



BIPARTISAN POLICY CENTER

## **Conditional Sanctions and Repeal Authority: A Mechanism for Legislative-Executive Cooperation on Negotiations with Iran**

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### **Introduction**

The goal of preventing a nuclear Iran has always been a bipartisan one. As diplomatic efforts shift to negotiating a final deal with Iran, following the recently announced interim agreement, maintaining that bipartisanship, especially in the form of cooperation between the White House and Capitol Hill, will be crucial to their success.

Both parties have supported the use of ever-stricter sanctions to keep Iran from acquiring nuclear weapons capability. In a gridlocked Congress, bills containing sanctions against Iran continually pass with overwhelming majorities and often near unanimity. Despite such legislative bipartisanship, however, the White House (whether occupied by a Democrat or a Republican) has not always seen eye-to-eye with Capitol Hill. Most recently, high-ranking Obama administration officials sought to convince the Senate not to pass additional measures in order to avoid derailing ongoing negotiations with Iran.

Now that the United States has reached an interim agreement with Iran, getting a suspension of its nuclear program in return for some sanctions relief, overcoming these intra-governmental divisions is critical. The success of any final deal on Iran's nuclear program will be judged by whether Iran's ability to pursue a nuclear weapon has been sufficiently curtailed. But Tehran's willingness to make concessions will be a direct result of both how damaging it believes continued intransigence would be and how advantageous a deal would be. Reaching a final deal, therefore, that satisfies U.S. security interests will require credibly applying pressure before such an agreement and being able to relieve it afterwards.

But, U.S. sanctions – not to mention those adopted by the United Nations or European Union – are a complex mix of legislation and Executive Orders, with different conditions for waiving, suspending or repealing. Thus, the White House, which is responsible for conducting talks, is unlikely to be able to unilaterally grant Iran all the relief needed to make a final deal stick. Members of Congress, on the other hand, who have expressed concern that a final deal might not do enough to prevent a nuclear Iran, have little ability to guide the direction of negotiations but can determine whether to repeal many sanctions or not.

In short, both legislative and executive action will be needed to reach a successful diplomatic solution to Iran's nuclear program. The legislative and executive branches should begin laying the foundation for cooperation now to enhance the chances of a peaceful end to Iran's nuclear ambitions. This will require the White House to acknowledge and take onboard Congressional

suggestions about the conditions of any final deal as well as to accept the potential imposition of additional sanctions. Congressional leaders, on the other hand, should discuss with the administration which sanctions should be repealed as part of any deal and commit to revoking them if an acceptable deal is reached.

### **Recommendation**

Without the White House and Congress on the same page on how to respond to developments in negotiations with Iran, efforts at sanctions relief from the administration may either be complicated or overtly foiled by Congress. While the President has a wide array of waivers he can apply, as well as the option of rescinding those executive orders that have not been codified into law, as well as the de facto ability to direct laxer enforcement of sanctions on the books, sidelining Congress from the process could result in a showdown that could cripple negotiations moving forward.

Thus, if the United States is to prevent a nuclear Iran, it is of the utmost importance that the Executive and Legislative branches coordinate and cooperate. While the White House is the primary U.S. voice at the negotiating table, it should acknowledge and incorporate Capitol Hill's input about the conditions for any final deal, as well as heed its nearly unanimous call for additional sanctions to further pressure Iran if the terms of the interim deal are not met. Congress, on the other hand, should discuss a strategy with the administration about which sanctions Iran could be offered relief from as part of a potential final deal and commit to repealing those measure if an agreement is reached that satisfies legislators' concerns.

An important step towards such intra-governmental bipartisan cooperation could come in the form of Congressional action that would spell out the conditions both for the imposition of additional sanctions on Iran and for their removal. This could be done by updating sanctions legislation already passed by the House of Representatives (by a vote of 400 – 20) and currently pending before the Senate.

More specifically, Congress should consider enacting legislation that includes the following provisions:

- 1) Require the President to certify, monthly, that Iran is abiding by the terms of the interim deal and is not making further progress in its nuclear program.**
- 2) Enumerate the specific elements that Congress expects a final deal with Iran to include.**
- 3) Require the President to certify at the end of the six-month interim period either that all of the elements identified by Congress have been agreed to by Iran as part of a final deal, or have not been agreed to by Iran as part of a final deal.**
- 4) Provide for implementation of the additional sanctions currently under consideration in Congress, but to be triggered only if the President fails to certify that Iran is abiding by**

**the terms of the interim deal or all of the elements identified by Congress have been agreed to by Iran as part of a final deal.**

- 5) Alternatively, provide that if the President certifies that all of the elements identified by Congress have been agreed to by Iran as part of a final deal, expedited congressional procedures will be available for the consideration of legislation authorizing the President to waive relevant sanctions required to be terminated as part of that deal.**

### **Three Categories of Sanctions Relief**

The comprehensive sanctions regime built by the United States over the course of decades is complicated and multi-layered, creating a tangled web that will challenge U.S. efforts to reward Iranian concessions through meaningful sanctions relief. Across all areas – from energy, trade, weapons of mass destruction, support for international terrorism, and human rights abuses – sanctions against Iran take the form of Executive Orders and legislation, some allowing for temporary waivers or suspensions by the White House and some requiring Congressional action for any alteration. Offering any kind of meaningful relief will require coordination between and concerted action from the Administration and Congress – as well as cooperation with allies in the United Nations and EU.

#### *Unilateral Executive Action*

Sanctions have historically been placed on Iran through Executive Orders – ranging from Carter’s presidency to the current administration. In practice, the President can issue new Executive Orders amending or repealing previous ones. There are, however, a few exceptions, as some Executive Orders have been codified into law and others are tied to existing sanctions legislation. Fully and permanently repealing these will require joint Congressional and Presidential action.

Those Executive Orders that have not been codified into legislation are somewhat limited in scope, freezing the assets of specific individuals and agencies affiliated with the Iranian government. Additionally, many of these easily rescinded executive orders deal with human rights violations in Iran and Syria and not Iran’s nuclear program at all. The limited scope of these Executive Orders means that, even if revoked, they likely won’t result in a noticeable easing in the economic pressure on the Iranian regime.

#### *Limited Waivers/Suspensions*

The President also has other means at his disposal to bypass Congress to offer sanctions relief. All existing sanctions legislation have a comprehensive system of waivers allowing the President, or the Secretary of State and Secretary of the Treasury, to temporarily waive or suspend sanctions under the broad mandate of serving U.S. interests, with only the requirement that they report to Congress explaining their decision.

In addition to the flexibility offered by waivers, the President also has the de facto authority to not enforce sanctions. This measure was used in the past by both the Clinton and Bush

administrations regarding the 1996 Iran and Libya Sanctions Act. In response to European protestations over the extraterritoriality of ISLA provisions, the Clinton administration negotiated an agreement under which the United States would not impose any ISLA sanctions on European firms – much to Congress’ dismay. The administration was also able to halt the enforcement process by claiming ignorance. In response to press reports about companies investing in Iran, the State Department said that their investigations were inconclusive and could not verify those claims and therefore could not impose sanctions.

While waivers can be used fairly comprehensively to offer Iran relief – extending across almost all sectors of Iran sanctions – and can be repeatedly renewed, their impermanence make them more a gesture of goodwill than a real concession. Requiring Iran to make irreversible changes in its nuclear program – such as shutting down operations at the Arak heavy water reactor and Fordow enrichment plant – will likely not result in success for the United States if it is only offering relief that can be rescinded at any time, without altering the overarching structure of the sanctions regime.

#### *Congressional Action*

Beyond the Presidents waiver authority, all sanctions passed into legislation require Congressional action, by both chambers, to fundamentally alter. If it does not agree with the terms negotiated by the Executive Branch, Congress might withhold its consent and keep sanctions on the books. It could even go one step further and freeze or remove the waiver provisions in already existing sanctions, denying the administration the ability to make even limited concessions that way.