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Possible U.S. Return to Iran Nuclear Agreement: Frequently Asked Questions

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SUMMARY

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Possible U.S. Return to Iran Nuclear Agreement: Frequently Asked Questions

President Joseph Biden and members of his Administration have expressed an intention to reverse various Trump Administration policies toward Iran, particularly the Trump Administration's decision to end its participation in the 2015 multilateral nuclear agreement known as the "Joint Comprehensive Plan of Action" (JCPOA). This report provides background and analysis on the agreement, the conditions under which the United States might re-enter it, and potential legal, congressional, and regional implications.

The JCPOA, which was finalized on July 14, 2015, by Iran and the United States and five other powers (Russia, China, the United Kingdom, France, and Germany), exchanged relief from international sanctions for restrictions on Iran's nuclear program. The Obama Administration called the JCPOA a significant diplomatic achievement that would accomplish the core U.S. national security goal of preventing Iran from developing a nuclear weapon. The Trump Administration asserted that the JCPOA did not address the broad range of Iran's objectionable behaviors and that JCPOA-mandated limitations on Iranian nuclear activities did not justify the sanctions relief provided. In May 2018, the Trump Administration announced that the United States would exit the JCPOA and would instead apply "maximum pressure" on Iran's economy in an attempt to change its behavior more broadly, centered on enforcement and imposition of comprehensive economic sanctions on Iran. All U.S. sanctions that had been suspended to implement the JCPOA were reactivated as of November 5, 2018. New U.S. sanctions beyond those in place prior to the JCPOA also were imposed.

In May 2019, Iran began exceeding limitations on its nuclear program that were stipulated in the JCPOA. In a September 13, 2020 editorial, then-presidential candidate and former Vice President Joseph Biden called the maximum pressure policy a "dangerous failure" and indicated an intent, if elected, to return to an Iran policy closer to that implemented during the Obama Administration. He indicated that the United States would resume implementing all of its JCPOA commitments if Iran were to do so. Such a step would be "a starting point for follow-on negotiations" on such issues as Iran's development of ballistic missiles and its support for regional armed factions. Since the start of the Biden Administration on January 20, 2021, Biden Administration cabinet nominees and officials have expressed that they will move forward with the policy shift on Iran. However, some experts have argued that the Biden Administration should maintain the leverage gained by U.S. sanctions in hopes of renegotiating the JCPOA to include binding limits on many other aspects of Iran's objectionable behavior. Iranian leaders have issued several demands of the new Administration but have indicated that they might be willing to undertake a mutual return to the stipulations of the JCPOA.

Despite interest expressed by all signatories, the United States' return to the JCPOA might be a complicated process. For its part, Iran would need to undertake significant, verified steps in order to resume implementing all of its JCPOA commitments. A U.S. return to JCPOA implementation would require that the Biden Administration suspend those sanctions that had been suspended in 2016, and also many of the additional sanctions imposed during the Trump Administration. Some in Congress might question the authorities of the Administration to ease these sanctions on Iran, if there were a decision to do so. Under the Iran Nuclear Agreement Review Act of 2015 (INARA, P.L. 114-17), any changes to the JCPOA would require Administration reporting to Congress, which could open the door for congressional review of the entire agreement. Some regional governments that have opposed the JCPOA have requested to be included in or consulted about a return to full implementation of the JCPOA—an insistence that, if met, could further complicate any U.S.-Iran talks on a mutual return to the JCPOA.

For further reading on the JCPOA, U.S. sanctions on Iran, the Trump Administration maximum pressure policy, and the broader range of threats posed by Iran, see the following: CRS Report R43333, *Iran Nuclear Agreement and U.S. Exit*, by Paul K. Kerr and Kenneth Katzman; CRS Report RL32048, *Iran: Internal Politics and U.S. Policy and Options*, by Kenneth Katzman; CRS Report RS20871, *Iran Sanctions*, by Kenneth Katzman; CRS Report R44017, *Iran's Foreign and Defense Policies*, by Kenneth Katzman; CRS Report R43311, *Iran: U.S. Economic Sanctions and the Authority to Lift Restrictions*, by Dianne E. Rennack; and CRS Report R46148, *U.S. Killing of Qasem Soleimani: Frequently Asked Questions*, coordinated by Clayton Thomas.

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Introduction: What is the new Administration's position on resuming implementation of the JCPOA?

One of the major questions facing the Biden Administration is U.S. policy toward Iran, whose government U.S. officials have long assessed as posing a multiplicity of threats to the United States and its allies and partners in the Middle East region.[1] The Biden Administration has argued that the Trump Administration decision in 2018 to cease implementing U.S. commitments pursuant to the JCPOA[2] did not compel Iran to change its behavior in any area of contention, including ballistic missile development and material support to regional armed factions, and furthermore prompted Iran to respond by exceeding JCPOA-mandated limits on its nuclear program. The new Administration has expressed its intent to implement an Iran policy that is similar to that pursued by the Obama Administration, centered on a return to the JCPOA, and rooted in a core judgment that preventing Iran from developing a nuclear weapon would facilitate U.S. efforts to counter the broad range of threats posed by Iran. President Biden outlined his rationale for the policy shift during the 2020 presidential campaign in an editorial on September 13, 2020, writing:[3]

> This past month has proven that Trump's Iran policy is a dangerous failure. At the United Nations, Trump could not rally a single one of America's closest allies to extend the UN arms embargo on Iran. Next, Trump tried to unilaterally reimpose UN sanctions on Iran, only to have virtually all the UN Security Council members unite to reject his gambit. Now there are reports that Iran has stockpiled 10 times as much enriched uranium as it had when President Barack Obama and I left office.
>
> We urgently need to change course...
>
> I will offer Tehran a credible path back to diplomacy. If Iran returns to strict compliance with the nuclear deal, the United States would rejoin the agreement as a starting point for follow-on negotiations. With our allies, we will work to strengthen and extend the nuclear deal's provisions, while also addressing other issues of concern ….
>
> … we will continue to push back against Iran's destabilizing activities, which threaten our friends and partners in the region…We will continue to use targeted sanctions against Iran's human rights abuses, its support for terrorism and ballistic missile program…If Iran chooses confrontation, I am prepared to defend our vital interests and our troops. But, I am ready to walk the path of diplomacy if Iran takes steps to show it is ready too… With the world back at America's side, a Biden administration will make it a priority to set Iran policy right."

Biden Administration officials and foreign policy nominees have affirmed that the new Administration intends to return to implementing the JCPOA, and have restated the rationales expressed by the Obama Administration for negotiating the original agreement in 2015. Secretary of State Antony Blinken stated at his confirmation hearing on January 19, 2021:[4]

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[1] For an assessment of the wide range of threats posed by Iran, see: CRS Report R44017, *Iran's Foreign and Defense Policies*, by Kenneth Katzman.

[2] The JCPOA does not contain a formal "withdrawal" provision. The U.S decision to leave the accord is characterized in this report as a cessation of implementing of its commitments under the accord or as an ending of U.S. participation in it.

[3] "Joe Biden: There's a smarter way to be tough on Iran." Editorial. *CNN*, September 13, 2020.

[4] Senate Foreign Relations Committee. "Senate Foreign Relations Committee Holds Hearing on the Nomination of Antony Blinken to be Secretary of State." January 19, 2021.

> … An Iran with a nuclear weapon or on the threshold of having one with the capacity to build one on short order would be an Iran that is even more dangerous than it already is when it comes to all of the other malicious activities that it is engaged in - whether it is support for terrorism, whether it is fueling and feeding its proxies, whether it is destabilizing the region an Iran with a nuclear weapon or with the threshold capacity to build one is an Iran that would act potentially with even greater impunity than it already is. So I think we have an urgent responsibility to do whatever we can to prevent Iran from acquiring a record for getting a (sic) weapon….

All of the other JCPOA signatories—France, the United Kingdom, Germany, Russia, and China—have sought to keep the JCPOA intact and support a U.S. re-entry into the accord. For their part, Iranian leaders appear to be welcoming a possible U.S. return to the JCPOA. Iran's Supreme Leader Ali Khamene'i, who is Iran's paramount decisionmaker and whose views on major national security issues almost always prevail, stated on January 8, 2021, in reference to a possible U.S. resumption of JCPOA participation; "If they return to their commitments, we will return to ours."[5] Some Iranian figures, and Iran's legislature, have demanded that the United States first ease all sanctions on Iran and even compensate Iran financially for losses incurred since the U.S. ended its participation in the JCPOA, but Khamene'i has the political authority to overrule and drop these demands.

JCPOA Timeline

2010: U.N. Security Council Resolution (UNSCR) 1929 requires member states to impose economic sanctions on Iran after discovery of Iranian nuclear facility at Fordow and increased Iranian uranium enrichment activity. European and Asian partner countries impose sanctions similar to those of United States.

2013: Negotiations between Iran and the P5+1 (the 5 permanent U.N. Security Council Members and Germany) lead to the Joint Plan of Action, an initial agreement providing for international inspections and the freezing of Iranian nuclear development for six months in exchange for some limited sanctions relief.

2014: The Joint Plan of Action is extended as multilateral negotiations on a more comprehensive agreement continue.

2015: Iran and the P5+1 sign the Joint Comprehensive Plan of Action (JCPOA signed); later endorsed by UNSCR 2231.

2016: IAEA certifies Iranian restrictions on its nuclear program, triggering the lifting of international sanctions ('Implementation Day').

2017: President Donald Trump takes office. Although he opposed the JCPOA during the campaign, his administration certifies Iranian compliance with the deal and extends sanctions waivers.

2018: In May, President Trump withdraws the United States from the JCPOA and announces a campaign of "maximum pressure" on Iran. All U.S. sanctions that had been suspended to comply with U.S. obligations under the JCPOA are reimposed by November as Iran and other JCPOA signatories remain in compliance.

2019: U.S. economic pressure continues as the Trump Administration discontinues sanctions exceptions for purchasers of Iranian oil, designates new sanctioned entities, and imposes new sanctions on various Iranian entities; Iran begins violating certain JCPOA-mandated restrictions as U.S.-Iran tensions escalate.

2020: The United States attempts to 'snap back' UN sanctions on Iran; the move is not recognized by any other JCPOA recipients. Ban on arms transfer to and from Iran expires October 18.

2023: UNSCR 2231 restrictions on Iran's missile program, and certain U.S. and EU sanctions, are to be lifted ('Transition Day,' October 18, 2023). Under the JCPOA, the U.S. executive branch is required to request that Congress lift all Iran sanctions established in legislation that were suspended to implement the JCPOA.

2025: UNSCR 2231 terminates; JCPOA restrictions on Iran's nuclear program begin to expire (some as late as 2040).

[5] "Khamenei Says Iran In 'No Rush' To See U.S. Rejoin 2015 Nuclear Deal." *RFE/RL*, January 8, 2021.

An Iranian and U.S. return to full implementation of their JCPOA commitments would presumably require direct or indirect U.S.-Iran negotiations on modalities and sequencing of a mutual return, as well as clarity on the exact commitments being made by each side. White House press secretary Jen Psaki stated on January 20, 2021 that a possible U.S. return to the accord would be discussed in President Biden's initial conversations with foreign leaders.[6] Because the Biden Administration has expressed its intent to resume implementing the agreement, this report focuses primarily on the issues involved in restoring implementation of the 2015 deal, including:

- The extent to which the new Administration might seek congressional review of any understandings negotiated with Iran in the process of resuming JCPOA implementation.
- The authorities under which the Administration could ease sanctions in conjunction with a U.S. return to the accord.
- Demands from U.S. regional partners that they be included, and the scope of the JCPOA be expanded, as part of any U.S.-Iran negotiations.

Should the Administration seek to change and expand the JCPOA?

Some experts and Members of Congress oppose a return to the existing JCPOA, which was criticized at its 2015 inception by many as either insufficient in its restrictions on Iranian nuclear activity and/or as addressing only Iran's nuclear program and not the broad range of threats posed by Iran, including its support for regional armed factions. For example, as noted in the timeline above, some of the JCPOA restrictions on Iran's nuclear expiration expire in less than five years. The Biden Administration takes the same position as did the Obama Administration—that limiting Iran's nuclear program is the overriding priority and would facilitate U.S efforts to mitigate the full range of Iran's objectionable behavior.

Critics of returning to the JCPOA argue that the Biden Administration should continue the Trump Administration's "maximum pressure" strategy to compel Iran to agree to a significantly revised JCPOA that would tighten nuclear controls further and/or address issues not included in the 2015 accord.[7] Some European officials have discussed renegotiating the deal, even though their governments have sought to preserve the accord despite the Trump Administration's pullout from it. For example, German Foreign Minister Heiko Maas said in a December 4, 2020, interview that "the previous agreement will not suffice anyway. There will have to be a kind of 'nuclear agreement plus'" that constrains Iranian regional behavior.[8] However, statements by most of the other European officials welcome a U.S resumption of implementing the JCPOA and a subsequent "diplomatic path to address wider concerns with Iran" separate from the JCPOA.[9]

Some Members of Congress have expressed opposition to an immediate U.S. return to participation in the JCPOA unless there are significant new Iranian concessions. During the confirmation hearing for President Biden's Secretary of State, Antony Blinken, incoming Senate Foreign Relations Committee Chairman Robert Menendez said:

> Now, I understand the Biden administration is interested in returning to a diplomatic path, which I support, but I fear returning to the JCPOA without concrete efforts to address Iran's

[6] "WH says Biden will talk Iran with foreign partners." *Reuters*, January 20, 2021.

[7] John Hannah. "Biden Shouldn't Rush to Restore the Iran Nuclear Deal." *Foreign Policy*, December 18, 2020.

[8] Germany's Foreign Minister on the Future of Trans-Atlantic Relations," *Der Spiegel*, December 4, 2020.

[9] E3 Statement on the JCPoA: Response to Iranian plans to expand its nuclear programme and restrict access of IAEA monitoring," German Federal Foreign Office, December 7, 2020.

> other dangerous and destabilizing activity would be insufficient. I believe there is bipartisan support to find a comprehensive diplomatic approach with Iran that includes working closely with our European regional partners if we take those other issues into consideration.[10]

When asked in a subsequent interview if he would support a return to the JCPOA, Senator Chris Coons said: "not without some clear path towards addressing the missile program and support for proxies." He also expressed the "need [for] a path forward for limits on their missile program and their support for proxies before I would support reentering the JCPOA. These need to happen at the same time."[11]

The Biden Administration's stated commitment to "follow-on" negotiations on issues beyond the nuclear program appears intended to address the views expressed above. National Security Advisor Jake Sullivan has spoken about a "follow-on negotiation" to come after the U.S. rejoining the JCPOA in which nuclear and non-nuclear issues could be "loosely connected."[12] His comments referred, in particular, to follow-on negotiations that might result in binding limits to Iran's development of ballistic missiles.[13]

Iranian leaders have given no indication, to date, whether they would be willing to enter into follow-on negotiations outside those issues addressed in the existing JCPOA.

What sanctions relief would be required?

In accordance with the commitments stipulated in the JCPOA, signatories were required to adopt measures to provide international sanctions relief on or by Implementation Day (January 16, 2016). The United States waived or terminated U.S. secondary sanctions on parties that conducted certain transactions, mostly having to do with Iran's energy sector. The JCPOA did not require the easing of some categories of secondary sanctions, or of the sanctions on direct U.S.-Iran trade. Waived U.S. sanctions are listed in detail in the textbox below. As discussed further below, the Trump Administration, by November 5, 2018, re-imposed the U.S. sanctions that had been eased or altogether removed, implementing its decision to withdraw the United States from the JCPOA.

The U.N. Security Council terminated sanctions imposed by three previous council resolutions on Iran; the sole operative Security Council resolution concerning Iran's nuclear program, Resolution 2231 (2015), includes a "snap-back" mechanism that includes a streamlined procedure for re-imposing sanctions in response to Iranian violations of the JCPOA.[14] As a result of the sanctions relief, most buyers of Iranian oil increased their purchases of Iranian oil to 2011 levels and resumed their prior trade relations with Iran. The relief also enabled Iran to access its

[10] Senate Foreign Relations Committee. Senate Foreign Relations Committee Holds Hearing on the Nomination of Antony Blinken to be Secretary of State. January 19, 2021.

[11] "U.S.'s Coons would back resuming Iran nuclear deal, with caveats." *Reuters*, November 20, 2020.

[12] Gordon Lubold and Joshua Jamerson, "Biden National Security Advisor Sees U.S. Rejoining Iran Nuclear Deal," *Wall Street Journal*, December 7, 2020; Jake Sullivan and Daniel Benaim. "America's Opportunity in the Middle East." *Foreign Affairs*, May 22, 2020.

[13] "Biden Plans Renewed Nuclear Talks With Russia While Punishing Kremlin, Adviser Says." *New York Times*, January 3, 2021.

[14] The resolution also stipulates that the council, which has been seized of (ie.involved in) the "Iranian nuclear issue" since 2006, is to end its consideration of the matter in 2025. The resolution's snapback mechanism will then cease to be operational. U.N. Security Council Resolution 2231 (2015), agreed to July 20, 2015. Available at http://undocs.org/S/RES/2231(2015).

approximately $125 billion in foreign exchange assets held in banks abroad, and its economy returned to significant growth during 2016-2018.

Sanctions Waived by the United States, 2016-2018

In accordance with the stipulations in the JCPOA, the United States waived sanctions applied pursuant to the laws below:

- Iran Sanctions Act of 1996 (ISA, P.L. 104-172, 50 U.S.C. §1701 note). All provisions that apply to Iran's energy sector and other economic sectors were waived. The weapons of mass destruction (WMD)-related provision of ISA was not waived. The Act sunsets effective December 31, 2026 (Section 13(b)).
- FY2012 National Defense Authorization Act (NDAA, P.L. 112-81, 22 U.S.C. 8513a). Section 1245(d) sanctioning banks of countries that do not reduce Iran oil imports was waived.
- Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRSHRA. P.L. 112-158, 22 U.S.C. §§8701 et seq). Iranian economy provisions, including the provision that prohibits foreign banks from allowing Iran to withdraw its funds, were waived. Human rights-related provisions were not waived.
- Iran Freedom and Counterproliferation Act of 2012 (IFCA, Title XII, Subtitle D, FY2013 NDAA, P.L. 112-239, 22 U.S.C. §§8801 et seq.). Sections 1244, 1245, 1246, and 1247 of the Act sanctioning transactions with Iran's energy, shipping, and shipbuilding sectors, and sanctioning banks that conduct transactions with sanctioned Iranian entities were waived.
- President Obama issued Executive Order 13716 (January 16, 2016; 81 F.R. 3693) to revoke Executive Orders: 13574, 13590, 13622, 13645, and Sections 5-7 and 15 of Executive Order 13628 (each codified under national emergency authorities at 50 U.S.C. §1701 notes). These Orders had imposed sanctions on: Iran's automotive sector, trading in the *rial* and precious stones, and sales to Iran of energy sector equipment.
- The core provision of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA, P.L. 111-195, 22 U.S.C. §§8501 et seq.) that imposes sanctions on foreign banks for facilitating transactions for Iranian entities was not waived. However, the Iranian banks that had been designated for sanctions were "delisted" – essentially rendering CISADA inoperable.
- The several hundred sanctioned Iranian economic entities and persons listed in Attachment 3 of Annex II of the JCPOA were delisted. The delisting made it possible for foreign companies/banks to resume transactions with those entities without risking being found in violation of U.S. law.
- The JCPOA, in Annex V, Section 21, required the President on "Transition Day," (October 18, 2023) to seek legislative action from Congress to revoke the legislation on which sanctions that were suspended under the JCPOA are based. No outcome of the request to Congress is mandated by the JCPOA.
- Security Council Resolution 2231, which endorsed the JCPOA, terminated U.N. sanctions on persons and entities still designated for U.N. sanctions on Transition Day. All U.N. sanctions are to terminate by "Termination Day"—October 18, 2025.

U.S. sanctions that remained in place under the JCPOA

The JCPOA did not commit the United States to suspend U.S. sanctions related to Iran's activities in international terrorism, weapons proliferation, regional interventions, or human rights abuses. Nor did the JCPOA suspend the ban on U.S.-Iran direct trade (with the selected exceptions discussed above). A number of sanctions remained in place during the period of U.S. implementation of the JCPOA and presumably would not need to be eased in a Biden Administration return to JCPOA implementation:

- Executive Order 12959, the restriction on U.S. trade with and investment in Iran first issued in 1995 by President Clinton, was retained. However, trade in Iranian luxury goods (carpets, caviar, and similar goods) was permitted, as stipulated in the JCPOA, through changes to U.S.-Iran trade regulations.
- Sanctions on Iran's support for armed factions in the region and for acts of international terrorism were all retained. These included sanctions on entities

designated under Executive Order 13224 (2001) as supporting acts of international terrorism, and sanctions related to Iran's designation as a state sponsor of terrorism (under the Foreign Assistance Act of 1961, Arms Export Control Act, and Export Controls Act of 2018).[15] Designations of Iranian entities for sanctions under Executive Order 13438 (2007) on Iran's interference in Iraq and Executive Order 13572 (2011) on repression in Syria were all retained.

- Sanctions on third parties' WMD proliferation to Iran and on sales to Iran of conventional weaponry were all retained. These included sanctions designations under Executive Order 13382 (2005) on WMD proliferation; the Iran-Iraq Arms Non-Proliferation Act of 1992 (IIANA, Title XVI, FY1993 National Defense Authorization Act, P.L. 102-484, 50 U.S.C. §1701 note); the Iran, North Korea, and Syria Non-Proliferation Act (INKSNA, P.L. 106-178, 2000, 50 U.S.C. §1701 note);[16] and the section of the Iraq Sanctions Act (P.L. 101-513, 1990, 50 U.S.C. §1701 note) that prohibits WMD- and arms-related transactions with Iran.
- Sanctions to address Iran's human rights abuses were retained. These include several provisions of CISADA, ITRSHRA, and IFCA; designations under Executive Order 13606 (2012), which imposes sanctions to target those engaged in censorship of Iran's domestic opposition; and Executive Order 13553 (2010) on Iranian human rights abuses connected to the 2009 Iran uprising.
- Sanctions that specifically targeted the Islamic Revolutionary Guard Corps (IRGC) or the IRGC-Qods Force, which supports regional pro-Iranian movements, were retained. Both entities are presently designated as Foreign Terrorist Organizations (FTO, under the Immigration and Nationality Act (8 U.S.C. §1189)), Specially Designated Global Terrorists (SDGT, EO 13224), human rights violators in both Iran and Syria, proliferators of weapons of mass destruction, and, interferers in U.S. election processes (pursuant to EO 13848 (2018)).
- Regulations barring Iran from access to the U.S. financial system were retained. The regulations include bans on direct transfers between U.S. and Iranian banks, as well as on foreign banks obtaining U.S. dollars to fund transactions with Iran.

Sanctions reimposed and newly imposed by the Trump Administration

In May 2018, the Trump Administration announced that the United States would exit the JCPOA and would instead apply "maximum pressure" on Iran's economy.[17] All U.S. sanctions that had been eased were re-imposed by November 4, 2018. The Administration:

- initially gave eight countries a "significant reduction exception" (SRE) under Section 1245 of the FY2012 NDAA to allow continued transactions with Iran's

[15] See CRS Report R43835, *State Sponsors of Acts of International Terrorism—Legislative Parameters: In Brief*, by Dianne E. Rennack.

[16] The JCPOA committed the United States to terminate sanctions on some entities designated under INKSNA. Entities designated under that law and under the Iran-Iraq Arms Non-Proliferation Act expire after two years.

[17] Secretary of State Michael Pompeo. Speech at the Heritage Foundation. "After the Deal: A New Iran Strategy." May 21, 2018.

Central Bank and to purchase Iranian oil. However, as of May 2, 2019, the SREs were terminated in an effort to drive Iran's oil exports close to zero.[18]

- kept in place waivers under IFCA that enable foreign entities to remove Iran's low-enriched uranium (LEU) that exceeds the 300kg allowed stockpile, to buy Iran's heavy water, and to expand the Bushehr civilian nuclear power reactor.[19] However, the Administration ended these waivers during 2019 and 2020.
- has continued to waive Section 1247(e) of IFCA to enable Iraq to continue paying for purchases of natural gas from Iran. The waiver term can be as long as 180 days, but the Administration is able to provide waivers for shorter periods,[20]and has been doing so apparently as part of an effort to pressure Iraq's government to identify alternative energy sources.

The above waivers and exceptions would presumably need to be provided in a Biden Administration return to implementation of the JCPOA.

The JCPOA (paragraph 36 and 37) and U.N. Security Council Resolution 2231 (paragraphs 10-13) contain a mechanism for the "snap back" of U.N. sanctions if Iran does not satisfactorily resolve a compliance dispute. During 2020, as it sought to prevent the scheduled expiration of the U.N. ban on arms transfers to and from Iran, the Trump Administration asserted that UNSCR 2231 allows the United States to trigger the snap-back because it remains legally a "participant" in Resolution 2231.[21] In August 2020, the Administration formally triggered the snapback provision and asserted that, on September 19, 2020, U.N. sanctions had been re-imposed.[22] However, the Security Council members overwhelmingly rejected the U.S. argument; the U.N. considers Security Council sanctions still ended[23] and the U.N. ban on arms transfers to and from Iran to have expired as scheduled on October 18, 2020.[24] It is not clear whether the U.N. Security Council and other JCPOA parties would require the Biden Administration to formally revoke the Trump Administration assertion to have triggered the snapback, if the United States were to resume its participation in the JCPOA.

Sanctions imposed after the U.S. exit from the JCPOA

Iran is almost certain to demand that the additional economic sanctions imposed by the Trump Administration subsequent to 2018 must be eased in a Biden Administration return to JCPOA implementation, insofar as the JCPOA defines sanctions on Iran's economy as subject to JCPOA waiver.

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[18] State Department Factsheet. Advancing the U.S. Maximum Pressure Campaign on Iran. April 22, 2019.

[19] The waivers had permitted foreign company participation in the following specific activities: (1) the JCPOA-mandated projects at Arak, Bushehr, and Fordow; (2) transfers from Iran of enriched uranium for the purpose of preventing Iran's low-enriched uranium (LEU) stockpile from exceeding 300 kilograms and exports of natural uranium to Iran in exchange for such transfers; (3) transfers to Iran of LEU fuel for the Tehran Research Reactor; (4) transfers from Iran of "nuclear fuel scrap," which "cannot be fabricated into fuel plates" for the reactor; (5) transfers from Iran of spent nuclear reactor fuel; and (6) storage of Iranian heavy water exported before November 5, 2018.

[20] State Department spokesperson. IRGC-QF Sanctions and Iraq's Electricity Waiver. March 26, 2020.

[21] Department of State. Secretary Michael R. Pompeo at the UN Security Council on the Iran Arms Embargo. June 30, 2020.

[22] Statement by Secretary of State Michael Pompeo. The Return of UN Sanctions on the Islamic Republic of Iran. September 19, 2020.

[23] "Iran nuclear deal: UN rejects US bid to 'snapback' Iran sanctions," *BBC*, August 26, 2020.

[24] See: CRS In Focus IF11429, *U.N. Ban on Iran Arms Transfers and Sanctions Snapback*, by Kenneth Katzman.

As part of providing sanctions relief in any U.S. return to the JCPOA, the United States would likely be required to again de-list all the entities de-listed for sanctions in 2016 in accordance with Annex II of the JCPOA (but which were "re-designated" in 2018). The United States will likely also have to de-list hundreds of similar entities designated for sanctions since the U.S. exit from the JCPOA. The Trump Administration has designated several previously de-listed Iranian economic entities, including its Central Bank as well as several Iranian banks and energy trading firms, as terrorism-supporting entities[25]—listings that will almost certainly need to be reversed in a U.S. return to the JCPOA in order to provide Iran with the requisite level of sanctions relief. Yet, de-listing terrorism-related entities might require an expansive U.S. inter-agency process to determine whether or not such entities are no longer supporting acts of international terrorism. On the other hand, a new Administration might revisit the Trump Administration's use of terrorism designations.[26] The post-JCPOA sanctions that might have to be addressed if the United States were to resume participating in the JCPOA include:

- Executive Order 13871 (May 2019) sanctioning Iran's minerals and metals sector.
- The designation of Iran's Central Bank as a Specially Designated Global Terrorist, under E.O. 13224 (2001), in September 2019. Because of the centrality of the Central Bank to Iran's financial system, Iran will undoubtedly demand that this designation be revoked. [27]
- Executive Order 13902 (January 2020) sanctioning the construction, manufacturing, mining, and textile sectors. As noted, numerous Iranian banks not sanctioned under other Orders were designated for sanctions under this Order.
- Executive Order 13949 (September 2020) sanctioning entities that facilitate sales of conventional weaponry to Iran. U.S. sanctions on conventional weapons trade were not required to be eased in implementation of the JCPOA. However, the U.N. arms transfer ban is deemed to have expired and Iran might argue that this Order—and other conventional arms transfer sanctions against Iran—must be revoked.

Several laws and Executive Orders since 2017 do not target Iran's economic sectors and might not need to be waived or revoked in a U.S. return to the JCPOA. These include: The Countering Iran's Destabilization Act of 2017 (Title I, Countering America's Adversaries through Terrorism Sanctions Act (CAATSA), P.L. 115-44, 22 U.S.C. §§9401 et seq.), which targets activities related to arms sales, missile development and testing, and human rights violations; the designation of the IRGC as a Foreign Terrorist Organization (FTO) in April 2019; and Executive Order 13876 (June 2019) sanctioning the office of Iran's Supreme Leader. However, Iranian negotiators might insist on the revocation of this Order in negotiations because of the political sensitivity of the Supreme Leader's position in Iran's hierarchy.

What does Iran need to do to return to full compliance?

In response to the May 2018 U.S. decision to no longer participate in the JCPOA, Iran initiated certain nuclear activities that currently exceed JCPOA-mandated limits. The IAEA verified these actions beginning in July 2019; Tehran has since increased the number of such activities. Biden

[25] "Trump Administration Hopes to Make Iran Pressure Campaign Harder to Reverse," *Wall Street Journal*, October 23, 2020.

[26] "U.S. Imposes Sanctions on Iran's Oil Sector," *New York Times*, October 26, 2020.

[27] "Biden's Plans for Deal with Iran Face Hurdles," *New York Times*, November 18, 2020.

Administration officials have stated that a resumption of U.S. participation in the JCPOA is contingent on Iran's coming back into full compliance with the JCPOA requirements

Iran's nuclear program has generated widespread concern that Tehran is pursuing nuclear weapons. Tehran's construction of gas centrifuge uranium enrichment facilities since the early 2000's has been the main source of proliferation concern. Gas centrifuges enrich uranium by spinning uranium hexafluoride (UF6) gas at high speeds to increase the concentration of the uranium-235 (u-235) isotope. Such centrifuges can produce both low-enriched uranium (LEU), which can be used in nuclear power reactors, and highly enriched uranium (HEU), which is one of the two types of fissile material used in nuclear weapons. LEU used in nuclear power reactors typically contains less than 5% u-235; research reactor fuel can be made using 20% u-235; HEU used in nuclear weapons typically contains about 90% u-235. Tehran claims that it wants to produce LEU for its current and future power reactors.

The JCPOA requires Iran to implement various restrictions on its nuclear program, as well as accept additional monitoring and reporting requirements. These provisions supplement the requirements contained in Iran's comprehensive safeguards agreement with the International Atomic Energy Agency (IAEA). Such agreements are designed to enable the IAEA to detect the diversion of nuclear material from peaceful purposes to nuclear weapons uses, as well as to detect undeclared nuclear activities and material. Safeguards include agency inspections and monitoring of declared nuclear facilities.

Actions exceeding JCPOA limits[28] [29]

According to IAEA reports, Iran's number of installed centrifuges, LEU stockpile, LEU u-235 concentration, and locations exceed JCPOA-mandated limits. Tehran is also conducting JCPOA-prohibited research and development (R&D) activities, as well as centrifuge manufacturing,

Operating centrifuges

Under the JCPOA, Iran is to use only its commercial-scale facility at Natanz for enriching uranium. Iran is to use no more than 5,060 IR-1 centrifuges for this purpose.[30] Iran has installed 174 JCPOA-prohibited IR-2m centrifuges in the facility and has begun to enrich uranium with these centrifuges. Iran is also producing enriched uranium at a pilot-scale centrifuge facility located at Natanz.

Iran is to refrain from producing enriched uranium at its Fordow enrichment facility, which is not to contain any nuclear material. Tehran is permitted to maintain a maximum of 1,044 IR-1 centrifuges in the facility. Iran is using 1,044 IR-1 centrifuges to enrich uranium in the facility and has installed at least 1057 IR-1 centrifuges in the facility.

[28] Unless otherwise noted, this section is based on the JCPOA text and information in *Verification and Monitoring in the Islamic Republic of Iran in Light of United Nations Security Council Resolution 2231 (2015)*, Report by the Director General, GOV/2020/51, November 11, 2020; *Verification and Monitoring in the Islamic Republic of Iran in Light of United Nations Security Council Resolution 2231 (2015)*, Report by the Director General, GOV/INF/2020/16/, November 17, 2020; CRS Report R43333, *Iran Nuclear Agreement and U.S. Exit*, by Paul K. Kerr and Kenneth Katzman.

[29] The limitations described in this section expire on various dates (see CRS Report R43333, *Iran Nuclear Agreement and U.S. Exit*).

[30] The IR-1 is Iran's first-generation operating centrifuge.

Enriched uranium limits

The JCPOA requires that Iran's enriched uranium stockpile not exceed 300 kilograms of UF6 containing 3.67% u-235. Iran has produced uranium containing up to 4.5%, according to the IAEA.[31] Atomic Energy Organization of Iran President Ali Akbar Salehi stated on January 18, 2021 that Tehran is producing enriched uranium containing 20% u-235.[32] Iran's total LEU stockpile is 2442.9 kilograms of uranium.[33] Most of this uranium is in the form of UF6; the remainder is in other chemical forms.

Centrifuge manufacturing

Iran has manufactured centrifuges for prohibited R&D activities and also manufactured centrifuge components using carbon fiber that has not received the required approval from the JCPOA-established Joint Commission, which continues to operate albeit without U.S. participation.

Research and development

The JCPOA permits R&D with uranium using only several specified types of centrifuges,[34] and allows Iran to operate only one test cascade containing a maximum of 10 IR-4 centrifuges.[35] Iran's current enrichment R&D activities include JCPOA-prohibited centrifuge types and configurations.

Verification and monitoring[36]

The IAEA monitored and verified Iran's implementation of its JCPOA commitments. Tehran could resume full implementation of its JCPOA commitments if it were to choose to do so.[37] The agency appears to have sufficient authority to verify such a resumption. UN Security Council Resolution 2231(2015), which the Council adopted on July 20, 2015, requests the IAEA Director General "to undertake the necessary verification and monitoring of Iran's nuclear-related commitments for the full duration of those commitments under the JCPOA." The IAEA has an obligation to cooperate with the Security Council, "[b]y virtue of its Relationship Agreement with the United Nations."[38] On August 25, 2015, the IAEA Board of Governors authorized the agency's Director General "to implement the necessary verification and monitoring of Iran's nuclear-related commitments as set out in the JCPOA."[39]

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[31] See GOV/2020/51.

[32] "AEOI Head: Iran Producing Half A Kilo of 20% Enriched Uranium Per Day," *Fars News Agency*, January 18, 2021.

[33] The JCPOA requires Iran to limit its LEU stockpile to 300 kilograms of "up to 3.67% enriched uranium hexafluoride…or the equivalent in other chemical forms." This quantity of UF6 "corresponds to 202.8 kg of uranium," according to the November 2020 IAEA report (GOV/2020/51).

[34] IR-4, IR-5, IR-6, and IR-8 centrifuges.

[35] Individual centrifuges are linked together in cascades for producing enriched uranium in quantity.

[36] See: CRS Report R40094, *Iran's Nuclear Program: Tehran's Compliance with International Obligations*, by Paul K. Kerr

[37] For details, see *Verification and Monitoring in the Islamic Republic of Iran in Light of United Nations Security Council Resolution 2231 (2015)*, Report by the Director General, GOV/INF/2016/1, January 16, 2016.

[38] GOV/2013/27. The agreement is contained in INFCIRC/11.

[39] *Joint Comprehensive Plan of Action Implementation and Verification and Monitoring in the Islamic Republic of Iran*

According to Resolution 2231, a JCPOA participant can, after notifying the Security Council of an issue that its government "believes constitutes significant non-performance of [JCPOA] commitments," trigger an automatic draft resolution keeping sanctions relief in effect. A veto of this resolution would reimpose the sanctions suspended pursuant to the JCPOA – a process commonly known as "snapback." Then-Secretary of State Michael Pompeo initiated this snapback process in August 2020. However, the other participating governments rejected this claim and the UN Secretary General wrote in a September 2020 letter that he could not proceed with the snapback process.[40]

Would Congress review a U.S. return to the JCPOA? [41]

In his confirmation hearings, Secretary of State Antony Blinken pledged to consult with Congress on a U.S. return to the JCPOA early in the process.[42] Whether President Biden must submit the JCPOA for congressional review prior to rejoining it appears to turn on the application of the Iran Nuclear Agreement Review Act[43] (INARA) and whether the United States would rejoin the same agreement or a new or amended one.

Enacted in 2015 while the JCPOA was under negotiation, INARA requires the President to submit to Congress within five days any agreement reached with Iran regarding its nuclear program together with all related materials and annexes; a verification assessment report by the Secretary of State; and a certification regarding essentially the appropriateness of terms and measures to be taken in light of the United States' non-proliferation goals and associated risk to the United States. In addition to receipt of these transmittal documents, INARA provides a congressional review period during which Congress can pass a joint resolution to disapprove the agreement while the President is prohibited from taking certain steps to implement it.[44]

Once a covered agreement is in effect, INARA provides that "the appropriate congressional committees and leadership [be] fully and currently informed of all aspects of Iranian compliance" with the agreement and shall receive the following reports.[45]

- *Material Breach Report*. INARA requires the Administration to report a potentially significant Iranian breach of the agreement within 10 days of acquiring credible information of such a breach.[46] Within another 30 days, the President must determine whether the breach is material and whether Iran has cured it.[47]

in Light of United Nations Security Council Resolution 2231 (2015), GOV/2015/72, December 15, 2015.

[40] See CRS In Focus IF11583, *Iran's Nuclear Program and U.N. Sanctions Reimposition*, by Paul K. Kerr.

[41] This section was authored by Jennifer K. Elsea, Legislative Attorney, American Law Division (ALD), CRS.

[42] Senate Foreign Relations Committee. Senate Foreign Relations Committee Holds Hearing on the Nomination of Antony Blinken to be Secretary of State. January 19, 2021. (Statement of Antony Blinken) (pledging to "engage in genuine consultations, not—not notification, real consultations, real dialogue on the takeoff, not on the landing so we can try to work things through together").

[43] Iran Nuclear Agreement Review Act, P.L. 114-17, 129 STAT. 201, codified at 42 U.S.C. §2160e.

[44] 42 U.S.C. §2160e(b).

[45] *Id.* §2160e(d)(1).

[46] *Id.* §2160e(d)(2).

[47] *Id.* §2160e(d)(3).

- *Certification Report*. INARA requires the President to certify, every 90 days, that Iran is "transparently, verifiably, and fully implementing" the agreement and that Iran has not taken any action to advance a nuclear weapons program.[48]
- *Semiannual Report*. INARA requires the Administration to report every 180 days on Iran's nuclear program, including Iran's compliance with its nuclear commitments; whether Iranian banks are involved in terrorism financing; Iran's ballistic missile advances; whether Iran continues to support terrorism; and any changes to the human rights situation in Iran.[49]
- *Additional Reports.* INARA also permits certain congressional committees to request the views of specific agencies "as to whether the safeguards and other controls contained in the agreement…provide an adequate framework to ensure that Iran's activities permitted thereunder will not be inimical to or constitute an unreasonable risk to the common defense and security."[50] The President is also required to "keep the appropriate congressional committees and leadership fully and currently informed of any initiative or negotiations with Iran relating to Iran's nuclear program, including any new or amended agreement."[51]

INARA does not expressly contemplate what would happen if the United States were to withdraw from and subsequently rejoin an agreement.[52] However, INARA remains good law and appears to apply to any agreements meeting the definition set forth in subsection (h)(1):

> The term "agreement" means an agreement related to the nuclear program of Iran that includes the United States, commits the United States to take action, or pursuant to which the United States commits or otherwise agrees to take action, regardless of the form it takes, whether a political commitment or otherwise, and regardless of whether it is legally binding or not, including any joint comprehensive plan of action entered into or made between Iran and any other parties, and any additional materials related thereto, including annexes, appendices, codicils, side agreements, implementing materials, documents, and guidance, technical or other understandings, and any related agreements, whether entered into or implemented prior to the agreement or to be entered into or implemented in the future.[53]

There is no disagreement that the JCPOA is an "agreement" within the INARA definition. Consequently, it seems highly probable that the ongoing reporting requirements of the Act would continue in operation if the President should rejoin the JCPOA. The submission of the semiannual report is required within 180 days of "entering into an agreement."[54] Assuming that entry into an agreement is tantamount to entry into force for a party to the agreement, it seems reasonable to assume that reentry into the agreement would qualify as "entering into an agreement" and would trigger the requirement on the same timeline.

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[48] *Id.* §2160e(d)(6).

[49] *Id.* §2160e(d)(4).

[50] *Id.* §2160e(d)(5).

[51] *Id.*

[52] For an analysis of withdrawal from international agreements, see CRS Report R44761, *Withdrawal from International Agreements: Legal Framework, the Paris Agreement, and the Iran Nuclear Agreement*, by Stephen P. Mulligan; CRS Legal Sidebar LSB10134, *Withdrawal from the Iran Nuclear Deal: Legal Authorities and Implications*, by Stephen P. Mulligan.

[53] 42 U.S.C. §2160e(h)(1).

[54] *Id.* §2160e(d)(4).

The more difficult question seems to be whether the initial transmittal and review requirements would apply upon reentry into the agreement, which may depend on, among other things, whether the agreement remains identical to the original or is substantively amended. The action that triggers the transmittal and review requirements is "reaching an agreement with Iran relating to the nuclear program of Iran."[55] The question is whether rejoining the JCPOA after a hiatus amounts to "reaching an agreement" under INARA. "Reaching an agreement" does not appear to be a term of art in the lexicon of treaties and international agreements,[56] but, based on common dictionary meaning of the words, it may be regarded as the mutual acceptance of terms of an accord following negotiation.[57]

It seems clear that if the parties negotiate a new agreement to replace the JCPOA, the transmittal and review requirements would apply within the times stated in INARA. If the United States were to rejoin and restart implementation of the JCPOA as originally agreed upon, it is less clear whether restarting implementation alone constitutes "reaching an agreement" that would trigger the transmittal and review requirements. If the United States were to renew the terms of the agreement without change, the President might reasonably conclude that, based on the plain meaning of the relevant statutory language, INARA would not require the transmittal of the written agreement again.

Other questions may arise if the parties were to amend the JCPOA prior to the U.S. rejoining it. It could be argued that reentering an amended agreement amounts to "reaching an agreement" that triggers INARA's transmittal and review requirements.[58] However, INARA contemplates amendments to the covered agreements, so it also could be argued that rejoining an amended JCPOA would only trigger those INARA amendment responsibilities. INARA requires only that amended agreements be reported to the appropriate committees.[59] The notification of such an amendment would arguably give Congress an opportunity to review INARA and make amendments if necessary to account for the changes, albeit without the implementation restrictions during the congressional review period provided under INARA.[60]

Although INARA is not clear on this point, it would seem reasonable for the Administration, if rejoining the JCPOA as it is currently written, to conclude that it is not "reaching an agreement" within the meaning of INARA and, thus, is not obligated to meet the initial transmittal and review requirements. This, in turn, would not trigger the congressional review period and its corresponding restrictions on implementation. On the other hand, it is conceivable that rejoining the agreement may entail a separate agreement of some sort with the remaining parties of the JCPOA that could constitute an agreement under INARA's definition, in which case transmittal of that agreement may be necessary. In any event, the Administration would be required to keep the appropriate committees apprised of negotiations toward rejoining the JCPOA.

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[55] *Id.* §2160e(a)(1).

[56] *See, e.g.*, Glossary, United Nations Treaty Collection, at https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1_en.xml#adoption.

[57] *See* The Free Dictionary, Idioms, at https://idioms.thefreedictionary.com/reach+an+agreement, which supplies the definition "[t]o achieve some accord, settlement, or compromise (with someone), especially after a period of debate, argument, negotiation, etc."

[58] At least with respect to amendment of international agreements by fewer than all parties, "[a]n agreement to amend constitutes a new international agreement." RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW §334, cmt. A (1987). This may not apply with respect to the JCPOA, though, because the parties do not consider it to be a legally binding agreement.

[59] 42 U.S.C. §2160e(d)(5)(B).

[60] *Id.* §2160e(b)

What is the President's authority to ease sanctions in the process of returning to the JCPOA?

For decades, the United States has imposed unilateral economic sanctions on the government of Iran, bureaus within the government, and Iranian individuals and entities in an effort to deter or change objectionable behavior ranging from human rights abuses, weapons proliferation including Iran's nuclear and missile development programs, actions incurring regional instability, and support of acts of international terrorism. Despite the three years during which the United States met its obligations defined in Annex II of the JCPOA[61] by removing hundreds of Iranian individuals and entities from the U.S. sanctions lists, the United States has maintained most of its sanctions restrictions triggered by other malign activities. Obligations under the JCPOA narrowly focused only on sanctions related to Iran's nuclear program.

If the United States seeks to return to the JCPOA as it currently is written, any actions taken since 2018 to reimpose economic restrictions would have to be assessed for their underlying rationale. If the United States has redesignated for sanctions any individual or entity listed in the attachments to Annex II of the agreement, for example, or has taken restrictive steps against any of the sectors described in paragraph 21 of the agreement, the naming would have to be assessed as to whether it was made because of the person's role in Iran's weapons programs or for some other qualifying objectionable activity under U.S. law (i.e., terrorism or human rights).

In a series of five Executive Orders,[62] President Trump reimposed the sanctions that had been removed in 2015 and established additional categories of targets and underlying reasons for imposing sanctions. Actions taken by President Trump between 2018 and 2020 are based on a national emergency declared in 1995[63] pursuant to national emergency and international emergency economic powers authorities.[64]

Under national emergency authorities, the President may designate new sanctions targets or remove from sanctions those designated without congressional input. The National Emergencies Act provides a means for Congress to review a national emergency declaration and to revoke a declaration with passage of a joint resolution;[65] the authorities, however, do not provide Congress any means to require that a national emergency declaration remain in place. Nor is Congress given a legislative means of reviewing the status of individual designations.

There is a complicating factor, however. In Executive Order 13846 of August 6, 2018, by which President Trump initiated the reimposition of designations that had been removed to meet the

[61] Joint Comprehensive Plan of Action, signed at Vienna, July 14, 2015, para. 21; and Annex II(B), pertaining to U.S. obligations under the Agreement, including attachments 3 and 4, identifying specific individuals and entities to be delisted from sanctions requirements.

[62] Executive Order 13846 of August 6, 2018, *Reimposing Certain Sanctions With Respect to Iran*, 83 F.R. 38939; Executive Order 13871 of May 8, 2019, *Imposing Sanctions With Respect to the Iron, Steel, Aluminum, and Copper Sectors of Iran*, 84 F.R. 20761; Executive Order 13876 of June 24, 2019, *Imposing Sanctions With Respect to Iran*, 84 F.R. 30573; Executive Order 13902 of January 10, 2020, *Imposing Sanctions With Respect to Additional Sectors of Iran*, 85 F.R. 2003; and Executive Order 13949 of September 21, 2020, *Blocking Property of Certain Persons With Respect to the Conventional Arms Activities of Iran*, 85 F.R. 60043.

[63] Executive Order 12957 of March 15, 1995, *Prohibiting Certain Transactions With Respect to the Development of Iranian Petroleum Resources*, 60 F.R. 14615.

[64] National Emergencies Act, P.L. 94-412; 50 U.S.C. 1601 et seq.; and International Emergency Economic Powers Act, P.L. 95-223; 50 U.S.C. §§1701 et seq. For background on these authorities, see CRS Report R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use*, coordinated by Christopher A. Casey.

[65] National Emergencies Act, Section 202 (50 U.S.C. §1622(b) and (c)).

requirements of the JCPOA, the President also cited the authorities enacted in several other Iran sanctions laws, including the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010,[66] as a basis for imposing sanctions. CISADA, at Section 401, requires that, before terminating sanctions, the President must certify that the government of Iran has ceased its engagement in the two critical areas of international terrorism and weapons proliferation including "the pursuit, acquisition, and development of, and verifiably dismantled its, nuclear, biological, and chemical weapons and ballistic missiles and ballistic missile launch technology."[67] Later-enacted Iran sanctions laws cite this requirement as the standard to be met before sanctions are lifted.

In short, President Biden could revoke any of the Executive Orders issued under national emergency and international emergency authorities, could determine that individual designations no longer hold, and could draw on waiver authorities stated throughout Iran-related legislation to ease secondary sanctions. The newer Executive Orders, however, that cite the broader range of authorities, or that cite other motivations for imposing sanctions—including missile proliferation, terrorism, regional aggression, and destabilizing conventional arms trade—create grounds for increased congressional oversight and debate.

Would regional countries that are not JCPOA parties be involved in negotiations on the U.S. return to the JCPOA?

Many U.S.-aligned Middle Eastern countries (especially Israel, the UAE, Saudi Arabia, and Bahrain) opposed the 2015 JCPOA and welcomed the Trump Administration's 2018 decision to cease participating in it. These countries criticized it as enabling Iran's attempts to expand its regional influence and providing a potential financial windfall for Iran, and were reportedly wary that the agreement was a sign of a reduced U.S. commitment to the region. The prospect that the Biden Administration might attempt to rejoin or renegotiate the accord has prompted some U.S. partners to insist that they should be included in negotiations that directly impact their security, and argue that their concerns about Iranian regional activities must be addressed as part of any U.S. return to the agreement. Additionally, Israeli Prime Minister Binyamin Netanyahu has voiced support for continuing the maximum pressure campaign against Iran instead of "just go[ing] back to the JCPOA."[68] Iran has rejected proposals to link discussions about its nuclear program to any kind of intra-regional dialogue, and some experts assess that doing so could complicate, if not preclude, the U.S. rejoining the agreement.

Despite their reservations about the JCPOA, most U.S. regional partners refrained from explicitly criticizing it or the United States in public.[69] A notable exception was Netanyahu, who, strenuously opposed the agreement; in a March 2015 address to a joint session of Congress, he said, "this is a bad deal. It's a very bad deal. We're better off without it."[70] When the deal was

[66] Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) of 2010; P.L. 111-195; 22 U.S.C. §§8501 et seq.

[67] CISADA, Section 401(a)(2) (22 U.S.C. §8551(a)(2)).

[68] Israeli Prime Minister's office, Additional Remarks by PM Netanyahu at his Meeting with U.S. Treasury Secy. Steven Mnuchin, January 7, 2021.

[69] Ben Hubbard, "Arab World Split Over Iran Nuclear Deal," *New York Times*, July 14, 2015; Loveday Morris and Hugh Naylor, "Arab states fear nuclear deal will give Iran a bigger regional role," *Washington Post*, July 14, 2015.

[70] "The complete transcript of Netanyahu's address to Congress," *Washington Post*, March 3, 2015.

signed four months later, he called it a "capitulation" and a "bad mistake of historic proportions."[71]

When the Trump Administration announced the U.S. exit from the deal in May 2018, the regional response was generally supportive, led by Israel, as well as Saudi Arabia and its allies.[72] U.S. partners with closer ties to Iran, such as Qatar and Oman, were more favorable toward the JCPOA and less enthusiastic about the Trump Administration's ending U.S. participation in it. In welcoming the U.S. exit, Saudi Arabia asserted its commitment to work with its partners in the United States and the international community to reach the goals announced by President Trump. The Kingdom advocated the necessity to address the dangers posed by the policies of Iran on international peace and security through a holistic approach, that is not limited to its nuclear program, but addresses its hostile activities, including Iran's interference in the internal affairs of countries in the region and its support of terrorism, and to prevent Iran from ever possessing weapons of mass destruction.[73]

Echoing the Trump Administration's criticisms of the JCPOA, many regional partners' officials argue that if the United States is to return to the agreement, it should only do so as part of a larger accord that broadly addresses aspects of Iran's behavior beyond its nuclear program. Saudi Foreign Minister Prince Faisal bin Farhan Al Saud said "reviving the JCPOA as it exists now will only bring us to the point where we were, which is a deficient agreement that doesn't address the full issues related to Iran's nuclear activities and other original activities."[74] Some in the region have implied that these non-nuclear threats may actually be more important, at least in the short term. Emirati Ambassador to the United States Yusuf al Otaiba, when asked about how regional states would prioritize the various threats from Iran, said, "If you ask any country in the region, I think that their priorities would be missiles and proxies and interference," while cautioning that "if you don't resolve the nuclear issue none of the other issues get resolved."[75]

Senior national security officials in the Biden Administration have expressed skepticism about the value of conditioning nuclear diplomacy on non-nuclear issues, but maintain that consultation with regional partners will be a U.S. priority. Jake Sullivan, President Biden's National Security Advisor, wrote in May 2020, "It is a recipe for failure to hold the opportunity to constrain Iran's nuclear enrichment hostage to maximalist regional demands."[76] Secretary of State Antony Blinken said in his January 2021 confirmation hearing that in any future U.S.-Iran negotiations, it is "vitally important that we engage on the takeoff, not the landing, with our allies and with our partners in the region to include Israel and to include the Gulf countries."[77] For their part, Iranian leaders maintain that they are open to dialogue with their neighbors without the involvement of

[71] Peter Beaumont, "Netanyahu denounces Iran nuclear deal but faces criticism from within Israel," *Guardian* (UK), July 14, 2015.

[72] Stephen Kalin and Sarah Dadouch, "Gulf Arab allies hail triumph after U.S. quits Iran deal," *Reuters*, May 8, 2018.

[73] Kingdom of Saudi Arabia's Statement on the United States Withdrawal from the JCPOA, Embassy of the Kingdom of Saudi Arabia, May 8, 2018.

[74] "Iran nuclear deal: Saudi Arabia says Gulf states must be consulted if US revives accord," *Guardian*, December 5, 2020.

[75] "Interview: UAE's Al-Otaiba on Reviving the JCPOA," *Nuclear Intelligence Weekly*, January 8, 2021.

[76] Daniel Benaim and Jake Sullivan, "America's Opportunity in the Middle East," *Foreign Affairs*, May 22, 2020.

[77] Senate Foreign Relations Committee Holds Hearing on the Nomination of Antony Blinken to be Secretary of State, CQ Congressional Transcripts, January 19, 2021.

outside powers and separate from the JCPOA, pointing to Iran's proposed Hormuz Peace Endeavor, originally put forward in 2019.[78]

How U.S. regional partners might be included in a possible U.S. re-entry into the JCPOA is less clear. Saudi Arabia's Prince Faisal said he expected his country and its allies to be "fully consulted in what goes on vis-à-vis the negotiations with Iran."[79] Others have gone further. Ambassador al Otaiba said in December 2020 that in maintaining strong ties with its European and Middle Eastern allies, the United States should "show up with both groups at the negotiating table."[80] Former Israeli Ambassador Ron Dermer similarly cited the inclusion of U.S. allies South Korea and Japan in the 2003-2009 six-party talks that aimed to resolve concerns about North Korea's nuclear program to argue that "forg[ing] a common policy with your allies in the region…will both enhance this process and, I think, put the United States in a much better place to deal with Iran."[81] In light of possible Israeli covert action during 2020 that was related to Iran's nuclear program, including an explosion at its Natanz facility and the assassination of a top Iranian scientist, some observers speculate about the possibility that future Israeli operations might influence or disrupt U.S. diplomacy on the nuclear issue.[82]

With the future U.S. approach uncertain, some supporters of greater regional involvement concede that broadening the scope of negotiations with Iran would prolong the talks and potentially prevent the United States from rejoining the JCPOA. Ambassador al Otaiba said in January 2021, "We're not going to resolve the regional issues tomorrow."[83]

What are Congress's options?

For decades, Congress has closely monitored and attempted to shape successive administrations' approaches to Iran through a number of means, including legislation. As the Biden Administration formulates its approach, Members of Congress may consider the following options, many of which have precedent in legislation introduced or passed during JCPOA negotiations.

- *In support of U.S. re-entering the JCPOA*. Congress could pass a resolution expressing support for U.S. engagement with Iran and U.S. re-entry into the JCPOA, or establishing such a move as U.S. policy. More substantively, it could also pass legislation to relax various U.S. sanctions against Iran, either as an incentive for Iran to conclude a revised or expanded nuclear agreement or in exchange for it having done so.
- *In opposition to U.S. re-entering the JCPOA*. Congress could pass a resolution expressing its sense that the United States should not re-join the JCPOA, or should do so only under certain conditions. Congress could also pass legislation to limit executive branch action in certain ways, including by revoking various presidential waiver authorities; limiting the president's ability to revoke

[78] See: Mehran Haghirian and Luciano Zaccara, "Making sense of HOPE: Can Iran's Hormuz Peace Endeavor succeed?" *Atlantic Council*, October 3, 2019.

[79] "Iran nuclear deal," Guardian.

[80] Nahal Toosi, "Arab states, Israel say they want in on Biden's future Iran talks," *Politico*, December 22, 2020.

[81] Economic Club of Washington, D.C., Virtual Signature Event, November 16, 2020. Transcript available at https://www.economicclub.org/sites/default/files/transcripts/dermer_al_otaiba_al_khalifa_edited_transcript.pdf.

[82] David Wainer and Ivan Levingston, "Israel Wants to Derail Biden's Plan to Rejoin Iran Nuclear Deal," *Bloomberg*, January 12, 2021.

[83] "Interview: UAE's Al-Otaiba," *Nuclear Intelligence Weekly*.

- designations of sanctioned entities; or reinstating any revoked designations through statute.
- *In support of greater congressional review*. Without expressing support for or opposition to any U.S. attempt to re-enter the JCPOA, Congress could mandate that the executive branch report to Congress on the progress and outcome of negotiations, either through revisions to INARA or through new legislation.

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