

MEMMO

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New Iran Concessions Weaken U.S. Posture and JCPOA

The Treasury Department opened the door to business with Iran's leading terrorist organization—the Islamic Revolutionary Guard Corps (IRGC)—in guidance issued on Oct. 7. This new edict accelerates a pattern of undeserved concessions to Tehran as it simultaneously escalates its terrorist activities, ballistic missile tests, and human rights violations. Any long-term success of the Joint Comprehensive Plan of Action (JCPOA) depends on Iran understanding that any violation will lead to swift, certain response. Undeserved concessions going beyond the JCPOA only reinforce Tehran's propensity to violate its international obligations and ultimately undermine the JCPOA itself.

The new guidance opens the door for business with entities owned in whole or in part by the IRGC and other sanctioned entities.

- The new guidance states it is “not necessarily sanctionable” for foreign persons to engage in transactions with an entity that is “minority owned, or that is controlled in whole or in part” by Iranian entities sanctioned for their support of terrorism, ballistic missile activity, or other nefarious activities.
- This appears to explicitly contradict current U.S. policy. Under Executive Orders 13382 and 13224, which sanction entities involved in proliferation or support of terrorism, the Secretary of the Treasury is required to designate and sanction entities “controlled by” a previously sanctioned entity.
- Under the new guidance, foreign companies could potentially conduct business—and face no sanction—with entities **entirely controlled** by the IRGC, Defense Industries Organization, or the Ministry Of Defense For Armed Forces Logistics.
- The guidance also highlights a problem with existing U.S. sanctions policy wherein foreign entities may conduct business with entities in which a sanctioned actor owns as much as 49 percent.

Congress must press the administration to clarify its policy toward entities controlled in whole by sanctioned entities like the IRGC.

- Does this guidance contradict current U.S. law or executive orders?
- What led the Treasury to decide conducting business with terrorist-controlled entities was permissible?
- Are foreign entities now permitted to trade with IRGC-controlled businesses without fear of sanction? If not, under what circumstances will America sanction them?
- Can foreign entities assume approval for trade with IRGC-controlled businesses, or do they need to seek guidance from the Treasury?

The new guidance will allow Iran greater access to the U.S. dollar.

- According to the guidance, “Foreign financial institutions... may process transactions denominated in U.S. dollars or maintain U.S. dollar-denominated accounts that involve Iran or persons ordinarily resident in Iran.”
- Previous guidance made clear that dollar transactions involving Iran could not transit the U.S. financial system. It was, however, silent on the issue of overseas transactions.
- The impact of the guidance will likely be more dollars in the hands of the Iranian regime—the world’s leading state sponsor of terrorism and a jurisdiction of primary money laundering concern.
- Congress and the administration must make clear to U.S. financial institutions that it remains a crime to knowingly provide U.S. dollars to a foreign financial institution for the purpose of facilitating transactions with Iran. U.S. banks must exercise extreme caution in providing dollars to banks that conduct business with Iranian entities.

Prior to Treasury’s guidance, press reports revealed that America provided unearned relief to two banks tied to Iran’s missile activity.

- The U.N. sanctioned Bank Sepah and Bank Sepah International for their central role in financing Iran’s ballistic missile program. UNSCR 2231—which endorses the JCPOA—fixed 2023 as the year when sanctions on these entities would lift.
- However, in an agreement signed with Iran on Jan. 17, the United States inexplicably agreed not to oppose the lifting of U.N. sanctions on Bank Sepah and Bank Sepah International. This agreement also coincided with the signing of other agreements relating to a \$1.7 billion U.S. cash payment to Iran and a prisoner exchange.
- It remains unclear as to why Iran was granted this relief, as prior to lifting the sanctions on the banks, Iran carried out two missile tests in violation of UNSCR 2231. Iran has also since carried out multiple additional missile tests.
- The administration's support for delisting these banks without any reciprocal measures by Iran to rein in its ballistic missile program sets a dangerous precedent and calls into question its willingness to enforce U.N. Security Council resolutions.

The United States is easing enforcement of sanctions against Iran’s terrorist activities, ballistic missile tests, and human rights violations.

- During the congressional debate on the nuclear deal, the administration promised to fully enforce sanctions on Iran’s support for terrorism, missile program and other nefarious activities.
- “We’ll maintain significant sanctions that fall outside the scope of the deal... we will maintain powerful sanctions targeting Iran's support for terrorist groups such as Hezbollah, its destabilizing role in Yemen, its backing of the Assad regime, its missile program, and its human rights abuses at home,” Treasury Secretary Jack Lew told Congress in July 2015.
- Since the deal’s implementation, the administration has not enforced sanctions related to Iran’s human rights abuses, support of the Assad regime, support of the Houthis, or support of Hamas and Hezbollah.

- America responded to new Iranian missile test with symbolic gestures. For example, in March, Treasury announced “new” sanctions targeting two Iranian companies, Shahid Nuri Industries and Shahid Movahed Industries, for supporting Iran’s ballistic missile program. However, the designated entities were subsidiaries of already sanctioned entities, rendering the sanctions mostly symbolic at the time.

The administration’s actions reflect an opaqueness in U.S. decision making and an emerging pattern of unwarranted leniency toward Iran.

- The January agreement to lift sanctions on Bank Sepah and Bank Sepah International was not publicly disclosed until a Sept. 29 Wall Street Journal report.
- According to a Sept. 1 Institute for Science and International Security report, Iran received secret concessions to evade key JCPOA restrictions and enabling it to prematurely receive sanctions relief in January 2016.
- In July 2016, the Associated Press obtained a copy of Iran’s long-term centrifuge enrichment plan. The plan details Iran’s intentions to expand its centrifuge manufacturing capability eight years into the JCPOA and begin increasing use of advanced centrifuges through year 13, at which point restrictions are scheduled to relax significantly. Despite its importance, the administration never released the plan publicly.

Congress and the president must take corrective steps now and in January to stop undeserved concessions to Iran and hold Tehran accountable.

- Given Iran’s continued illicit activities, additional concessions to Tehran will only extend a dangerous precedent and encourage Iran to further shirk its international obligations.
- If the JCPOA is to have long-term success, the P5+1 must strictly enforce its terms and provide greater public transparency.
- Congress must begin by reauthorizing the Iran Sanctions Act (ISA)—which expires in December. Doing so will send the clearest possible signal to Tehran that Congress is vigilantly scrutinizing its actions and will exact a steep price for illicit actions.
- Failure to reauthorize would signal a lack of U.S. commitment to respond to Iran’s continued intransigence. Iran may well conclude that it can further push the limits of or outwardly defy with impunity the JCPOA and UNSCR 2231.
- The administration must uphold its promises to Congress and the American people and fully enforce sanctions for Iran’s:
 - Support of terrorism, including Hamas and Hezbollah;
 - Development of ballistic missiles and acquisition of conventional weapons;
 - Support to the Assad regime in Syria and the Houthi rebels in Yemen; and
 - Commitment of gross human rights violations.