Bank Kargoshaee, Bank of Industry and Mine, Bank Melli, Bank Mellat, Bank Refah, Bank Sepah, Bank Tejarat, Europaisch-Iranische Handelsbank, Export Development Bank of Iran, First East Export Bank, First Islamic Bank, Future Bank, Iranian-Venezuela Bi-National Bank, Kont Investment Bank, Moallem Insurance Company, Persia International Bank, Post Bank, Sorinet Commercial Trust Bankers, and Trade Capital Bank (aka Bank Torgovoy Kapital ZAO) as well as the Central Bank of Iran (aka Bank Markazi Jomhuri Islami Iran) will be lifted on "Implementation Day." See Attachment 3. (http://eas.europa.eu/statements-eas/docs/iran_agreement/annex_1_attachments_en.pdf)

⁴⁰ Over the past decade, the Treasury Department has designated 51 banks and their subsidiaries inclusive of the 23 banks designated as proliferators, Bank Saderat which was designated for financing terrorism, and the Central Bank of Iran. With the exception of Bank Saderat, Ansar Bank, and Mehr Bank, all Iranian financial institutions will be de-listed on implementation day. Note, there is an inconsistency in Attachment 3. The Joint Iran-Venezuela Bank is

U.S. persons will remain prohibited from transacting with Iranian financial institutions, and these de-listed banks will continue to be prohibited from transacting in dollars.⁴¹ Restrictions banning Iran from engaging in U-turn payments will remain in place.⁴²

Meanwhile, the European Union will de-list most Iranian banks that it sanctioned over the past decade and remove restrictions on financial messaging services, allowing these de-listed Iranian banks back onto the SWIFT financial messaging system from where they were expelled in March 2012.⁴³ SWIFT sanctions will be lifted on the Central Bank of Iran and all Iranian banks⁴⁴ originally banned from SWIFT⁴⁵ without any indication that their financial conduct has changed.

While the U.S. and EU “de-designation” lists are similar, there are important differences that international companies should keep in mind.

The U.S. will lift sanctions on Bank Sepah on Implementation Day while the bank will remain under EU and U.N. sanctions for another eight years. Bank Sepah was originally designated in 2007 by the U.S., EU, and U.N. because it was the “financial linchpin of Iran’s missile procurement network.”⁴⁶ It is not clear why the United States is de-listing this bank before it is removed from EU and U.N. sanctions lists.

listed as the same entry as Iran-Venezuela Bi-National Bank. On the SDN list, the two are listed with unique entries and different designations. FDD assumes, however, that both banks are being de-listed.

⁴¹ Henry Balani, “Iran Nuclear Agreement’s AML Policy Implications: Banks Should Be Researching Changes Now,” *Banking Exchange*, September 4, 2015. (<http://www.bankingexchange.com/compliance/bsa-aml/item/5726-iran-nuclear-agreement-s-aml-policy-implications>)

⁴² U.S. Department of the Treasury, Office of Foreign Assets Control, “Additional Iran-related Questions From Financial Institutions,” Accessed October 30, 2015. (http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx#misc_fi)

⁴³ “Joint Comprehensive Plan of Action, Annex II – Sanctions-related commitments,” Vienna, July 14, 2015. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_2_sanctions_related_commitments_en.pdf); SWIFT, Press Release, “SWIFT Instructed to Disconnect Sanctioned Iranian Banks Following EU Council Decision,” March 15, 2012. (http://www.swift.com/news/press_releases/SWIFT_disconnect_Iranian_banks)

⁴⁴ On Implementation Day, the EU will lift sanctions on the Central Bank of Iran and Bank Mellat, Bank Melli, Bank Refah, Bank Tejarat, Europaische-Iranische Handelsbank (EIH), Export Development Bank of Iran, Future Bank, Onerbank ZAO, Post Bank, and Sina Bank. On Transition Day, the EU will also lift sanctions on Ansar Bank, Bank Saderat, Bank Sepah and Bank Sepah International, and Mehr Bank. See Attachment 1, parts 1 and 2 and Attachment 2, parts 1 and 2. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_attachements_en.pdf)

⁴⁵ The Council of the European Union, “Council Regulation (EU) No 267/2012 of 23 March 2012 Concerning Restrictive Measures against Iran and Repealing Regulation (EU) No 961/2010,” *Official Journal of the European Union*, March 24, 2012. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1406807228342&uri=CELEX:32012R0267>)

⁴⁶ U.S. Department of the Treasury, Press Release, “Iran’s Bank Sepah Designated by Treasury: Sepah Facilitating Iran’s Weapons Program,” January 9, 2007. (<http://www.treasury.gov/press-center/press-releases/Pages/hp219.aspx>); The Council of the European Union, “Commission Regulation (EC) No 441/2007 of 20 April 2007 Amending Council Regulation (EC) No 423/2007 Concerning Restrictive Measures Against Iran,” *Official Journal of the European Union*, April 21, 2007. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1444852679147&uri=CELEX:32007R0441>); United Nations Security Council, “Resolution 1747 (2007),” March 24, 2007. (https://www.iaea.org/sites/default/files/unsc_res1747-2007.pdf)

In contrast, the EU will de-list Bank Saderat in eight years, but U.S. sanctions will remain in place indefinitely. The EU designated Saderat in July 2010 for providing “financial services for entities procuring on behalf of Iran’s nuclear and ballistic missile” programs.⁴⁷ This designation followed a U.N. Security Council resolution calling on all states to “exercise vigilance over the activities of [Iranian] financial institutions” and mentioned Bank Melli and Bank Saderat by name.⁴⁸ The U.S. designated the bank in 2007 because Iran used it to “channel funds to terrorist organizations” and because Hezbollah used the bank to “send money to other terrorist groups.”⁴⁹

Then there are banks owned or controlled by the IRGC: The EU will lift nuclear and ballistic missile sanctions on Ansar Bank and Mehr Bank in eight years, but U.S. sanctions will remain in place. The two banks were created by the IRGC to provide services to its personnel and to its paramilitary Basij force, according to both the U.S. Treasury and the EU.⁵⁰ When these two banks are de-listed by the EU, they, along with all other de-listed banks, including the Central Bank of Iran, will be permitted back onto the SWIFT system.

On Implementation Day, the United States will also de-list Bank Melli and its subsidiaries, including Arian Bank, Bank Kargoshaee, and Future Bank. When Treasury sanctioned Bank Melli, it specifically mentioned that the institution facilitates transactions for the IRGC and engages in deceptive financial practices to hide the IRGC’s involvement.⁵¹ Lifting sanctions on these financial institutions will provide the IRGC and its elite arm, the Quds Force, with renewed access to the international financial systems and an easier ability to finance their illicit activities.

The Challenge of “Non-Nuclear” Sanctions and Iran’s “Nuclear Snapback”

Another fatal deficiency of the JCPOA is that it creates an Iranian “nuclear snapback” instead of an effective economic sanctions snapback. Throughout the negotiations, the Obama administration assured the public and Congress that if Iran violated its nuclear commitments under the final deal, sanctions could be “snapped back” into place.

⁴⁷ The Council of the European Union, “Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 Implementing Article 7(2) of Regulation (EC) No 423/2007 Concerning Restrictive Measures Against Iran,” *Official Journal of the European Union*, July 27, 2010. (<http://www.iranwatch.org/sites/default/files/eu-council-sanctions-072610.pdf>)

⁴⁸ United Nations Security Council, “Resolution 1803 (2008),” March 3, 2008, page 4. (<http://www.treasury.gov/resource-center/sanctions/Programs/Documents/1803.pdf>)

⁴⁹ U.S. Department of the Treasury, Press Release, “Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism,” October 25, 2007. (<http://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx>)

⁵⁰ U.S. Department of the Treasury, Press Release, “Fact Sheet: Treasury Designates Iranian Entities Tied to the IRGC and IRISL,” December 21, 2010. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1010.aspx>); The Council of the European Union, “Council Implementing Regulation (EU) No 503/2011 Of 23 May 2011 Implementing Regulation (EU) No 961/2010 On Restrictive Measures Against Iran,” *Official Journal of the European Union*, May 24, 2011. (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:136:0026:0044:EN:PDF>)

⁵¹ U.S. Department of the Treasury, Press Release, “Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism,” October 25, 2007. (<http://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx>)

Even as originally conceived, this enforcement mechanism was flawed⁵² because of the significant disagreements that are likely to take place between the United States, Europe, and members of the U.N. Security Council on the evidence, the seriousness of infractions, the appropriate level of response, and likely Iranian retaliation. The snapback sanction mechanism also is economically flawed because it does not account for the effort it will take to persuade companies to leave Iran. It took years to persuade international companies to exit Iran after they had invested billions of dollars; once companies re-enter the Iranian market, it will be difficult to get them to leave again. Furthermore, as international companies reengage in the Iranian market, European countries may experience domestic economic pressure not to re-impose sanctions. These companies may have invested billions of dollars back into Iran and may be unwilling to walk away from those investments despite Iranian nuclear non-compliance. Foreign Minister Mohammad Zarif noted that the “swarming of businesses to Iran” is a barrier to the re-imposition of sanctions, and once the sanctions architecture is dismantled, “it will be impossible to reconstruct it.” Zarif boasted that Iran can restart its nuclear activities faster than the United States can re-impose sanctions.⁵³

The Obama administration’s understanding of the “snapback” sanction also reflected a too-optimistic assessment of the lag-time between the imposition of sanctions and market and Iranian reaction. Previous economic sanctions impacted reputational and legal risk calculations of private companies evaluating potential business deals with Iranian entities that had consistently engaged in deceptive and other illicit conduct. The question of risk and the integrity of Iran’s economy and financial dealings cannot be turned on and off quickly.

United Nations Resolution 2231 also states that the snapback mechanism is for issues of “significant non-performance,” implying that it would not likely be used for incidents of incremental cheating.⁵⁴ The Iranian regime has previously cheated incrementally, not egregiously, although the sum total of these infractions has been egregious. The snapback provision incentivizes Iran to continue this behavior because there is no enforcement mechanism to punish incremental cheating. Acting Under Secretary of the Treasury Adam Szubin and other administration officials have emphasized that if there are small violations, “We have a host of calibrated penalty tools to respond.”⁵⁵ However, Iran is likely to interpret these actions—“from small measures to sectoral measures to full snap-back of the current sanctions,” to quote Szubin⁵⁶—as a re-imposition of sanctions and grounds to walk away from the deal, and has said as much.⁵⁷

⁵² For more detail on the challenges of the “snapback” sanction, see “The ‘Snapback’ Sanction as a Response to Iranian Non-Compliance,” *Iran Task Force*, January 2015. (http://taskforceoniran.org/pdf/Snapback_Memo.pdf)

⁵³ “Foreign Investments in Iran to Serve as Barrier for Sanctions Snapback – FM,” *Voice of the Islamic Republic of Iran, Radio Farhang* (in Persian), July 21, 2015. (Accessed via BBC Worldwide Monitoring)

⁵⁴ United Nations Security Council, “Resolution 2231 (2015),” July 20, 2015, page 4, paragraph 11. (<http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf>)

⁵⁵ 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>)

⁵⁶ 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>)

⁵⁷ 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/>)

According to statements from the Obama administration, the snapback will not be used to address Iranian violations of the “non-nuclear” provisions of U.N. Security Council resolutions, namely the arms embargo and the ballistic missile restrictions.⁵⁸ To date, the United Nations has not taken direct action to address Iran’s violation of the ballistic missile restrictions or to address Quds Force Commander Qassem Soleimani’s visit to Russia in violation of international sanctions.⁵⁹ Members of Congress already have raised concerns about the unwillingness of the Obama administration to respond to Iran’s illicit activities.⁶⁰

Instead of an effective sanctions snapback, the JCPOA provides Iran with a powerful “nuclear snapback.” The JCPOA makes it clear that using snapback sanctions may lead to a cancelling of the agreement, with Iran walking away from its commitments and resuming its nuclear program. Under the JCPOA, both the EU and U.S. “will refrain from re-introducing or re-imposing” the sanctions specified by the JCPOA and “from imposing new nuclear-related sanctions.”⁶¹ Nor will there be any “new nuclear-related UN Security Council sanctions... [or] new EU nuclear-related sanctions or restrictive measures.”⁶² Twice the text then states that if the U.S. or EU re-impose sanctions, Iran will treat this “as grounds to cease performing its commitments under this JCPOA in whole or in part.”⁶³

In short, because any re-imposition of sanctions is likely to scuttle the entire agreement, it will be difficult to persuade our P5+1 partners to punish Iran for any violations short of the most flagrant unless the administration sends a message by its own actions that it is determined to punish any violation. Any punishment of a small-to-medium level violation may lead Iran to stop complying with the agreement. Because both the United States and Europe will be heavily invested in the deal and only willing to abrogate it for a major violation, and without serious, explicit action that signals a determination to hold Iran accountable for non-compliance, Iran is likely to get away with small- and medium-sized violations. Iran may also use an implicit—or explicit—threat of nuclear escalation to pressure U.S. allies not to support efforts to address Iranian non-compliance.

Of deep concern, the JCPOA’s language also provides Iran with an opening to diminish the ability of the United States to apply any sanctions, including non-nuclear sanctions, against the full range of Iran’s illicit conduct. The JCPOA text specifically states that the EU and the United States will

⁵⁸ Louis Charbonneau & Michelle Nichols, “No Automatic Return of Sanctions If Iran Breaks Arms Embargo: Kerry,” *Reuters*, August 11, 2015. (<http://www.reuters.com/article/2015/08/11/us-iran-nuclear-kerry-sanctions-idUSKCN0QG22M20150811>)

⁵⁹ Jennifer Griffin & Lucas Tomlinson, “Exclusive: Quds Force Commander Soleimani Visited Moscow, Met Russian Leaders in Defiance of Sanctions,” *Fox News*, August 6, 2015. (<http://www.foxnews.com/politics/2015/08/06/exclusive-quds-force-commander-soleimani-visited-moscow-met-russian-leaders-in/>)

⁶⁰ Office of Sen. Richard Blumenthal, Press Release, “Blumenthal, Murphy Express Profound Concern over Iranian Ballistic Missile Test in Letter to Secretary Kerry,” October 21, 2015. (<http://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-murphy-express-profound-concern-over-iranian-ballistic-missile-test-in-letter-to-secretary-kerry>); Jordan Carney, “Senators Push Obama for Response to Iran’s Ballistic Missile Test,” *The Hill*, October 15, 2015. (<http://thehill.com/blogs/floor-action/senate/257018-senators-push-administration-on-iran-missile-test>)

⁶¹ “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, paragraph 26. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

⁶² *Ibid.*

⁶³ *Ibid.*, paragraph 26 and 37.

“refrain from any policy specifically intended to directly and adversely affect the normalization of trade and economic relations with Iran.” Tehran may use this provision to argue that any imposition of sanctions, even for non-nuclear illicit activities, violates the JCPOA.⁶⁴ Iran will likely threaten to walk away from the deal and expand its nuclear program if the United States and its allies attempt to strengthen counter-terrorism related sanctions, for example. The administration should be mindful of this and enforce non-nuclear sanctions vigorously, as it indicated many times that it would.

Iran has already stated that it may “reconsider its commitments” under the JCPOA if “new sanctions [are imposed] with a nature and scope identical or similar to those that were in place prior to the implementation date, irrespective of whether such new sanctions are introduced on nuclear related or other grounds.”⁶⁵ Supreme Leader Khamenei reiterated this threat in his October 21 letter on Iran’s implementation of the JCPOA:

“Imposition of any sanctions at any level and under any pretexts (including the repeated and fabricated pretexts of terrorism and human rights) by any of the negotiating countries will be considered a violation of the JCPOA.”⁶⁶

U.S. administration officials, in contrast, have stated that Washington is not limited by the JCPOA in its use of targeted economic sanctions to combat the full range of Iran’s illicit activities. Secretary of State John Kerry pledged that the United States “will oppose Iran’s destabilizing policies with every national security tool available.”⁶⁷ Secretary of the Treasury Jack Lew committed before Congress that the United States will “continue to prosecute our unilateral sanctions on things like terrorism, on things like regional destabilization and human rights.”⁶⁸ And Under Secretary Szubin has been most explicit on this point:

“The JCPOA does not in any way affect our sanctions that touch on Iran’s support to terrorist groups such as Hezbollah, Palestinian Islamic Jihad, other destabilizing proxies, such as the Qods Force, the Islamic Revolutionary Guard Corps (IRGC). It doesn’t touch on Iran’s abuse of human rights and other areas, such as their support to Bashar al-Assad in Syria and the Houthis in Yemen.... The JCPOA in no way limits our ability to target Iran’s destabilizing activities, and we have made our posture on this point clear not just to our negotiating partners but to Iran as well.”⁶⁹

⁶⁴ Ibid, paragraph 29.

⁶⁵ 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/>)

⁶⁶ “Iran Press Review,” *Foundation for Defense of Democracies*, October 21, 2015. (<http://fdd.cmail20.com/t/ViewEmail/r/941B907BD0F8D6F62540EF23F30FEDED/18EF3159F08F673EDDA3541AF197FE1F>)

⁶⁷ John Kerry, “Remarks on Nuclear Agreement With Iran,” *National Constitution Center, Philadelphia*, September 2, 2015. (<http://www.state.gov/secretary/remarks/2015/09/246574.htm>)

⁶⁸ Jacob J. Lew, “Iran Nuclear Agreement: The Administration’s Case,” *Hearing before the House Foreign Affairs Committee*, July 28, 2015. (<http://www.cq.com/doc/congressionaltranscripts-4734477?3>)

⁶⁹ 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>)

It is important now, before international companies return to Iran, to test the proposition that the JCPOA does not limit America's ability to use economic sanctions to combat non-nuclear illicit activities. Throughout the negotiating period and now following the JCPOA's adoption, Iran has continued to engage in support for terrorism, support for Assad's brutality against Syrian civilians, and systemic human rights abuses against Iranian civilians. Congress should pass legislation to enhance sanctions against these activities by targeting the IRGC, the primary organ of the regime responsible for these activities. If administration officials argue that congressional efforts undermine the JCPOA, we will know that Iran, rather than the United States, is speaking truthfully about the JCPOA's impact on non-nuclear sanctions.

ENRICHING THE HARDLINERS

The JCPOA will enrich the most dangerous elements of the Iranian regime. Rather than benefitting independent Iranian businesses, the sanctions relief likely will strengthen the control of the Supreme Leader, IRGC, and state of key sectors of Iran's economy.

These elements stand to be the greatest beneficiaries of the economic relief granted under the JCPOA. They will benefit both from their dominance of key strategic areas of the Iranian economy and from an overall improvement in Iran's macroeconomic environment. Already, the sanctions relief provided as part of the interim agreement enabled Iran to move from a severe economic recession to a modest recovery. During negotiations, Iran received \$11.9 billion in direct sanctions relief, sanctions on major sectors of Iran's economy were suspended, and President Obama de-escalated the sanctions pressure by blocking new congressional sanctions. Jointly, these forces rescued the Iranian economy and its leaders, including the IRGC, from an imminent and severe balance of payments crisis.⁷⁰

Iran's growth for this fiscal year (FY 2015/16) is forecast to stabilize around 1-2 percent and expand to 4-5 percent annually for the next three years.⁷¹ Depending on Iran's policy choices, economic growth could reach 5-6 percent.⁷² In addition to the improvement in Iran's macroeconomic environment, on Implementation Day, the European Union, United States, and United Nations will lift or suspend sanctions against entire sectors of the Iranian economy. The IRGC in particular is active in many of these sectors, and IRGC companies and entities controlled by the Supreme Leader are set to capitalize on new business opportunities.

The IRGC and Iran's Rogue Activities

⁷⁰ Jennifer Hsieh, Rachel Ziemba, & Mark Dubowitz, "Iran's Economy: Out of the Red, Slowly Growing," *Foundation for Defense of Democracies & Roubini Global Economics*, October 2014.

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

(http://www.defenddemocracy.org/content/uploads/publications/RoubiniFDDReport_FEB15.pdf)
⁷¹ Mark Dubowitz, Annie Fixler, & Rachel Ziemba, "Iran's Mysterious Shrinking Reserves: Estimating the Value of Tehran's Foreign Assets," *Foundation for Defense of Democracies & Roubini Global Economics*, September 2015.

(http://www.defenddemocracy.org/content/uploads/publications/FDDRoubini_Report_Irans_mysterious_shrinking_reserves.pdf)
⁷² Roubini Global Economics predicts 5-6 percent, and the IMF predicts 5.5 percent in FY 2016/17 and 2017/18. International Monetary Fund, "Regional Economic Outlook for the Middle East and Central Asia," October 21, 2015, page 83. (<http://www.imf.org/external/pubs/ft/reo/2015/mcd/eng/pdf/mreo1015.pdf>)

The IRGC is the central force behind the range of Iran’s illicit and illegal activities—from nuclear proliferation to support of international terrorism to systemic human rights abuses. In 2011, then-Secretary of State Hillary Clinton and then-Secretary of the Treasury Timothy Geithner explained:

“The IRGC also serves as the domestic ‘enforcer’ for the Iranian regime, continues to play an important proliferation role by orchestrating the import and export of prohibited items to and from Iran, is involved in support of terrorism throughout the region, and is responsible for serious human rights abuses against peaceful Iranian protestors and other opposition participants.”⁷³

It is for this reason that the United States and the international community have targeted the IRGC with a range of sanctions tools. The IRGC was designated first in 2007 for involvement in Iran’s proliferation activities,⁷⁴ in 2011 for “severe human rights abuses in Iran,”⁷⁵ and in 2012 activities like monitoring dissidents and censorship.⁷⁶

At the same time, the United States also targeted the IRGC’s elite arm, the Quds Force (QF), for its role in international terrorism and supporting a range of terrorist groups. The Quds Force is responsible for “exporting the revolution” abroad,⁷⁷ is Iran’s “primary arm for...supporting terrorist and insurgent groups,” and “provides material, logistical assistance, training and financial support to militants and terrorist operatives throughout the Middle East and South Asia.”⁷⁸ In its designation of the Quds Force in 2007 for terrorism, Treasury noted that the Quds Force provided “weapons, training, funding, and guidance” to groups in Iraq that targeted American servicemen.⁷⁹ The Quds Force and IRGC-QF Commander Qassem Soleimani were also sanctioned for supporting Syria’s intelligence services during the current crisis in Syria.⁸⁰

⁷³ Hillary Rodham Clinton & Timothy Geithner, “Joint Statement on Iran Sanctions,” June 23, 2011. (<http://www.state.gov/r/pa/prs/ps/2011/06/166814.htm>)

⁷⁴ U.S. Department of the Treasury, Press Release, “Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism,” October 25, 2007. (<http://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx>)

⁷⁵ U.S. Department of the Treasury, Press Release, “Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities,” June 23, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>).

⁷⁶ Executive Order 13606, “Blocking the Property and Suspending Entry into the United States of Certain Persons With Respect to Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology,” April 22, 2012. (<http://www.treasury.gov/resource-center/sanctions/Programs/Documents/13606.pdf>)

⁷⁷ Tony Badran, “Exporting the Islamic Revolution,” *Now Lebanon*, June 3, 2015. (<https://now.mmedia.me/lb/en/commentary/564933-exporting-the-islamic-revolution>)

⁷⁸ U.S. Department of the Treasury, Press Release, “Fact Sheet: U.S. Treasury Department Targets Iran’s Support for Terrorism Treasury Announces New Sanctions Against Iran’s Islamic Revolutionary Guard Corps-Quds Force Leadership,” August 3, 2010. (<http://www.treasury.gov/press-center/press-releases/Pages/tg810.aspx>)

⁷⁹ U.S. Department of the Treasury, Press Release, “Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism,” October 25, 2007. (<http://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx>)

⁸⁰ Executive Order, “13572 Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria,” April 29, 2011. (<http://www.treasury.gov/resource-center/sanctions/Programs/Documents/13572.pdf>); U.S. Department of the Treasury, Press Release, “Administration Takes Additional Steps to Hold the Government of Syria Accountable for Violent Repression Against the Syrian People,” May 18, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1181.aspx>)

As discussed below in the recommendations section, the IRGC should be treated as a terrorist entity under U.S. law. It makes no sense to distinguish between the IRGC and QF for the purposes of terrorist designations. The IRGC is “involved in support of terrorism throughout the region,” as Secretaries Clinton and Geithner explained,⁸¹ and should be designated as a terrorist organization under Executive Order 13224 or as a Foreign Terrorist Organization (FTO), or both.

The IRGC’s Pervasive Control of the Iranian Economy

The IRGC has become a dominant force in the Iranian economy, and Iran’s “most powerful economic actor,” according to the U.S. Treasury.⁸² Although exact figures are difficult to estimate because of the opaque nature of the IRGC’s influence and the size of off-book enterprises, experts calculate that the IRGC controls around 20-30 percent of the Iranian economy.⁸³ Its annual income may be as high as one-sixth of Iran’s GDP.⁸⁴ The IRGC has “displace[d]...the legitimate Iranian private sector,” created a preferential system “in favor of a select group of insiders” and “expanded its reach into critical sectors of Iran’s economic infrastructure,” according to the U.S. government.⁸⁵

The IRGC investment portfolio is robust, including substantial shares in companies publicly traded on Tehran’s Stock Exchange (TSE). Taken together, the companies in which the IRGC holds shares are worth more than 20 percent of the TSE, and are valued at \$16.5 billion.⁸⁶ Former senior IRGC commanders, many of whom have never been subjected to sanctions, sit on their boards. And this estimate does not account for the hundreds of non-publicly-traded companies in which the IRGC holds controlling stakes.

⁸¹ Hillary Rodham Clinton & Timothy Geithner, “Joint Statement on Iran Sanctions,” June 23, 2011. (<http://www.state.gov/r/pa/prs/ps/2011/06/166814.htm>)

⁸² U.S. Department of the Treasury, Press Release, “Treasury Submits Report to Congress on NIOC and NITC,” September 24, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1718.aspx>)

⁸³ Greg Bruno, Jayshree Bajoria, & Jonathan Masters, “Iran’s Revolutionary Guard,” *Council on Foreign Relations*, June 14, 2013. (<http://www.cfr.org/iran/irans-revolutionary-guards/p14324>); Emanuele Ottolenghi & Saeed Ghasseminejad, “Who Really Controls Iran’s Economy?,” *The National Interest*, May 20, 2015.

(<http://nationalinterest.org/feature/who-really-controls-irans-economy-12925>); Frederic Wehrey, Jerrold D. Green, Brian Nichiporuk, Alireza Nader, Lydia Hansell, Rasool Nafisi, & S. R. Bohandy, “The Rise of the Pasdaran: Assessing the Domestic Roles of Iran’s Islamic Revolutionary Guards Corps,” *The RAND Corporation*, 2009. (http://www.rand.org/content/dam/rand/pubs/monographs/2008/RAND_MG821.pdf); Mark Gregory, “Expanding Business Empire of Iran’s Revolutionary Guards,” *BBC News*, July 26, 2010. (<http://www.bbc.com/news/world-middle-east-10743580>)

⁸⁴ Parisa Hafezi & Louis Charbonneau, “Iranian Nuclear Deal Set to Make Hardline Revolutionary Guards Richer,” *Reuters*, July 6, 2015. (<http://www.reuters.com/article/2015/07/06/us-iran-nuclear-economy-insight-idUSKCN0PG1XV20150706>)

⁸⁵ U.S. Department of State, “Joint Statement on Iran Sanctions,” June 23, 2011. (<http://www.state.gov/r/pa/prs/ps/2011/06/166814.htm>); U.S. Department of State, “Treasury Targets Iran’s Islamic Revolutionary Guard Corps,” February 10, 2010. (<http://www.state.gov/r/pa/prs/ps/2010/02/136595.htm>); U.S. Department of the Treasury, “Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities,” June 23, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>)

⁸⁶ This number is their combined value on August 31, 2015 on the Tehran Stock Exchange (www.tse.ir). See more: Alexi Mostrous, Billy Kenber, & Hugh Tomlinson, “Iranian Militia to Grab British Cash,” *The Times* (U.K.), August 26, 2015. (<http://www.thetimes.co.uk/tto/news/world/middleeast/article4538125.ece>)

The IRGC is heavily involved in Iran’s “financial and commercial sectors and [has] extensive economic interests in the defense production, construction, and oil industries, controlling billions of dollars in corporate business,” noted Treasury.⁸⁷ The IRGC’s control over strategic sectors of the Iranian economy—banking, energy, construction, industrial, engineering, mining, shipping, shipbuilding, amongst others—means that any foreign firms interested in doing business with Iran will have to do business with the IRGC. The IRGC will thus directly benefit from the lifting of sanctions on key sectors of the Iranian economy.

For an extensive analysis of the role of the IRGC in strategic sectors of the Iranian economy and how it will benefit from sanctions relief under the JCPOA, I recommend the testimony of my colleague Emanuele Ottolenghi before the House Foreign Affairs Middle East and North Africa Subcommittee.⁸⁸ What follows are key highlights from his testimony:

Oil, Gas, and Petrochemical Sectors

Iran will benefit from the lifting of sanctions on its energy sector both through renewed foreign investment in upstream and downstream projects and from access to previously-restricted Western technology. IRGC firms own important contracts across the entire energy sector and are positioned to secure additional contracts as foreign capital and technology return to the energy industry. Additionally, the lifting of oil sanctions will benefit the National Iran Oil Company (NIOC) and its many subsidiaries, which both the U.S. and EU are set to de-list on Implementation Day. At the time of NIOC’s designation, the U.S. Treasury explained that “the IRGC has been coordinating a campaign to sell Iranian oil in an effort to evade international sanctions” and that “the IRGC’s influence has grown within NIOC,” the firm responsible for exporting oil and petroleum products.⁸⁹ Thus, when oil sanctions are lifted, the IRGC will likely benefit from these increased sales through its influence in NIOC.

The JCPOA also will permanently remove barriers to trade in the petrochemical sector, allowing renewed Iranian access to sensitive dual-use technology. United Nations Security Council Resolution 1929 (2010) noted the “potential connection between Iran’s revenues derived from its energy sector and the funding of Iran’s proliferation-sensitive nuclear activities,” and also that “chemical process equipment and materials required for the petrochemical industry have much in common with those required for certain sensitive nuclear fuel cycle activities.”⁹⁰ Iran’s petrochemical products are, after oil, the country’s largest source of foreign income and its second-leading export.⁹¹ During the interim agreement, sanctions on this sector were suspended and

⁸⁷ U.S. Department of the Treasury, “Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities,” June 23, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>)

⁸⁸ Emanuele Ottolenghi, “Major Beneficiaries of the Iran Deal: IRGC and Hezbollah,” *Hearing before the House Foreign Affairs Subcommittee on the Middle East and North Africa*, September 17, 2015. (<http://foreignaffairs.house.gov/hearing/subcommittee-hearing-major-beneficiaries-iran-deal-irgc-and-hezbollah>)

⁸⁹ U.S. Treasury Department, Press Release, “Treasury Submits Report to Congress on NIOC and NITC,” September 24, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1718.aspx>)

⁹⁰ United Nations Security Council, “Resolution 1929 (2010),” June 9, 2010. (http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1929%282010%29)

⁹¹ Maysam Bizær, “Iran Holds Trump Card on Oil: Petrochemicals,” *Al-Monitor*, January 22, 2015. (<http://www.al-monitor.com/pulse/originals/2015/01/iran-oil-petrochemicals.html>)

exports rose 32 percent to \$3.17 billion.⁹² While not a majority owner in any of the publicly-traded petrochemical companies, the IRGC holds major stakes in many of these firms and will no doubt benefit from the suspension of petrochemical sanctions.⁹³

Automotive

The United States imposed sanctions on Tehran's automotive sector in June 2013, noting that the sector "is a significant contributor to its overall economic activity, generating funds that help prop up the rial and the regime."⁹⁴ The IRGC is active in the automotive sector, controlling five major automotive companies listed on the Tehran Stock Exchange including the Bahman Group, Iran's third largest carmaker.⁹⁵

The automotive industry relies on dual-use technology, which has applications in the aerospace, defense, and nuclear industries. Lifting bans on such goods is problematic given the IRGC's significant presence in this sector and considering past cases of Iran's illicit procurement under the guise of legitimate trade in the automotive sector.⁹⁶

Transportation

The IRGC has relied on Iran's largest shipping and aviation companies to transport military equipment and personnel to proxies abroad.⁹⁷ Under the JCPOA, sectoral sanctions as well as individual designations of companies in the transportation sector will be lifted.

In addition to the deceptive practices in which Iran's state-owned shipping companies, the Islamic Republic of Iran Shipping Lines (IRISL) and the National Iranian Tanker Company (NITC) engage, the IRGC itself controls and manages most Iranian commercial ports. Although Iran's biggest port operator, Tidewater Middle East PLC, will remain under EU sanctions until Transition Day (and under U.S. sanctions indefinitely), any increase in shipping prompted by the lifting of sanctions will enrich IRGC-owned companies managing container terminals and port services. As

⁹² Emanuele Ottolenghi & Saeed Ghasseminejad, "Iran Sanctions Relief Sparks Growing Trade with Europe, Asia," *Foundation for Defense of Democracies*, March 27, 2015. (<http://www.defenddemocracy.org/media-hit/Iran-sanctions-relief-sparks-growing-trade-with-Europe-Asia/>)

⁹³ Emanuele Ottolenghi & Saeed Ghasseminejad, "The Geneva Joint Plan of Action and Iran's Petrochemical Sector," *Foundation for Defense of Democracies*, December 9, 2013. (<http://www.defenddemocracy.org/media-hit/the-geneva-joint-plan-of-action-and-irans-petrochemical-sector/>)

⁹⁴ U.S. Department of the Treasury, Press Release, "Testimony of Under Secretary for Terrorism and Financial Intelligence David Cohen before the Senate Committee on Banking, Housing and Urban Affairs on 'Iran Sanctions: Ensuring Robust Enforcement, and Assessing Next Steps,'" June 4, 2013. (<http://www.treasury.gov/press-center/press-releases/Pages/j11969.aspx>)

⁹⁵ Emanuele Ottolenghi & Saeed Ghasseminejad, "Sanctions Relief Under the JCPOA," *Foundation for Defense of Democracies*, February 23, 2015. (<http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-sanctions-relief-under-the-jpoa/>)

⁹⁶ Michael Birnbaum and Joby Warrick, "A Mysterious Iranian-Run Factory in Germany," *The Washington Post*, April 15, 2013. (https://www.washingtonpost.com/world/europe/a-mysterious-iranian-run-factory-in-germany/2013/04/15/92259d7a-a29f-11e2-82bc-511538ae90a4_story.html); Mark Dubowitz & Emanuele Ottolenghi, "Iran's Car Industry - A Big Sanctions Buster," *Forbes*, May 13, 2013. (<http://www.forbes.com/sites/energysource/2013/05/13/irans-car-industry-a-big-sanctions-buster/>)

⁹⁷ U.S. Department of the Treasury, Press Release, "Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities," June 23, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>)

Treasury noted when it sanctioned Tidewater in June 2011, “[S]hipments into Tidewater facilities provide an avenue of revenue to the IRGC in support of its illicit conduct.”⁹⁸

At the same time, the United States will “allow for the sale of commercial passenger aircraft and related parts and services to Iran,” as well as the export, lease, and transfer of aircraft, and the provision of associated services to aircraft, provided they are “for exclusively civil aviation end-use.”⁹⁹ The U.S. and EU will also de-list major Iranian airlines, including those designated for facilitating illegal activities. For example, Yas Air (now called Pouya Air), was designated for acting “on behalf of the IRGC-QF [Quds Force] to transport illicit cargo—including weapons—to Iran’s clients in the Levant.”¹⁰⁰ According to Treasury, Yas Air “has moved IRGC-QF personnel and weapons under the cover of humanitarian aid.”¹⁰¹

Similarly, Mahan Air was designated in October 2011 “for providing financial, material and technological support” to the Quds Force including ferrying personnel and weapons to Syria.¹⁰² Mahan’s role in the shipment of weapons and military personnel to Syria appears to be ongoing with shipments reportedly taking place as recently as this week.¹⁰³ U.S. sanctions on these two firms will remain in place, though the EU will lift sanctions on Yas Air on Transition Day. Of greater concern, the EU has not previously designated Mahan Air, and therefore the its airplanes fly with impunity to more than a dozen European destinations.

The removal of sanctions on other firms in the aviation sector will likely also enhance the IRGC’s ability to engage in illicit activities. On Implementation Day, the U.S. will de-list Iran Air, which has, according to the U.S. Treasury, “shipped military-related equipment on behalf of the IRGC since 2006... [and has] also been used to transport missile or rocket components to Syria.”¹⁰⁴ Quds Force uses Iran Air to “dispatch weapons and military personnel to conflict zones worldwide.”¹⁰⁵ As a result of the JCPOA, my colleagues Emanuele Ottolenghi and Saeed Ghasseminejad explain,

⁹⁸ Ibid.

⁹⁹ “Joint Comprehensive Plan of Action – Annex II – Sanctions related commitments,” July 14, 2015, Section 5.1.1. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_2_sanctions_related_commitments_en.pdf)

¹⁰⁰ U.S. Department of the Treasury, Press Release, “Treasury Targets Iranian Arms Shipments,” March 27, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1506.aspx>)

¹⁰¹ U.S. Department of the Treasury, Press Release, “Treasury Designates Syrian Entity, Others Involved in Arms and Communications Procurement Networks and Identifies Blocked Iranian Aircraft,” September 19, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1714.aspx>)

¹⁰² U.S. Department of the Treasury, Press Release, “Treasury Designates Iranian Commercial Airline Linked to Iran’s Support for Terrorism,” October 12, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1322.aspx>)

¹⁰³ Emanuele Ottolenghi & Benjamin Weinthal, “The Wings of War,” *Politico EU*, September 16, 2015. (<http://www.politico.eu/article/iran-mahan-air-sanctions-nuclear-deal-aviation-air-safety/>); Jennifer Griffin, “Exclusive: Russia Flying Iranian Weapons Shipments into Syria, Sources Say,” *Fox News*, October 29, 2015. (<http://www.foxnews.com/world/2015/10/29/exclusive-russia-flying-iranian-weapons-shipments-into-syria-sources-say/>)

¹⁰⁴ U.S. Department of the Treasury, Press Release, “Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities,” June 23, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>)

¹⁰⁵ Emanuele Ottolenghi & Saeed Ghasseminejad, “The Nuclear Deal’s Impact on Iran’s Revolutionary Guards,” *Foundation for Defense of Democracies*, July 17, 2015. (<http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/>)

“The Quds Force will have access to newer, larger, and more efficient planes with which to pursue its strategic objectives.”¹⁰⁶

Construction

Khatam al-Anbiya (KAA), a massive IRGC conglomerate, was designated by the United States as a proliferator of weapons of mass destruction.¹⁰⁷ It is Iran’s biggest construction firm and, according to my colleagues’ estimates, “may be its largest company outright, with 135,000 employees and 5,000 subcontracting firms.”¹⁰⁸ The value of its current contracts is estimated to be nearly \$50 billion, or about 12 percent of Iran’s GDP.¹⁰⁹ KAA has hundreds of subsidiaries in numerous sectors of Iran’s economy, including its nuclear and defense programs, energy, construction, and engineering. The company is also involved in “road-building projects, offshore construction, oil and gas pipelines, and water systems.”¹¹⁰

The IRGC uses KAA to “generate income and funds its operations,” according to the U.S. Treasury Department.¹¹¹ Even though KAA will remain under EU sanctions for eight years and under U.S. sanctions indefinitely, its primary constraint until now was Iran’s failing economy itself. With Tehran’s economy on the potential rebound, the organization’s prospects look bright. The anticipated increase in public spending to modernize and improve Iran’s aging infrastructure will no doubt lead to public tenders for large projects. KAA will be the primary beneficiary. More business coming into Iran means more construction, so even if the company is still under sanctions, it will make money.

While the Obama administration may be correct that Iran will use the bulk of funds in previously frozen accounts to finance construction projects rather than transferring the funds directly to terrorist proxies, the money will flow through the IRGC’s construction arm, which in turn will support the IRGC’s ability to fund terrorism.

Telecommunications

¹⁰⁶ Ibid.

¹⁰⁷ U.S. Department of State, Office of the Spokesman, “Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism,” October 25, 2007. (<http://2001-2009.state.gov/r/pa/prs/ps/2007/oct/94193.htm>)

¹⁰⁸ Parisa Hafezi & Louis Charbonneau, “Iranian Nuclear Deal Set to Make Hardline Revolutionary Guards Richer,” *Reuters*, July 6, 2015. (<http://www.reuters.com/article/2015/07/06/us-iran-nuclear-economy-insight-idUSKCN0PG1XV20150706>); Emanuele Ottolenghi & Saeed Ghasseminejad, “The Nuclear Deal’s Impact on Iran’s Revolutionary Guards,” *Foundation for Defense of Democracies*, July 17, 2015. (<http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/>)

¹⁰⁹ Benoît Faucon & Asa Fitch, “Iran’s Guards Cloud Western Firms’ Entry After Nuclear Deal,” *The Wall Street Journal*, July 21, 2015. (<http://www.wsj.com/articles/irans-guards-cloud-western-firms-entry-after-nuclear-deal-1437510830>)

¹¹⁰ Ibid.

¹¹¹ U.S. Department of the Treasury, Press Release, “Treasury Announces Additional Sanctions Against Iranian Engineering and Shipping Firms,” March 28, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1509.aspx>)

The United States sanctioned the IRGC in April 2012 for its role for systemic human right abuses via information technology. Executive Order 13606 targets those entities and individuals that operate, support, or provided technology that disrupts, monitors, or tracks communication that could assist or enable human rights abuses by the governments of Iran.¹¹²

All mobile operators in Iran are directly or indirectly partners with IRGC-affiliated companies.¹¹³ The IRGC also controls Iran's largest telecom company, the Telecommunication Company of Iran (TCI).¹¹⁴ The company has a near monopoly on Iran's landline telephone services,¹¹⁵ and reportedly "all internet traffic in and out of Iran travels through" TCI,¹¹⁶ which is particularly problematic since TCI purchased "a powerful surveillance system capable of monitoring landline, mobile and internet communications" from a Chinese firm.¹¹⁷

As sanctions on the telecommunication sector are lifted, the sector will attract foreign investment and gain significant access to advanced technology. The IRGC will be in a position to benefit from additional sensitive monitoring technology, and it will likely use these tools to enhance its surveillance of Iranian dissidents. As a result of the JCPOA, the IRGC will thus increase revenue, as well as its ability to spy on and censor its citizens.

Funding the IRGC's Illicit Activities

The profits the IRGC derives from its business interests fund Iran's military, terrorist proxies, and other activities hostile to U.S. interests. The U.S. Treasury has repeatedly noted that the IRGC's economic empire "ultimately benefits the IRGC and its dangerous activities."¹¹⁸ As a result, international sanctions have singled out the IRGC and its affiliated entities for sanctions.

Justifying sanctions against the IRGC's business interests, Treasury noted, "Imposing financial sanctions on commercial enterprises of the IRGC has a direct impact on revenues that could be used by the IRGC to facilitate illicit conduct."¹¹⁹ Logically, the lifting of sanctions on these entities and the relevant sectors will also have a direct impact—increasing revenues that could be used to facilitate illicit conduct.

¹¹² Executive Order 13606, "Blocking the Property and Suspending Entry Into the United States of Certain Persons With Respect to Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology," April 23, 2012. (http://www.treasury.gov/resource-center/sanctions/Programs/Documents/2012iran_syria_eo.pdf)

¹¹³ Khourosh Avaei, "What to expect in Iran's Telecom Sector," *Al-Monitor*, August 18, 2013. (<http://www.al-monitor.com/pulse/originals/2013/08/expect-iran-telecom-sector.html#>)

¹¹⁴ Michael Slackman, "Elite Guard in Iran Tightens Grip with Media Move," *The New York Times*, October 8, 2009. (http://www.nytimes.com/2009/10/09/world/middleeast/09iran.html?_r=0)

¹¹⁵ Steve Stecklow, "Special Report: Chinese firm helps Iran spy on citizens," *Reuters*, March 22, 2012. (<http://uk.reuters.com/article/2012/03/22/uk-iran-telecoms-idUKBRE82L0B720120322>); Robin Wright, editor, *The Iran Primer*, (Washington, DC: United States Institute of Peace, 2010), page 55.

¹¹⁶ Ian Black, "How Iran is filtering out dissent," *The Guardian*, June 30, 2009. (<http://www.guardian.co.uk/technology/2009/jun/30/internet-censorship-iran>)

¹¹⁷ Steve Stecklow, "Special Report: Chinese Firm helps Iran spy on its Citizens," *Reuters*, 22 March 2012. (<http://www.reuters.com/article/2012/03/22/us-iran-telecoms-idUSBRE82L0B820120322>)

¹¹⁸ U.S. Department of the Treasury, Press Center, Press Release, "Treasury Targets Iran's Islamic Revolutionary Guards Corps," February 10, 2010. (<http://www.treasury.gov/press-center/press-releases/Pages/tg539.aspx>)

¹¹⁹ U.S. Department of the Treasury, "Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities," June 23, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>)

In its role as a protector of the integrity of the global financial system, the U.S. Treasury—as well as the U.S. government more broadly—has a duty to expose the connections of Iranian companies to the IRGC. Even if official government designations do not always follow, this exposure can still discourage business ties and dissuade multilateral companies from being complicit 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 its illegal activities. As Treasury has stated in the past, “target[ing the] core commercial interests of the IRGC... undermin[es its] ability to continue using these interests to facilitate its proliferation activities and other illicit conduct.”¹²⁰

The JCPOA’s Big Winner: The IRGC

As a significant force in the Iranian economy, the IRGC is set to be a primary direct and indirect beneficiary of the deal unless the United States and its allies act decisively to prevent its enrichment. With the lifting of EU sanctions under the JCPOA, Europe will increasingly become an economic free zone for Iran’s most dangerous people and entities. In addition to the lifting of specific types of economic and financial sanctions, the JCPOA requires the United States and Europe to remove numerous IRGC-linked entities from their sanction lists.

In anticipation of the sanctions relief in a final nuclear deal, President Rouhani’s 2015 budget rewards the IRGC. It includes a 48 percent increase on expenditures related to the IRGC, the intelligence branches, and clerical establishment. Iran’s official defense spending will increase to about \$11-12 billion—excluding off the books funding—up from \$10 billion last year.¹²¹ The IRGC and its paramilitary force, the Basij, are set to receive 64 percent of public military spending, and the IRGC’s massive construction arm Khatam al-Anbiya will see its budget double. Rouhani’s budget also included a 40 percent increase (\$790 million) for Iran’s Ministry of Intelligence.¹²² Iran’s latest five-year plan, announced days before the JCPOA, calls for an additional increase in military spending to 5 percent of the total government budget.¹²³ With access to additional revenue around the corner and with the termination of the arms embargo just over the horizon, Iran knows how it will spend its new cash.

These estimates do not include Iran’s black market economy, from which the IRGC draws another significance source of income. My colleague Saeed Ghasseminejad, who studies the Iranian economy, notes that the underground economy is estimated to be valued at 6-36 percent of Iran’s GDP. He concludes: “Assuming a conservative 15 [percent], the underground economy is worth an additional \$60 billion each year.... The IRGC is in the best position to have the lion’s share of

¹²⁰ U.S. Department of the Treasury, “Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities,” June 23, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>)

¹²¹ Saeed Ghasseminejad, “Iran’s Military Budget is Going to Get a Huge Boost From the Nuclear Deal,” *Business Insider*, October 30, 2015. (<http://www.businessinsider.com/irans-military-budget-is-going-to-get-a-huge-boost-from-the-nuclear-deal-2015-10>)

¹²² Emanuele Ottolenghi & Saeed Ghasseminejad, “Iran’s Repressive Apparatus Gets a Raise,” *The Wall Street Journal*, December 22, 2014. (<http://www.wsj.com/articles/emanuele-ottolenghi-and-saeed-ghasseminejad-irans-repressive-apparatus-gets-a-raise-1419281552>)

¹²³ Abbas Qaidaari, “More Planes, More Missiles, More Warships: Iran Increases Its Military Budget By A Third,” *Al-Monitor*, July 13, 2015. (<http://www.al-monitor.com/pulse/originals/2015/07/khamenei-orders-increase-military.html>)

the benefits” from the underground economy.¹²⁴

Many IRGC businesses that were involved in the procurement of material for Iran’s nuclear and ballistic missile programs will be de-listed. The European Union will de-list a few of the major IRGC-controlled entities on Implementation Day, and many more after eight years (assuming that these sanctions are even enforced over the next eight years). Europe may increasingly become the economic destination of choice for regime-connected, corrupt, IRGC oligarchs.

Of even greater concern, after eight years, the EU will lift all of its counter-proliferation sanctions on Iran. Notorious Quds Force Commander Qassem Soleimani will remain under EU sanctions terrorism and Syria-related issues,¹²⁵ and the Quds Force itself will also remain under certain Syria-related sanctions.¹²⁶ But despite these few remaining sanctions, after eight years, the only Iran-specific EU sanctions will be those related to human rights.

In short, while the United States is set to maintain its sanctions on the IRGC and the European Union will not de-list most IRGC entities for eight years, once the bulk of Iran sanctions are lifted, the remaining measures against the IRGC will be insufficient to prevent it from expanding its illicit activities. Unless Congress acts to strengthen non-nuclear sanctions against the IRGC, the remaining measure will not isolate it from the economic benefits that the JCPOA will generate.

The JCPOA’s Second Big Winner: Supreme Leader Khamenei’s Network of Corruption

According to the U.S. Treasury, Supreme Leader Ali Khamenei’s financial empire is a “shadowy network of off-the-books front companies.”¹²⁷ The network, headed by an organization known as the Execution of Imam Khomeini’s Order (EIKO), or Setad, is reportedly worth \$95 billion.¹²⁸ EIKO and its subsidiaries will be de-listed by both the EU and United States on Implementation Day.

The U.S. Treasury Department designated this organization and its subsidiaries in June 2013 and noted at the time that the purpose of EIKO was “to generate and control massive, off-the-books

¹²⁴ Saeed Ghasseminejad, “Iran’s Military Budget is Going to Get a Huge Boost From the Nuclear Deal,” *Business Insider*, October 30, 2015. (<http://www.businessinsider.com/irans-military-budget-is-going-to-get-a-huge-boost-from-the-nuclear-deal-2015-10>)

¹²⁵ The Council of the European Union, “Council Implementing Regulation (EU) No 611/2011 of 23 June 2011 Implementing Regulation (EU) No 442/2011 Concerning Restrictive Measures in View of the Situation in Syria,” *Official Journal of the European Union*, June 24, 2011. (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:164:0001:0003:EN:PDF>); The Council of the European Union, “Council Implementing Regulation (EU) 790/2014 of 22 July 2014 Implementing Article 2(3) of Regulation (EC) No 2580/2001 on Specific Restrictive Measures Directed Against Certain Persons and Entities with a View to Combatting Terrorism, and Repealing Implementing Regulation (EU) No 125/2014,” *Official Journal of the European Union*, July 23, 2014. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0790>)

¹²⁶ The Council of the European Union, “Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria,” *Official Journal of the European Union*, June 1, 2013. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013D0255>)

¹²⁷ U.S. Department of the Treasury, Press Release, “Treasury Targets Assets of Iranian Leadership,” June 4, 2013. (<http://www.treasury.gov/press-center/press-releases/Pages/j11968.aspx>)

¹²⁸ Steve Stecklow, Babak Dehghanpisheh & Yeganeh Torbati, “Khamenei Controls Massive Financial Empire Built on Property Seizures,” *Reuters*, November 11, 2013. (<http://www.reuters.com/investigates/iran/#article/part1>)

investments, shielded from the view of the Iranian people and international regulators.”¹²⁹ Then-Under Secretary for Terrorism and Financial Intelligence David S. Cohen explained:

“Even as economic conditions in Iran deteriorate, senior Iranian leaders profit from a shadowy network of off-the-books front companies. While the Iranian government’s leadership works to hide billions of dollars in corporate profits earned at the expense of the Iranian people, Treasury will continue exposing and acting against the regime’s attempts to evade our sanctions and escape international isolation.”¹³⁰

My colleagues Emanuele Ottolenghi and Saeed Ghasseminejad have also studied the sanctions relief scheduled to be provided to Supreme Leader Ali Khamenei under the JCPOA. As they explain, the de-listing of these entities “will pump tens of billions of dollars into the supreme leader’s personal coffers, helping him secure his grip on the Iranian people, and bolstering Iran’s ability to promote its agenda abroad.”¹³¹

An overview of the EIKO’s holdings reveals the extent of its control of the Iranian economy. The value of EIKO’s real estate portfolio totals nearly \$52 billion; its stakes in publicly traded companies totaled nearly \$3.4 billion in 2013.¹³² EIKO controls more than five percent of publicly traded companies on Tehran’s Stock Exchange.¹³³

The United States is scheduled to de-list Khamenei’s financial empire on Implementation Day despite the fact that none of these entities were designated for nuclear proliferation.¹³⁴ These entities were sanctioned because they were involved in illicit financial practices, including government corruption. There is no indication that this conduct has changed. They continue to pose risks to the integrity of the global financial system and pose a significant terror financing risk. Yet, the Supreme Leader and his financial empire will be granted a clean bill of health as a result of the JCPOA.

¹²⁹ U.S. Department of the Treasury, Press Release, “Treasury Targets Assets of Iranian Leadership,” June 4, 2013. (<http://www.treasury.gov/press-center/press-releases/Pages/j11968.aspx>)

¹³⁰ Ibid.

¹³¹ Emanuele Ottolenghi & Saeed Ghasseminejad, “Under Iran Agreement, U.S. Will Delist All Entities Controlled by Supreme Leader,” *Foundation for Defense of Democracies*, July 27, 2015.. (<http://www.defenddemocracy.org/media-hit/ottolenghi-ghasseminejad-us-will-delist-entities-controlled-by-khamenei/>)

¹³² Steve Stecklow, Babak Dehghanpisheh & Yeganeh Torbati, “Khamenei Controls Massive Financial Empire Built on Property Seizures,” *Reuters*, November 11, 2013. (<http://www.reuters.com/investigates/iran/#article/part1>)

¹³³ Emanuele Ottolenghi & Saeed Ghasseminejad, “Who Really Controls Iran’s Economy,” *The National Interest*, May 20, 2015. (<http://nationalinterest.org/feature/who-really-controls-irans-economy-12925>); For more information about EIKO and its investment arms, see Emanuele Ottolenghi & Saeed Ghasseminejad, “The Bank of Ayatollah,” *National Post* (Canada), December 18, 2013. (<http://news.nationalpost.com/full-comment/ottolenghi-ghasseminejad-the-bank-of-ayatollah>)

¹³⁴ Executive Order 13599, “Blocking Property of the Government of Iran and Iranian Financial Institutions,” February 8, 2012. (<http://www.gpo.gov/fdsys/pkg/FR-2012-02-08/pdf/2012-3097.pdf>); U.S. Department of the Treasury, Press Release, “Treasury Targets Assets of Iranian Leadership,” June 4, 2013. (<http://www.treasury.gov/press-center/press-releases/Pages/j11968.aspx>); “New US Sanctions on the Government of Iran and Iranian Financial Institutions,” *Steptoe & Johnson, LLP*, February 7, 2012. (<http://www.steptoelaw.com/publications-newsletter-431.html>)

RECOMMENDATIONS

To prevent the benefits of sanctions relief from flowing to the most dangerous elements of the Iranian regime, Congress should enhance non-nuclear sanctions, increase the enforcement of remaining sanctions, and use the tax code to deny benefits to companies doing business with the most dangerous elements of the Iranian regime.

1. Designate the IRGC for Terrorism

The U.S. Department of State maintains a list of Foreign Terrorist Organizations that pose a threat to U.S. nationals and U.S. national security. The U.S. Treasury Department also issues sanctions and designations under Executive Order 13224 against entities and individuals that engage in the planning or funding of terrorism. There is little doubt that the IRGC has engaged in terrorist activity against U.S. nationals and threatened the national security of the United States. The United States government has repeatedly noted that the IRGC is involved in terrorism and regional aggression. For example, the Defense Department's Unclassified Report on Military Power of Iran in April 2010 stated the following:

“IRGC and IRGC-QF have been involved in or behind some of the deadliest terrorist attacks of the past 2 decades, including the 1983 and 1984 bombings of the U.S. Embassy and annex in Beirut, the 1983 bombing of the Marine barracks in Beirut, the 1994 attack on the AMIA Jewish Community Center in Buenos Aires, the 1996 Khobar Towers bombings in Saudi Arabia, and many of the insurgent attacks on Coalition and Iraqi Security Forces in Iraq since 2003. It generally directs and supports the groups that actually execute the attacks, thereby maintaining plausible deniability within the international community.... Elements of Iran's Islamic Revolutionary Guard Corps (IRGC) have provided direct support to terrorist groups, assisting in the planning of terrorist acts or enhancing terrorist group capabilities.”¹³⁵

Most recently, in testimony before the Senate Banking Committee, Acting Under Secretary of the Treasury for Terrorism and Financial Intelligence Adam Szubin noted that IRGC activities appear to meet the definition of support for terrorism:

“The IRGC is a parent organization, has a number of subsidiaries, and it's involved almost in every bad aspect of what Iran is engaged in. Whether it's the ballistic missile procurement, whether terrorism, whether it's regional destabilization or human rights. We designated the Quds Force, which is their arm that they use to support military activity and terrorist groups, under our terrorism program because it was the most apt element of the IRGC to label with the terrorist brush.... [B]ut, certainly we've seen the activity underneath the IRGC that easily qualifies for terrorist support.”¹³⁶

¹³⁵ U.S. Department of Defense, “Unclassified Report on Military Power of Iran,” April 2010, pages 7-8.

(<http://www.foxnews.com/projects/pdf/IranReportUnclassified.pdf>)

¹³⁶ Adam Szubin, “Nomination Hearing,” *Senate Banking, Housing and Urban Affairs Committee*, September 17, 2015. (<http://www.cq.com/doc/congressionaltranscripts-4758134?7&search=nisvDID6>)

To date, the State Department has not designated the IRGC or its “external arm,” the Quds Force, as a Foreign Terrorist Organization (FTO). The U.S. Treasury has, however, designated the IRGC-QF for its role in terrorism¹³⁷ and for supporting the Assad regime’s brutal repression in Syria.¹³⁸ My FDD colleague Ali Alfoneh has been closely studying the IRGC’s activities in Syria and monitoring the reported casualties, noting that among the casualties have been high-ranking IRGC commanders from non-Quds Force units.¹³⁹ He has observed a blurring of the lines between the Quds Force and the IRGC Ground Forces.

The conclusion is clear: the Quds Force is part of the IRGC. If the Quds Force is responsible for terrorism, then the IRGC as a whole should be designated as a terrorist organization under Executive Order 13224 or included on the FTO list, or both. The current distinction between the IRGC and the IRGC-QF is a false separation. Just as the U.S. has included Hezbollah and Hamas on the FTO list and found that neither has a distinct “political wing” and “military wing,” so too are the IRGC and the IRGC-QF intertwined.

Sanctioning the IRGC for supporting terrorism will provide a warning to foreign companies contemplating business in Iran and deter them from engaging with the most dangerous elements of the regime. This is a way for members of Congress—both those who supported and those who opposed the JCPOA—to ensure that the sanctions relief provided under the JCPOA does not unleash even greater Iranian regional aggression.

2. Designate Additional IRGC Entities and Individuals and Foreign Companies that Do Business with the IRGC

The subsidiaries of designated Iranian companies are all under sanctions, and no company or financial institution is likely to risk transacting with an entity on a U.S. or EU sanctions list. In theory, Iranian entities that are not listed may still draw enhanced scrutiny from anti-money laundering and compliance authorities. In practice, however, the global business community looks to the U.S. Treasury for guidance and will assume that what is not explicitly forbidden is permitted.

In its role as a protector of the integrity of the global financial system, the U.S. Treasury has a duty to expose Iranian companies’ connections to the IRGC. This could be implemented through the creation of an “IRGC Watch list,” as my colleague Emanuele Ottolenghi recommends.¹⁴⁰ Even if official government designations do not always follow, exposure can still discourage business ties

¹³⁷ Treasury Department, “Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism,” October 25, 2007. (<http://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx>)

¹³⁸ Executive Order 13572, “Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria,” April 29, 2011. (<http://www.gpo.gov/fdsys/pkg/FR-2011-05-03/pdf/2011-10910.pdf>)

¹³⁹ Ali Alfoneh, “Shiite Combat Casualties Show the Depth of Iran’s Involvement in Syria,” *The Washington Institute for Near East Policy*, August 3, 2015. (<http://www.washingtoninstitute.org/policy-analysis/view/shiite-combat-casualties-show-the-depth-of-irans-involvement-in-syria>); Ali Alfoneh, “The IRGC Transforms into an Expeditionary Force,” *Foundation for Defense of Democracies*, October 29, 2015. (<http://www.defenddemocracy.org/media-hit/ali-alfoneh-the-irgc-transforms-into-an-expeditionary-force/>)

¹⁴⁰ Emanuele Ottolenghi, “Major Beneficiaries of the Iran Deal: IRGC and Hezbollah,” *Hearing before the House Foreign Affairs Subcommittee on the Middle East and North Africa*, September 17, 2015. (<http://foreignaffairs.house.gov/hearing/subcommittee-hearing-major-beneficiaries-iran-deal-irgc-and-hezbollah>)

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 its illegal activities. As Treasury has stated, "target[ing the] core commercial interests of the IRGC... undermin[es its] ability to continue using these interests to facilitate its proliferation activities and other illicit conduct."¹⁴¹

If the criteria for designation were changed, many of these entities could in fact be sanctioned because of their connections to the IRGC. There is precedent in U.S. law to define "owned or controlled" to include not only a majority equity share, but also a majority of seats on the board of the board of directors or an ability "to otherwise control the actions, policies, or personnel decisions."¹⁴² That is, if one entity controls a majority of the board of directors of another, the former entity is said to own or control the latter. In the case of IRGC ownership, the use of this "board of directors criteria" would expand the number of entities liable for sanctions and more accurately reflect the IRGC's influence in the Iranian economy.

Furthermore, the majority equity stake threshold for designation should be re-examined. Currently, Treasury uses the "50 percent plus one" threshold to determine IRGC ownership; however a 25 percent threshold would better reflect global standards and Treasury's own recommendations. Last summer, the Treasury's Financial Crimes Enforcement Network (FinCEN) proposed a rule that would strengthen due diligence procedures by requiring companies to verify the beneficial owners of their business partners. Treasury proposed that the threshold for beneficial ownership be a 25 percent stake.¹⁴³

The 25 percent threshold also reflects FATF's recommendations which note, "A controlling ownership interest depends on the ownership structure of the company. It may be based on a threshold, e.g. any person owning more than a certain percentage of the company (e.g. 25%)."¹⁴⁴ While not specifically requiring the use of the 25 percent threshold, FATF's language implies that 25 percent is a recommended standard. Lowering Treasury's designation threshold from 50 percent plus one to 25 percent would put sanctions designations in line with global anti-money laundering standards.

Additionally, there are numerous IRGC officials who have been designated by the European Union for human rights abuses but have escaped designation by the United States. While these officials are unlikely to have assets under U.S. jurisdiction, their addition to U.S. sanctions lists would have

¹⁴¹ Treasury Department, "Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities," June 23, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>)

¹⁴² 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>)

¹⁴³ 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/jl2595.aspx>); Samuel Rubinfeld, "Proposed Rule to Force Banks to Identify Beneficial Owners," *The Wall Street Journal's Risk & Compliance Journal*, July 30, 2014. (<http://blogs.wsj.com/riskandcompliance/2014/07/30/u-s-treasury-proposes-rule-forcing-banks-to-identify-beneficial-owners/>)

¹⁴⁴ 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)

symbolic value and emphasize that the United States will continue to highlight Iran's unconscionable record on human rights.

Moreover, the EU has designated IRGC commanders involved in nuclear and ballistic missile-related activities that have not been similarly designated by the United States.¹⁴⁵ Congress should request a report from the President explaining why these individuals have not been sanctioned and should urge Treasury to investigate them with an eye toward imposing sanctions.

Finally, Congress should work with the Treasury Department to ensure that foreign companies that engage in business with IRGC enterprises are banned from the U.S. markets. The rules of the Iran sanctions regime will be the same as they always were: You can do business with the United States or you can do business with the IRGC. If you choose the latter, be prepared to be banished from the world's largest financial market.

3. Sanction the Supreme Leader's Financial Empire for its Use of Funds from Corruption to Support Terrorism

The Supreme Leader of Iran's financial empire, the Execution of Imam Khomeini's Order (EIKO, or Setad) should be targeted with sanctions for its links to terrorism and corruption. EIKO is reportedly worth \$95 billion,¹⁴⁶ and, along with its subsidiaries, will be de-listed by both the EU and United States on Implementation Day. This will give Iran's Supreme Leader the freedom to move billions of dollars in illicit funds through the global financial sector with relative impunity. With the benefit of sanctions relief, and with the aid of the Revolutionary Guards, Khamenei also will be able to tighten his stranglehold on the Iranian people—a side effect of the nuclear deal that has not garnered enough attention. At the same time, he'll be under fewer restrictions to finance terror and bloodshed around the region.

Congress should consider legislation targeting corruption in countries like Iran, Syria, and Sudan that are state sponsors of terrorism. The link between the funds generated from corruption and the sponsorship of terrorism by these regimes is undeniable. New legislation could sanction entities, individuals and sectors involved in generating funds through corruption to support terrorism and other illicit activities. This would have the added benefit of sending a message to the Iranian people and to international companies that, in the words of the U.S. Treasury, the U.S. will identify and punish those who use “a shadowy network of off-the-books front companies...to hide billions of dollars in corporate profits earned at the expense of the Iranian people,”¹⁴⁷ and whose objective is “to generate and control massive, off-the-books investments, shielded from the view of the Iranian people and international regulators.”¹⁴⁸

¹⁴⁵ For example, the United States has not sanctioned Mohammad Pakpour, head of the IRGC Ground Forces; Amir Ali Hajizadeh, head of the IRGC Air Force; Ali Ashraf Nouri, deputy commander of the IRGC and chief of the IRGC Political Bureau; Hojatoleslam Ali Saidi, representative of the Supreme Leader to the IRGC; Behrouz Kamalian, head of Ashiyaneh cyber group; and Mohamed Sadeghi, Colonel and Deputy of IRGC technical and cyber intelligence, among others.

¹⁴⁶ Steve Stecklow, Babak Dehghanpisheh & Yeganeh Torbati, “Khamenei Controls Massive Financial Empire Built on Property Seizures,” *Reuters*, November 11, 2013. (<http://www.reuters.com/investigates/iran/#article/part1>)

¹⁴⁷ U.S. Department of the Treasury, Press Release, “Treasury Targets Assets of Iranian Leadership,” June 4, 2013. (<http://www.treasury.gov/press-center/press-releases/Pages/j11968.aspx>)

¹⁴⁸ *Ibid.*

4. Prevent Tax Breaks for Companies Doing Business in Iran

This subcommittee has called this hearing in particular to examine the provisions of the tax code related to Iran's support for terrorism. This is an important but less investigated issue, and I applaud this subcommittee for looking into this issue.

There is a provision in the tax code which allows U.S. taxpayers to take a credit against their federal income taxes for any taxes paid to a foreign government. However, this credit is not permitted in certain instances, including in the case where the foreign country has been designated as a state sponsor of terrorism.¹⁴⁹ Prior to the removal of Libya from the State Sponsors of Terrorism List, President Bush waived this restriction, stating this was in U.S. national interests, and permitted companies engaged in business in Libya to claim this tax credit.¹⁵⁰ For its part, at the time the action was taken, Libya had given up its entire nuclear program and had settled all outstanding terrorism cases. Iran most clearly has not.

There are concerns that President Obama could take similar actions to waive this provision and allow companies doing business in Iran to receive this tax credit, arguing that its continuation "adversely affects the normalization of trade and economic relations with Iran,"¹⁵¹ and thus violates the JCPOA. Congress should examine the criteria under which the president could use his waiver authority in this tax provision to prevent any company, U.S. or foreign, from benefitting from tax credits for doing business with a state sponsor of terrorism like Iran.

I am honored to be testifying alongside legal experts specializing in the U.S. tax code who will share other ideas about protecting the U.S. taxpayer from inadvertently supporting the illicit and dangerous activities of the Iranian regime.

5. Prevent Re-Opening of the U.S. Parent-Foreign Subsidiary Loophole

Under the JCPOA, Washington will license foreign subsidiaries to conduct business from which their parent companies are prohibited. According to Annex II, the United States will "[l]icense non-U.S. entities that are owned or controlled by a U.S. person to engage in activities with Iran that are consistent with this JCPOA."¹⁵²

This provision is a reversal of Congress' explicit effort to address the foreign subsidiaries loophole. Section 218 of the Iran Threat Reduction Act of 2012 prohibited any entity "owned or controlled

¹⁴⁹ Legal Information Institute, "U.S. Code § 901 - Taxes of Foreign Countries and of Possessions of United States," *Cornell University Law School*, Section 901 (a) and (j), Accessed October 29, 2015. (<https://www.law.cornell.edu/uscode/text/26/901>)

¹⁵⁰ U.S. Department of the Treasury, "Presidential Determination Concerning Libya and Delegation of Authority to the Secretary of the Treasury; Report of the Secretary of the Treasury to the Congress," *Federal Register* Volume 69, Number 202, October 20, 2004. (<http://www.gpo.gov/fdsys/pkg/FR-2004-10-20/html/04-23563.htm>)

¹⁵¹ "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)

¹⁵² "Joint Comprehensive Plan of Action, Annex II – Sanctions-related commitments," Vienna, July 14, 2015, paragraph 5.1.2. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_2_sanctions_related_commitments_en.pdf)

by a United States person and established or maintained outside the United States from knowingly engaging in any transaction directly or indirectly” with Iran if the transaction would otherwise be prohibited if it were conducted by a United States person.¹⁵³

Acting Treasury Under Secretary Szubin has cautioned that this provision is only applicable to “subsidiaries that can independently generate and support trade with Iran.”¹⁵⁴ Reportedly, however, the State Department intends to construe this provision “as broadly as possible.” Congress should request clarity from the administration on its interpretation of this foreign subsidiaries provision and express its objection to re-opening a loophole it specifically closed.

6. Develop a Rehabilitation Program for Designated Iranian Banks that Relies on a Change in Illicit Financial Conduct

On Implementation Day and on Transition Day, the United States is set to de-list nearly all of the Iranian financial institutions designation for illicit financial activities. These “de-designations” will occur despite no evidence of a demonstrable change in the illicit financial practices of these banks. Allowing these institutions back into the global financial system puts the integrity of the system at risk. In order to preserve Treasury’s role as a protector of the global financial systems, the U.S. government needs a financial rehabilitation program for Iranian banks.

This congressionally-mandated rehabilitation program should require Treasury certifications that banks are no longer engaged in financial crimes based on a prescribed set of benchmarks. While certain banks will no longer be designated as a result of sanctions relief in the JCPOA, the absence of a certification from Treasury that these banks are “safe” could have a useful signaling effect to the international financial community.

Long term, the creation of a rehabilitation program would have implications beyond Iranian financial sanctions. This program would provide a framework for financial institutions designated for a range of illicit financial activities to improve their compliance standards and be readmitted to the global financial system as an institution in good standing.

7. Legislate Criteria for Lifting the Section 311 Finding

The suspension of sanctions against the Central Bank of Iran will provide significant relief to Iran and should have been tied to verifiable changes in Iranian behavior. This is one of the major flaws of the JCPOA.

Without contradicting the JCPOA, lawmakers can still require the president to certify to Congress, prior to the lifting of the Section 311 finding against the central bank and the entire Iranian financial sector, that Iran is no longer a “jurisdiction of primary money laundering concern” and

¹⁵³ U.S. House of Representatives, 112th Congress, 2nd Session, H.R. 1905, “Iran Threat Reduction and Syria Human Rights Act of 2012,” *Government Printing Office*, 2012, Section 218. (<http://www.gpo.gov/fdsys/pkg/BILLS-112hr1905enr/pdf/BILLS-112hr1905enr.pdf>)

¹⁵⁴ Michael Gordon, “Sanctions Debate Emerges From Shadow of Iran Nuclear Accord,” *The New York Times*, September 11, 2015. (<http://www.nytimes.com/2015/09/12/us/politics/iran-nuclear-accord-sanctions.html>); James Rosen, “Exclusive: U.S. Officials Conclude Iran Deal Violates Federal Law,” *Fox News*, October 9, 2015. (<http://www.foxnews.com/politics/2015/10/09/exclusive-us-officials-conclude-iran-deal-violates-federal-law/>)

that the Central Bank of Iran, as the central pillar of Iran’s illicit financial activities, is no longer engaged in “support for terrorism,” “pursuit of weapons of mass destruction,” including the development of ballistic missiles, or any “illicit and deceptive financial activities.” Congress should stipulate that Treasury must certify that the entire country’s financial system no longer poses “illicit finance risks for the global financial system.”

Congress should consider enshrining the Section 311 finding in legislation and making the lifting of the 311 subject to specific termination criteria relating to Iranian illicit conduct. The legislation of termination criteria for the Section 311 finding would prevent a politically motivated lifting of the finding (as occurred in the Banco Delta Asia case).

CONCLUSION

Congress should act now to defend the sanctions architecture originally constructed to address the full range of Iran’s illicit activities and use the tax code to deny benefits to those companies doing business with a country that remains a leading state sponsor of terrorism. Even within the confines of the JCPOA, there are significant “non-nuclear” measures that Congress can pass that would mitigate the most significant and most troubling effects of the sanctions relief—namely the enrichment of those in the Iranian regime like the IRGC and the Supreme Leader who continue to engage in activities hostile to U.S. interests.

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