

# United States Ends Participation in Iran Nuclear Deal, Re-Imposes Sanctions Against Iran

May 9, 2018

International Trade Controls

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On May 8, 2018, President Trump [announced](#) his decision to end U.S. participation in the Joint Comprehensive Plan of Action (“JCPOA”) and re-impose sanctions against Iran that had been suspended as part of this 2015 nuclear agreement between the United States, Iran, and certain other governments. This action will have far-reaching effects for both U.S. and non-U.S. companies transacting business with Iran pursuant to the U.S. government’s JCPOA-related sanctions relief, which will be phased out over the next six months.

In a [National Security Presidential Memorandum \(“NSPM”\)](#) accompanying the announcement, the President directed the Secretary of State and the Secretary of the Treasury to re-impose all nuclear-related sanctions that had been waived or lifted as part of the JCPOA. Although the possibility of re-imposing some sanctions was widely anticipated, the Administration’s decision goes much further, and will effectively return U.S. Iran policy to its pre-JCPOA posture.

Re-imposition of sanctions comes in two main phases. First, after a 90-day wind-down period ending on August 6, 2018, the U.S. government will fully re-impose an initial list of sanctions. Second, after a 180-day wind-down period ending on November 4, 2018, the U.S. government will fully re-impose additional sanctions. By November 5, 2018, the U.S. government also expects to move to the List of Specially Designated Nationals and Blocked Persons (the “SDN List”) various Iranian parties that were removed from the SDN List on January 16, 2016.

The Treasury Department’s Office of Foreign Assets Control (“OFAC”) has provided [initial guidance](#) on what activities are permissible during the two applicable wind-down periods. OFAC will be taking follow-on actions to issue general licenses governing the wind-down periods and to revoke or revise other authorizations.

OFAC also emphasized that the U.S. government maintains multiple authorities apart from those affected by the May 8 announcement that target “Iranian malign activity outside of Iran’s nuclear program, including Iran’s support for terrorism, ballistic missile program, human rights abuses, and destabilizing activity in the region.” These existing sanctions authorities, which will also continue to be enforced by OFAC, broadly prohibit most commercial activity between the United States and Iran, including most exports from the United States to Iran, most imports from Iran to the United States, and other activities in or involving Iran, its government, and its residents by U.S. persons and non-U.S. entities that they own or control, except as authorized by OFAC.

## Political Landscape

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The JCPOA was signed on July 14, 2015 and took effect on January 16, 2016. In the United States, the agreement was reviewed by Congress pursuant to the Iran Nuclear Agreement Review Act. Under the procedures of that law, President Obama was permitted to implement the JCPOA notwithstanding that majorities of both houses of Congress voted to disapprove the agreement (but not the supermajorities required under that law to block implementation).

As our earlier [alert](#) explained, pursuant to the agreement, the United States, the EU, and the United Nations extended broad sanctions relief to Iran in exchange for Iran accepting limitations on its nuclear program. Specifically, under the JCPOA, Iran accepted limitations on its enrichment of uranium, spent fuel processing, and certain research and development activities, and committed to transparency measures intended to enable the international community to verify Iran's implementation of these measures. In exchange, the United States, the EU, and the United Nations provided phased sanctions relief upon the International Atomic Energy Agency's verification that Iran had met certain nuclear-related commitments.

Although most "primary" U.S. sanctions—which prohibit U.S. persons<sup>1</sup> and their owned or controlled non-U.S. affiliates from engaging in most unlicensed dealings with Iran—remained in place under the JCPOA, the United States significantly relaxed its "secondary sanctions" targeting non-U.S. persons that engage in certain dealings with Iran. In addition, OFAC licensed non-U.S. entities that are owned or controlled by U.S. persons to engage in transactions or dealings with Iran that it deemed consistent with the JCPOA. That authorization came in the form of [General License H](#), issued on January 16, 2016, and described in our prior [alert](#). A number of U.S. companies' non-U.S. affiliates entered business relationships and made investments in Iran pursuant to this authorization. As described below, General License H will now be revoked, and wind-down of activities authorized by that license must conclude within 180 days.

The President's May 8 action follows widespread predictions in the wake of the 2016 U.S. presidential election that some sanctions relief agreed to pursuant to the JCPOA might be withdrawn, as then-candidate Donald Trump had campaigned against the agreement. The likelihood of this occurring increased on October 13, 2017, when President Trump [announced](#) that he would no longer certify that the suspension of sanctions pursuant to the JCPOA was "appropriate and proportionate" to the steps Iran had taken to terminate its nuclear program. It increased again on January 12, 2018, when President Trump [announced](#) that he was extending the waiver of U.S. secondary sanctions on Iran one last time, "but only in order to secure our European allies' agreement to fix the terrible flaws of the Iran nuclear deal."

Intensive consultations subsequently took place between diplomats from the United States, the United Kingdom, France, and Germany to identify ways to "fix" the JCPOA, but in the end the two sides were too far apart, particularly on the question of what to do about the agreement's sunset provisions, which will lift most restrictions on uranium enrichment activity by Iran beginning in January 2026. Over the past week, it became evident that no common ground

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<sup>1</sup> A "U.S. person" is a legal entity organized under U.S. law and its non-U.S. branches and offices; individual U.S. citizens and lawful permanent residents ("green-card" holders), wherever located or employed; and persons and entities in the United States.

could be reached on the sunset issue. In the final days, French President Macron, German Chancellor Merkel, and British Foreign Secretary Johnson all came to Washington in part to try to convince President Trump that the United States should remain in the JCPOA. Their pleas were emphatically rejected by President Trump, who announced that not only would he allow an expiring sanctions waiver to lapse, but that he would also proactively restore other sanctions that were administratively rescinded by the Obama Administration. The scope of President Trump's May 8 decision is broader than many observers predicted, and appears designed to return U.S. sanctions to their pre-JCPOA posture.

Immediately following the President's announcement, the leaders of France, Germany, and the United Kingdom issued a [joint statement](#) emphasizing their "continuing commitment to the JCPOA," and "urge[d] all sides to remain committed to its full implementation and to act in a spirit of responsibility." Accordingly, there are no immediate reports that pre-JCPOA EU sanctions are affected by this development, and [early reports](#) suggest that the Iranian government may seek to negotiate with EU nations, Russia, and China to preserve its benefits under the JCPOA.

The President did signal, in the NSPM, that he was "open to consultations with allies and partners on future international agreements to counter the full range of Iran's threats, including the nuclear weapon and intercontinental ballistic missile threats"—a point he also made in remarks when announcing his decision to have the United States exit the JCPOA. But he left open the form and timing of any such future agreements. Further, by insisting that any future agreement address other issues in addition to Iran's nuclear capabilities, such as missile proliferation, and also that its restrictions on Iranian enrichment activities be of unlimited duration, President Trump established objectives that will be difficult to achieve in any future negotiations.

### **Sanctions Re-Imposed After 90 Days**

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On August 6, 2018, the initial 90-day wind-down period will end. At that point, the U.S. government will re-impose the first group of sanctions targeting Iran that had been lifted under the JCPOA. Those sanctions include:

- Sanctions on the purchase or acquisition of U.S. dollar-denominated banknotes by the government of Iran;
- Sanctions on Iran's trade in gold or precious metals;
- Sanctions on the direct or indirect sale, supply, or transfer to or from Iran of graphite, raw or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes;
- Sanctions on significant transactions related to the purchase or sale of Iranian rials, or the maintenance of significant funds or accounts outside the territory of Iran denominated in the Iranian rial;
- Sanctions on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and
- Sanctions on Iran's automotive sector.

Following the wind-down period that ends on August 6, 2018, the U.S. government will revoke certain JCPOA-related authorizations that permitted:

- The importation into the United States of Iranian-origin carpets and foodstuffs and certain related financial transactions pursuant to general licenses;
- Activities pursuant to specific licenses related to the export and reexport of commercial passenger aircraft, issued under the JCPOA Statement of Licensing Policy for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services (“SLP”)<sup>2</sup>; and
- Activities pursuant to General License I relating to contingent contracts for transactions that had previously been eligible for authorization under the JCPOA SLP. OFAC will revoke General License I and publish a replacement authorization for wind-down activities.

OFAC advises persons engaged in any of the above activities to take the steps necessary to wind them down by August 6, 2018, in order to avoid sanctions and enforcement exposure.

## **Sanctions Re-Imposed After 180 Days**

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On November 4, 2018, the 180-day wind-down period will end. At that point, the U.S. government will re-impose a second group of sanctions targeting Iran that had been lifted under the JCPOA. Those sanctions include:

- Sanctions on Iran’s port operators, and shipping and shipbuilding sectors, including on the Islamic Republic of Iran Shipping Lines, South Shipping Line Iran, and their affiliates;
- Sanctions on petroleum-related transactions with, among others, the National Iranian Oil Company, Naftiran Intertrade Company, and National Iranian Tanker Company, including the purchase of petroleum, petroleum products, or petrochemical products from Iran;
- Sanctions on significant transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions under Section 1245 of the National Defense Authorization Act for Fiscal Year 2012;
- Sanctions on the provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions described in Section 104(c)(2)(E)(ii) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010;
- Sanctions on the provision of underwriting services, insurance, or reinsurance; and
- Sanctions on Iran’s energy sector.

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<sup>2</sup> OFAC explained that the SLP has now been rescinded. OFAC thus will not consider further license applications under the SLP, and will revoke specific licenses issued pursuant to the SLP. OFAC will instead issue authorizations to provide for a wind-down period ending on August 6, 2018. Companies are permitted to resubmit their license applications for consideration under a separate safety of flight statement of licensing policy in the Iranian Transactions and Sanctions Regulations (“ITSR”).

In addition to re-imposing the above-noted sanctions, beginning on November 5:

- The U.S. government will revoke authorization for U.S.-owned or -controlled foreign entities to wind down certain activities with the government of Iran or persons subject to its jurisdiction that had previously been authorized under General License H; and
- The U.S. government will consider as subject to secondary sanctions activities with persons that have been reinstated to the SDN List, and which under the JCPOA appeared on the “E.O. 13599 List” identifying persons that met the definition of the terms “Government of Iran” or “Iranian Financial Institution.” Those persons on the E.O. 13599 List will be moved to the SDN List “[n]o later than November 5,” according to OFAC. Depending on the authority pursuant to which this re-listing occurs, secondary sanctions may attach to dealings with such persons following their re-designation.

As with the sanctions subject to a 90-day wind-down period, OFAC advises parties engaged in any of the above activities to wind them down within 180 days, or face exposure to U.S. sanctions or enforcement actions.

## **Permissible Wind-Down Activities and Other Relief**

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Although they stem from various legal authorities, including both federal statutes and executive orders, the U.S. government has divided the sanctions to be re-imposed pursuant to the May 8 announcement into two categories for wind-down purposes: those with a 90-day wind-down period, and those with a 180-day wind-down period. To implement these wind-down periods, the Secretary of State has revoked certain sanctions waivers issued in conjunction with the JCPOA, and replaced them with more limited waivers designed to implement the limited wind-down periods noted above.

OFAC cautions that after the applicable wind-down periods end, the State Department does not expect to issue additional “broad waivers” of relevant statutory authorities, and will revoke any remaining sanctions relief under existing general or specific licenses.

With respect to whether parties may engage in “new activity involving Iran” if concluded before the applicable wind-down period ends, OFAC does not state in its initial guidance that such activity is prohibited or sanctionable. Instead, it notes that when considering enforcement actions in response to any impermissible post-wind-down activities, “OFAC will evaluate efforts and steps taken to wind down activities and will assess whether any new business was entered into involving Iran during the applicable wind-down period.” Moreover, as detailed below, OFAC has advised that parties will only be permitted to collect obligations owed for permissible activities undertaken pursuant to written contracts or written agreements in effect prior to May 8.

OFAC also has provided additional guidance for certain specific situations, as discussed in more detail below.

### **Non-U.S., Non-Iranian Persons**

In situations where non-U.S., non-Iranian persons (i) had a written contract or written agreement in effect prior to May 8, 2018, to provide goods or services to an Iranian counterparty that was consistent with then-governing sanctions; and (ii) have fully completed the provision or delivery of such goods or services to the Iranian counterparty prior to the end of the applicable wind-down period, the non-U.S., non-Iranian person may collect any payments owed for such goods

or services after the applicable wind-down period expires without being exposed to U.S. secondary sanctions, if the collection is pursuant to the terms of the written contract or agreement.

Further, in situations where non-U.S., non-Iranian persons (i) had a written contract or written agreement in effect prior to May 8, 2018, to extend a loan or credit to an Iranian counterparty that was consistent with then-governing sanctions; and (ii) extended such loan or credit prior to the end of the applicable wind-down period, the non-U.S., non-Iranian person may receive repayment of the debt or obligation according to the terms of the written contract or agreement after the applicable wind-down period expires without being exposed to U.S. secondary sanctions.

OFAC explains that these allowances are “designed for non-U.S., non-Iranian parties to be made whole for debts and obligations owed or due to them for goods or services fully provided or delivered or loans or credit extended to an Iranian party prior to the end of the 90-day or 180-day wind-down period, as applicable.” OFAC also cautions that any payments made pursuant to this wind-down “allowance” may not involve U.S. persons or the U.S. financial system unless authorized by OFAC or otherwise exempt.

### **U.S. Persons**

OFAC also explains that U.S. persons and U.S.-owned or -controlled foreign entities may wind down any activities involving Iran that had been conducted pursuant to OFAC authorizations until the expiration of the applicable wind-down period. These persons may receive payments according to the terms of any written contracts or agreements entered into prior to May 8, 2018, for goods or services fully provided or delivered pursuant to an OFAC authorization. OFAC’s guidance does not expressly confirm that such collection activities will be permitted to continue after the wind-down period, but it appears that may be the intended approach in light of the comparable relief afforded to non-U.S. parties.

According to OFAC, it will replace General Licenses H and I “[a]s soon as administratively feasible,” as well as general licenses relating to Iranian carpets and foodstuffs set forth in federal regulations,<sup>3</sup> with “more narrowly scoped authorizations . . . to engage in all transactions ordinarily incident and necessary to wind down activities that were previously authorized” by the above-referenced general licenses. Providing goods or services, or extending additional loans or credit to an Iranian counterparty after the applicable wind-down period—even if done pursuant to a pre-May 8, 2018 written contract or agreement—may result in enforcement actions under applicable U.S. sanctions, unless such activities are exempt from regulation or authorized by OFAC.

### **Foreign Financial Institutions**

As noted above, the U.S. government will re-impose sanctions under Section 1245(d) of the [National Defense Authorization Act for Fiscal Year 2012](#) following a 180-day wind-down period. Under that provision, foreign financial institutions that the President determines “knowingly conducted or facilitated any significant transaction with the Central Bank of Iran or another Iranian financial institution designated by the Secretary of the Treasury for the imposition of

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<sup>3</sup> See 31 C.F.R. §§ 560.534 and 560.535.

sanctions,” including foreign central banks, are barred from opening—and subject to strict conditions on maintaining—a correspondent account or payable-through account in the United States.

Under Section 1245(d)(4)(D), however, those sanctions do not apply if the President determines “that the country with primary jurisdiction over the foreign financial institution has significantly reduced its volume of crude oil purchases from Iran” during periodic 180-day reporting periods. OFAC explains that pursuant to the May 8 re-imposition of sanctions, the State Department will once again “evaluate and make determinations with respect to significant reduction exceptions” in this provision. For the initial exceptions, the State Department will consider efforts to reduce crude oil imported from Iran during the initial 180-day wind-down period, and “expects to engage in consultations with countries currently purchasing Iranian crude oil” during that time.

As noted, no later than November 5, OFAC will re-designate various parties that were removed from the SDN List in connection with the JCPOA. This will include most, if not all, Iranian banks that were removed from the SDN List pursuant to the JCPOA, which will further expose foreign financial institutions to the risk of secondary sanctions.

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Covington has deep experience advising clients on the legal, policy, and practical dimensions of U.S. trade controls, including Iran sanctions. We will continue to monitor developments in this area, including responses by the EU to the United States’ withdrawal from the JCPOA, and are well-positioned to assist clients in understanding how these recent actions may affect their business operations.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our International Trade Controls practice:

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