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The Implications of U.S. Aircraft Sales to Iran

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Chairman Huizenga, Vice Chairman Mulvaney, Ranking Member Moore, and distinguished members of the Committee on Financial Services, Subcommittee on Monetary Policy and Trade, I am honored to appear before you today to discuss the implications of U.S. aircraft sales to Iran. In particular, I would like to focus my testimony on the threat Iran still poses, both to the region and to the international financial community, the risks in providing commercial aircraft to Iran, as well as how to best mitigate those risks. In addition, I will also speak directly to the three legislative proposals circulated by Committee staff.

As we approach the one-year anniversary of the signing of the Joint Comprehensive Plan of Action (“JCPOA”) between Iran and the P5+1, it is as important as ever to carefully examine the consequences of that agreement and Iran’s continued destabilizing activities in the region, and to remain vigilant in ensuring that Iran is limited in its ability to support terrorist forces and corrupt the international financial system.

While the JCPOA has arguably curbed Iran’s nuclear activities in the short run, the Islamic Republic continues to send fighters to Syria, develop ballistic missiles in violation of United Nations Security Council Resolutions, and openly support Hezbollah, which is well known to have killed Americans and remains designated as a Specially Designated Global Terrorist, as well as other terrorist groups and militant proxies. In short, Iran remains a threat to regional stability in the Middle East and to our key allies such as Israel.

In addition—and of particular importance to this Committee—Iran poses a special threat to the global financial system. Beginning in the early 2000s, the United States and the international community more broadly recognized this threat and began actively cutting Iranian banks out of global financial markets and limiting Iran’s ability to use the international financial system to finance its proliferation and terrorist activities.

Make no mistake. Though Iran has signed the JCPOA and begun implementing it, Iran has not changed the underlying criminal activity that has led respectable financial institutions across the world to refuse to do business in Iran or with clients doing substantial amount of business there. Indeed, one marked development in the past year has been the international financial community’s unwillingness to re-enter the Iranian market, even if legally permitted to do so.

Yet as we approach the one-year anniversary of the JCPOA and despite these serious risks, we are seeing increasing interest from Western companies to legally re-enter Iranian markets. In particular, pursuant to a Statement of Licensing Policy issued by the Office of Foreign Assets Control (“OFAC”) at the United States Department of the Treasury, both Boeing and Airbus have recently struck agreements to sell aircraft to Iran, contingent on securing approval from the United States Government.¹ While these sales were clearly contemplated under the JCPOA, the sale of such aircraft to Iran, and in particular to Iran Air, raises serious concerns that such planes will be used to traffic illicit arms and militants to Syria in support of Syrian President Bashar al-Assad, to Hezbollah in Lebanon, and to militants in Yemen. This fear is warranted: as recent research has shown, Iran Air—as well as still-designated entities like Mahan Air—regularly flies

¹ See, e.g., Rick Gladstone, “Boeing Offers Details on Iran Deal, Saying All Was Done Legally,” *The New York Times*, June 23, 2016. See also Robert Wall, “Iran Faces Financial Hurdles for Airbus Offers,” *Wall Street Journal*, June 1, 2016.



commercial aircraft to Syria and Lebanon that are known to—or suspected of—transporting arms, cash from illicit activities, or foreign militants.²

At the same time, there are legitimate public policy reasons to at least consider approving these sales. In particular, Iran’s commercial aviation safety record is dismal and new Boeing and Airbus aircraft and maintenance would likely reduce these horrible catastrophes that risk the lives of ordinary Iranian citizens.³

Yet any licenses issued by the Treasury Department permitting the sale of aircraft by Boeing and Airbus to Iran Air or any other government entity or private company in Iran risk not only providing the Islamic Republic with new ways to support Hezbollah and President Assad, but also of potentially signaling to the international financial community that it may be acceptable to return to doing business in the Islamic Republic, despite the fact that the underlying international security and financial crimes compliance (“FCC”) risks remain.

This Committee is right to consider legislation significantly restricting the sale of these aircraft. In any prospective sale of aircraft to Iran, the impetus must remain on Iran to prove that it is not and will not use them for illicit or dangerous purposes. In the following testimony, I suggest ways the Committee can modify the current legislative proposals to continue to pressure Iran.

Further, the United States should not be a cheerleader for these deals and should not actively help facilitate them. It is one thing to say to private industry that it can do permissible business that was bargained for in the JCPOA. It is quite another to proactively tell U.S. and foreign financial institutions—through a specific licensing process—that they can bank such activities.⁴ Given Iran’s history of abusing the international financial system, the United States should refrain from providing legal authorization to any financial institution that wants to re-enter Iranian markets in all but the rarest of circumstances.

I will focus my comments today on four main areas. First, I will discuss the threats posed to the international financial system by Iran’s continued support for terrorism and proliferation, as well as the general risks facing any companies considering doing business in the Islamic Republic. Second, I will touch on the specific real and regulatory risks that Boeing and Airbus face when

² See, e.g., Emanuele Ottolenghi, “The Risks of The Iran-Boeing Deal,” *The Hill*, June 21, 2016. <http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-risks-of-the-iran-boeing-deal/>. See also “Fact Sheet: Treasury Targets Commercial Infrastructure of IRGC, Exposes Continued IRGC Support for Terrorism,” United States Department of the Treasury Press Release, June 23, 2011. Available at <https://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>.

³ See, e.g., Mary Fall Wade, “The Boeing-Iran Air Deal: Limited in Scope and Motivated by Safety Concerns,” *Iran Matters Blog at the Belfer Center at Harvard University*, Aug. 5, 2014, available at <http://iranmatters.belfercenter.org/blog/boeing-iran-air-deal-limited-scope-and-motivated-safety-considerations>

⁴ A close reading of OFAC’s Statement of Licensing Policy suggests that specific licenses for U.S. financial institutions to provide financial services for these contracts suggests that they were not intended to be included under the terms of the Policy, and therefore likely not bargained for during the JCPOA negotiations. In particular, the Policy provides for specific licenses to be issued to “provide associated services, including warranty, maintenance, and repair services for all the foregoing [airplane sales] . . .” Based on this language, it is unclear whether financial services would be categorized as “associated services,” and given the other services mentioned (e.g., warranty, maintenance, and repair services), it seems unlikely that the negotiators and drafters meant to include financial services as an associated service.



deciding whether to sell aircraft and associated services to Iran Air and other Iranian entities, as well as any financial institutions that decide to provide financial services related to the agreements. Third, I will discuss the legitimate safety concerns with the Iranian airline fleet that and how these concerns must be balanced against the financial crime and illicit activity risks inherent in providing these planes to Iran. Fourth, I will comment directly on the three proposed pieces of legislation.

Iran's Illicit Activity

Because of the regime's continued illicit activities, as well as the opacity of its economy, international business and bankers face real risks when considering returning to Iranian markets.

The sanctions and pressure campaign that eventually brought Iran to the table and led to the signing of the JCPOA was, in large part, premised on Iran's use of its financial and commercial system for illicit purposes, namely its proliferation activity, support for terrorist groups, general lack of anti-money laundering ("AML") controls, and corruption endemic to the regime itself. Highlighting these activities and shortcomings, the United States and its partners were able to convince the international business community—and in particular the international banking community—to stop doing business with Iran. In effect, no reputable bank wanted to be helping Iran develop its nuclear weapons program or aiding in its support of terrorist groups. Through arguments premised on reputation—and the direct threat of enforcement actions—policymakers were able to convince the private sector that doing business in Iran was just too dangerous.

This approach reduced Iranian access to the international financial system more and more over time. And the Iranians only hastened this process. As a way to ensure continued funding for illicit activities, Iranian actors substituted legitimate business transactions with illicit ones by funneling them through similar conduits. The Iranian regime often tried to hide the nature of its transactions and the identities of the government entities involved. This led international financial institutions to increasingly view doing transactions with Iranian actors as high-risk and to generally decide that the rewards of doing such business were not worth the risks.

At the same time, the Iranian military was taking greater control of the nation's economy through the Islamic Revolutionary Guard Corps ("IRGC"). The IRGC has embedded itself into Iran's economy, ultimately building what has been called a veritable business empire.⁵ The reach of the IRGC's economic empire now extends to majority stakes in infrastructure companies, shipping and transport, beverage companies, and food and agriculture companies.⁶

In 2006, the IRGC acquired control of the Iranian telecommunications sector, and it began to control more elements of the nation's energy sector, including the development of pipelines and the valuable South Pars oil field. Some estimates note that the IRGC controls between 25 and

⁵ Frederic Wehrey, Jerrold D. Green, Brian Nichiporuk, Alireza Nader, Lydia Hansell, Rasool Nafisi, & S. R. Bohandy, *The Rise of the Pasdaran: Assessing the Domestic Roles of Iran's Islamic Revolutionary Guards Corps* (Washington, DC: RAND Corporation, 2009).

⁶ Emanuele Ottolenghi, *The Pasdaran: Inside Iran's Islamic Revolutionary Guard Corps* (Washington, DC: Foundation for Defense of Democracies, 2011) at 44–45.



40 percent of Iran's gross domestic product.⁷ The IRGC is deeply involved in building Iran's infrastructure, pursuing projects such as deep-water ports and underground facilities important to Iran's defense and economy. These projects and industries give the IRGC political power and access to profits and capital, which have grown over time.

The IRGC is also actively engaged in—and often times the driving force behind—Iran's most destabilizing activities, with responsibilities related to the development of weapons of mass destruction, missile systems, and overseas operations. It and its affiliates have been responsible for all the activities—weapons proliferation, terrorist support, and militant activity—for which Iran was sanctioned in the past.

As part of past efforts to exclude Iran from the financial system, the U.S. Treasury made the argument directly to banks and companies around the world that it was too risky to do business with Iran, since it was almost impossible to accurately determine who the banks' real customers actually were. In addition, starting in 2006 and 2007, the United States designated IRGC entities and Bank Melli, Bank Mellat, and Bank Saderat as proliferators of weapons of mass destruction. Treasury Department officials also conducted an outreach campaign to European and Asian financial institutions, noting how dangerous it was from a reputational risk perspective to be seen as doing business with such illicit financial institutions and actors.⁸

At the same time as targeting these entities for their proliferation-related activity, the United States continued to focus aggressively on Iranian individuals and organizations engaged in terrorism-related activities, designating a number of IRGC-related entities for their continued support of terrorism, as well as large Iranian banks such as Bank Saderat.⁹ In addition, in 2008 the United States revoked the U-turn exception for Iran, which had previously allowed foreign financial institutions to facilitate transactions for Iranian persons in U.S. dollars.¹⁰ This action made it significantly more difficult for Iranian persons to conduct transactions in U.S. dollars.

Building off of these designations and its cooperation with European and Asian financial institutions, in 2010 the United States began significantly expanding the scope of its Iran sanctions program to more comprehensively target Iran's ability to conduct financial transactions in non-U.S. markets. Beginning in 2010 with the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA"), the United States threatened to shut off access to U.S. financial markets for those foreign financial institutions conducting business with certain Iranian companies and financial institutions.¹¹ These so-called secondary sanctions were aimed at closing a key gap in the U.S. effort to prevent Iranian illicit activities and to damage its economy. Prior to the imposition of CISADA, non-U.S. persons could conduct certain transactions with

⁷ *Id.* at 43.

⁸ Peter Feaver and Eric Lorber, "Coercive Diplomacy: Evaluating the Consequences of Financial Sanctions" (Legatum Institute, November 2010) at 28-30.

⁹ See Juan Zarate, "Harnessing the Financial Furies: Smart Financial Power and National Security," *The Washington Quarterly*, Vol. 32, No. 4 (2009) at 53.

¹⁰ Transactions involving the transfer of funds from a foreign bank that pass through a U.S. financial institution and are then immediately transferred out to a second foreign bank are referred as U-turn transactions. Steven Weisman, "U.S. Puts the Squeeze on Financing in Iran and North Korea," *The New York Times*, October 16, 2006, http://www.nytimes.com/2006/10/16/world/americas/16iht-sanctions.3173938.html?_r=1&.

¹¹ See Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.



designated Iranian persons, assuming the United States had no jurisdiction over the activity. As a way to prevent Iran from engaging in these transactions, the United States put a choice to those non-U.S. persons doing such business: either do business with Iran, or in the United States, but not both. In particular, it threatened to force U.S. financial institutions to close correspondent accounts held by these non-U.S. persons in the United States.¹² Importantly, these secondary sanctions were substantively different from designations that required the blocking or freezing of designated entities; rather, U.S. authorities would simply prevent targeted non-U.S. entities from enjoying access to U.S. markets.

The United States continued this campaign to prevent foreign financial institutions and companies from doing business with designated entities in Iran. For example, in 2011, the United States Department of the Treasury designated Iran as a jurisdiction of primary money laundering concern. While this designation was never promulgated as a final rule by the Treasury Department, it put foreign financial institutions on notice that conducting transactions in Iran was risky and could result in being cut off from U.S. markets.

And while the JCPOA has relaxed certain sanctions related to the development of Iran's nuclear program, the underlying risks of illicit conduct remain. For example, as recently as February 19, 2016, the Financial Action Task Force ("FATF") issued a statement warning that Iran's "failure to address the risk of terrorist financing" poses a "serious threat ... to the integrity of the international financial system."¹³ The international community continues to recognize that Iran—regardless of the status of its nuclear program—poses a real and serious threat to the integrity of the global financial system. Indeed, the FATF, while suspending the imposition of mandatory countermeasures for one year to try to coax Iran into reforming its decrepit jurisdictional AML and CFT controls, recently decided to keep Iran on its so-called "Black List" to ensure that financial institutions around the world understand the serious risks that exist with doing business in Iran.¹⁴

The Risks of Doing Business in Iran

On January 16, 2016, the United States, the European Union, the United Nations, and other countries unwound a substantial number of sanctions on the Islamic Republic of Iran as part of

¹² A correspondent account is "an account established for a foreign financial institution to receive deposits from, or to make payments or other disbursements on behalf of, the foreign financial institution, or to handle other financial transactions related to such foreign financial institution." 31 C.F.R. § 1010.605(c)(1)(i). Correspondent banking is a financial relationship in which a bank maintains an account with a financial institution in another country in order to enjoy access to that country's currency or financial sector. In this case, non-U.S. financial institutions have such accounts with U.S. banks in order to transact in dollars. Closing these accounts would make it significantly more difficult for these non-U.S. financial firms to access U.S. dollars or financial markets. *See, e.g.*, Samuel Rubinfeld and Eyk Henning, "Commerzbank Settles Allegations of Sanctions, Money-Laundering Violations," *The Wall Street Journal*, March 12, 2015, <http://www.wsj.com/articles/commerzbank-to-settle-u-s-allegations-of-sanctions-and-money-laundering-violations-1426177346>.

¹³ "FATF Public Statement," *Financial Action Task Force*, Feb. 19, 2016. Available at <http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-february-2016.html>.

¹⁴ Mark Dubowitz and Toby Dershowitz, "Risky Business in Iran," *Forbes*, June 28, 2016, <http://www.forbes.com/sites/realspin/2016/06/28/risky-business-in-iran/#95318072a37d>.



their obligations under the JCPOA.¹⁵ Most notably, many EU and UN sanctions, as well as many U.S. “secondary” sanctions, will no longer remain in force. “Primary” U.S. sanctions programs barring almost all U.S. persons from doing Iran-linked business remain.¹⁶

In the wake of Implementation Day and with remaining sanctions and financial crime concerns, important questions exist regarding what doing business in or with Iran now means and how to evaluate and manage such risk.

As Iran attempts to reintegrate into the world economy, many challenges remain for companies considering doing business in the Islamic Republic, with Iranian counterparties, or supporting customers operating in Iran. Dealing with the spectrum of risk – financial crime, regulatory, reputational, and policy – in the Islamic Republic will require that U.S., European, Asian, Middle Eastern, and other firms clearly understand the patchwork of sanctions that will remain in place on the country, as well as many of the systemic issues, such as corruption, impacting various Iranian business sectors. Companies must also factor the risk that sanctions may “snap back” in the medium or long term into their business decisions.

This complicated risk environment has dissuaded most legitimate companies from re-entering and investing in the Iranian economy. While Iranian markets may appear attractive, companies considering transacting with persons in Iran or doing business in Iran are proceeding with caution. Companies considering doing business in Iran or with Iranian persons must contend with at least eight sanctions and financial crimes-related risks:

1. **Primary U.S. Sanctions.** Most U.S. primary sanctions, which broadly prohibit U.S. persons from conducting transactions in Iran, with persons resident in Iran, or with the Government of Iran, will remain in force. These U.S. primary sanctions pose significant risks for any multinational company considering doing business in Iran. U.S. jurisdiction is broad and U.S. regulators can use it to target transactions that may not initially appear to touch U.S. markets or involve U.S. persons.

U.S. jurisdiction applies to all U.S. individuals (including U.S. citizens and permanent resident aliens, wherever located, as well as persons located in the United States) and entities (including any entity located or operating in the United States, organized under the laws of the United States, as well as foreign branches of U.S. entities). Further, the United States may impose penalties (civil or criminal) on any foreign person who *causes* a U.S. person to violate sanctions regulations.¹⁷

¹⁵ This section draws heavily from the recent Financial Integrity Network Policy Alert. “Post-Implementation Day Risks of Doing Business in Iran,” *Financial Integrity Network Policy Alert*, Mar. 2016. Available at <http://www.financialintegritynetwork.net/policy-alerts.html>.

¹⁶ Primary sanctions are those that apply directly to (1) the activities of U.S. persons (including persons located in the United States), (2) non-U.S. persons who cause U.S. persons to violate U.S. sanctions regulations, (3) activities taking place within the United States, and (4) transfers of U.S.-regulated goods, services, and technologies. Secondary sanctions apply to non-U.S. persons where the United States lacks jurisdiction to impose primary sanctions. Such sanctions often include privileging a company’s access to U.S. markets on compliance with U.S. sanctions regulations.

¹⁷ See 50 U.S.C. § 1705.



For example, if a Middle Eastern, European, or Asian financial institution conducts transactions on behalf of an Iranian company and the transaction involves a U.S. bank or a correspondent account located in the United States, U.S. regulators will likely have jurisdiction over the transaction and can impose *penalties* on the non-U.S. financial institution. Similarly, if a Middle Eastern exporting company with U.S. offices relies on those offices for back office functions for transactions related to Iran or with an Iranian, the U.S. offices providing back office support will be engaged in the prohibited exportation of services to Iran (and can be subject to OFAC penalties). Where the Middle Eastern entity caused the U.S. offices to provide the services without knowledge of the Iranian nexus, U.S. regulators could impose fines on that Middle Eastern entity for causing the U.S. offices to violate the sanctions.

Even those U.S. companies taking advantage of the new General License H – which permits foreign subsidiaries of U.S. companies to engage in certain activities in Iran – will face significant sanctions-related risks. While these subsidiaries may be allowed to conduct those activities, if the U.S. parent company is involved in any Iran-related business or transactions, it will likely be exposed to U.S. primary sanctions.¹⁸ Multinational companies must build a firewall between U.S. parents and any foreign subsidiary doing business with Iranian persons or in Iran, which may be difficult to effectively do in practice

Because the breadth of U.S. jurisdiction is expansive, companies based in Europe and Asia must be aware that any engagement with Iran may still expose them to remaining U.S. sanctions. Companies, particularly ones operating across borders, have to pay careful attention to whether they may be subject to U.S. jurisdiction, which might pose one of the most pressing regulatory risks that any company considering entering Iranian markets will face.

2. ***Remaining U.S. Secondary Sanctions.*** Foreign businesses considering doing business in Iran will continue to face the risk of violating remaining “secondary sanctions” on Iran, which prohibit foreign financial institutions and other non-U.S. headquartered companies from doing certain business with Iran. While many of the secondary sanctions imposed since 2010 have been unwound,¹⁹ non-U.S. persons are still at risk for violating

¹⁸ Note that U.S. parent companies are permitted to establish policies and procedures that allow these foreign subsidiaries to conduct business in Iran and with Iranian persons, though after the initial decision to re-engage in Iran-related business and the establishment of procedures for doing so, U.S. persons cannot be involved in the activities of their foreign subsidiaries relating to transactions with Iranian persons or in Iran. Similarly, U.S. companies can make their automated computing, accounting, and communications systems available for their subsidiaries conducting permitted activities in Iran. In effect, this permits foreign subsidiaries doing permitted business in Iran to continue to use the same computer systems as their parent companies. Note however that provision does not allow U.S. parents to otherwise be involved in those activities in any way.

¹⁹ Following Implementation Day, non-U.S. entities can now conduct certain transactions with:

- The financial and banking industry in Iran, including maintaining correspondent accounts for non OFAC-designated Iranian financial institutions, the provision of financial messaging services, dealing in the rial and in Iranian sovereign debt, and issuing credit cards for Iranians;
- Insurance-related activities consistent with the JCPOA, including payment of claims to non-U.S. persons;
- The energy industry;



remaining U.S. secondary sanctions if they engage in transactions with any one of more than 200 people and entities listed as Specially Designated Nationals (“SDNs”) including the IRGC and its affiliates.

These restrictions pose additional and significant risks because under U.S. law, entities owned or controlled 50% or more by designated persons—so-called “shadow SDNs”—are by law also considered SDNs. For example, if a foreign financial institution processes transactions on behalf of an entity that is owned or controlled by the IRGC (whether or not that entity is listed on national or international lists of designated parties) it could be subject to U.S. secondary sanctions. This creates significant risk for financial institutions and other companies wishing to do business in Iran, given that the IRGC controls a significant portion of the economy. This risk is further exacerbated by Iranian attempts to create a “gold rush” psychology in the marketplace and to muddy the waters regarding what restrictions may apply to specific transactions. We should expect Iranian customers and counterparties to alter ownership interests, names of entities, and ownership structures in an attempt to hide links to designated parties. This would match past practices of sanctions evasion and obfuscation of financial transactions.

Determining whether a customer, partner, or counterparty is owned or controlled by a designated person will be a challenging task, further complicated by the fact that the Office of Foreign Assets Control at the United States Department of the Treasury has provided limited guidance on how companies looking to do business in Iran can determine whether they are inadvertently doing business with the IRGC. OFAC recommends only that “a person considering business in Iran or with Iranian persons conduct due diligence sufficient to ensure that it is not knowingly engaging in transactions with the IRGC or other Iranian or Iran-related persons on the SDN List and keep records documenting that due diligence.” Businesses looking to enter the Iranian market must make their own determinations about what constitutes “sufficient” due diligence without more precise guidance and while the structure of civil and criminal penalties for sanctions violations remains in place.

Further, non-U.S. persons still need to be aware of remaining U.S. export controls. For example, restrictions still apply regarding the facilitation of Iranian acquisition or development of weapons of mass destruction. In addition, transfers of certain potential dual-use materials must be approved via the procurement channel established by the JCPOA. U.S. origin goods, technology, and services also are subject to the Export Administration Regulations, which retain prohibitions on exports and re-exports to Iran.

3. ***Remaining EU and UN Sanctions.*** While most EU and UN sanctions on Iran have been unwound, a number of important restrictions remain in place.²⁰ Under EU law, trade

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- Shipping, shipbuilding, and port operations;
 - Precious and raw/semi-finished metals dealers; and
 - The automotive industry, insofar as non-U.S. goods, technology, and services are involved.

²⁰ Under EU law, several engagements previously prohibited, including associated services, are now allowed so long as they avoid dealing with listed Iranian persons:



restrictions on the sale, export, provision, or servicing of goods deemed to be “internal repression equipment,” or used for “telecommunications surveillance and interception,” remain in place. Likewise, the EU will continue to impose asset freezes and prohibitions on business and trade with individuals and entities designated for committing human rights abuses and restrictions on the trade of certain items related to nuclear proliferation.

UN Security Council Resolutions that imposed sanctions on Iran for its nuclear program were terminated on Implementation Day. Thus, the United Nations no longer imposes limits on providing insurance and reinsurance products to Iranian entities, and no longer prohibits the opening of new Iranian bank branches or subsidiaries outside Iran (nor is there a mirrored prohibition on entities from UN member states doing the same within Iran). However, a UN arms embargo and UN sanctions on Iran’s ballistic missile program remain in place. Further, some individuals designated by the UN for participating in nuclear and ballistic missile programs will remain designated.²¹ The recent missile tests and Iranian promises for more simply exacerbate the risk that additional sanctions will be applied.

4. ***Likely Additional Sanctions.*** Businesses interested in entering Iran should be aware that additional designations and sanctions are likely as the United States Congress continues to focus on illicit Iranian behavior and as Iran continues with activities such as ballistic missile testing and the provision of support to terrorist groups. Congress has explored additional sanctions legislation, in particular related to more stringent sanctions tied to the IRGC and its ownership and control interests. Though the Administration will resist actions that appear to re-impose lifted sanctions, both the House of Representatives and the Senate appear interested in pursuing legislation that directly or indirectly impacts Iran, including the recent legislation imposing additional sanctions on Hezbollah.

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- Financial, banking, and insurance measures involving Iranian entities—including the provision of insurance to Iranian oil and gas shipments—are now permitted by EU law and do not require prior authorization;
 - The import, purchase, swap, and transport crude oil and petroleum products, gas, and petrochemical products from Iran, and the export of equipment to Iran for use in the energy industry are now permitted;
 - Engagements with the Iranian shipping, shipbuilding, and transport sectors are no longer restricted;
 - Trade with Iran involving gold, other precious metals, banknotes, and coinage is now permissible;
 - While the sale or transfer of certain graphite and raw/semi-finished metals to any Iranian entity is no longer prohibited, such activity is subject to an authorization regime; and
 - While the sale or transfer of Enterprise Resource Planning software to any Iranian entity for use in activities consistent with the JCPOA is no longer prohibited, such activity is subject to an authorization regime.

Like the United States, the EU has also delisted certain entities that are thus no longer subject to its asset freeze, prohibition to make funds available, and visa ban. However, certain financial institutions such as Ansar Bank, Bank Saderat Iran, Bank Saderat PLC, Bank Sepah, Bank Sepah International, and Mehr Bank remain listed by the EU.

²¹ Pursuant to the terms of United Nations Security Council Resolution (UNSCR) 2231 (2015) (which endorsed the JCPOA), all prior United Nations Security Council Resolutions mandating sanctions on Iran — namely, UNSCR 1696 (2006), 1737 (2007), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010), and 2224 (2015) — were formally terminated upon receipt of the IAEA’s report verifying that Iran has met its nuclear-related obligations under the JCPOA. Through UNSCR 2231, the UN continues to impose certain restrictions on nuclear, conventional arms, and ballistic missile-related activities involving Iran.



The Administration has been inclined to demonstrate its willingness to sanction non-nuclear Iranian behavior, both to stave off additional congressional action and address Iranian threats to U.S. interests. It has not wanted, however, to impose sanctions or financial measures that would allow Iran to claim that the United States had violated the terms of the JCPOA. Since Implementation Day, the Treasury Department has twice used ballistic missile-related designations – in January 2016, designating 11 entities and individuals involved in procurement on behalf of Iran’s ballistic missile program, and then again on March 2016, designating additional parties tied to the missile program. Companies are aware that additional Iranian individuals, companies, and related networks could be designated, effectively requiring an end to any financial or commercial relationship.

This risk increases as Iran engages in activities that spur additional U.S. and possibly EU sanctions. In addition to its support to terrorist groups and the Assad regime, its ballistic missile program, and human rights abuses, there are other risks attendant to doing business with Iran. Iran’s link with North Korea, and in particular its cooperation on proliferation and ballistic missile-related issues, increases the likelihood that the United States and the European Union will impose additional sanctions on the Islamic Republic. For example, in late January, France requested the European Union consider imposing additional sanctions on Iran for its continued ballistic missile activities.

5. ***Iran’s Potential Cheating on the JCPOA.*** If the United States or other members of the P5+1 conclude that Iran is cheating on its obligations under the JCPOA, they can snap back many of the sanctions into place. In the context of any potential snapback, OFAC has made clear that there will be no “grandfather” clause for pending transactions, meaning foreign companies doing business in Iran would need to very quickly wind down their operations, potentially at a significant loss. While the Obama Administration will be unlikely to push for a comprehensive snapback of sanctions unless there is a serious, material breach of the JCPOA, Treasury Department officials have made it clear that they have developed more limited snap back mechanisms in the case that Iran pushes the envelope and engages in activities that violate its obligations. Similarly, depending on the outcome of the U.S. presidential election in November 2016, candidates have expressed a desire to re-impose sanctions on Iran. Such action could pose serious risks for foreign companies doing business in the Islamic Republic.
6. ***Sanctions Violations Enforcement Posture.*** The United States Department of the Treasury has indicated it will continue to aggressively enforce regulations remaining in place. For example, acting Under Secretary of the Treasury for Terrorism and Financial Intelligence Adam Szubin noted following Implementation Day that “[w]e have consistently made clear that the United States will vigorously press sanctions against Iranian activities outside of the Joint Comprehensive Plan of Action – including those related to Iran’s support for terrorism, regional destabilization, human rights abuses, and ballistic missile program.” Indeed, the day after JCPOA Implementation Day, the U.S. government imposed sanctions on entities and individuals in the Middle East and Asia for supporting Iran’s ballistic missile program. These types of sanctions will be used to help demonstrate to Iran and U.S. allies that the United States remains prepared to use



economic measures to enforce existing sanctions. In addition, Iran's history of using a variety of financial and commercial measures to hide its hand to evade sanctions and the scrutiny of the international community adds additional risk that sanctions may be applied.

7. ***Regulatory Risk from Multiple Enforcement Agencies.*** From a regulatory and enforcement perspective, it is important to note that the Treasury Department and OFAC are not the only arbiters of sanctions violations and requirements. The United States Department of Justice, the Securities and Exchange Commission, state prosecutors, and various New York authorities, such as the Department of Financial Services, will all play a significant role in how existing sanctions regulations and related laws are enforced. Local authorities may elect to take a more aggressive enforcement posture with respect to sanctions violations, which would fall outside of the federal government's control. Any company considering doing business in Iran or with Iranian individuals or entities will need to pay close attention to the regulatory and enforcement postures taken by these other government agencies.
8. ***Financial Crimes Risks in Iran.*** Though the recent business attention on Iran has understandably focused on sanctions-related issues, banks and businesses must remember that other financial crimes concerns in the Islamic Republic remain pervasive. In particular, the nature of the Iranian economy and the role of the government within the economy present serious risks related to bribery and corruption, money laundering, and illicit financing. Iran ranked 130 of 175 countries in Transparency International's Corruption Perceptions Index as of 2015.

In 2011, the U.S. identified Iran as a state of primary money laundering concern pursuant to Section 311 of the USA PATRIOT Act. The FATF first raised concerns over Iran's lack of a comprehensive anti-money laundering/countering the financing of terrorism (AML/CFT) framework in 2007, and it still urges Iran to meaningfully address AML/CFT deficiencies. OFAC also has made it clear that activity inconsistent with a wide range of Executive Orders imposing sanctions on Iran (including for providing support to terrorism, undermining the stability of Yemen, and other behaviors) could still subject U.S. and non-U.S. persons to sanctions.

As some of the sanctions on Iran are unwound, many European, Asian, and Middle Eastern companies understandably want to re-engage in the Iranian economy. The risk appetites of companies will likely vary by sector, with large oil, aerospace, auto, infrastructure, and equipment companies likely more willing to enter Iranian markets more quickly and with a higher tolerance for risk.

However, these risks are a significant part of the reason that the world's most reputable financial institutions have been unwilling to return to Iran. When speaking with the world's largest and most respected banks, the response to the partial unwinding of sanctions on Iran has been remarkably uniform: while banks recognize that there are commercial opportunities in the country, the real and regulatory risks remain far too high to consider re-entering the market. Indeed, as Stuart Levey, the former Undersecretary of the Treasury for Terrorism and Financial



Intelligence and now the Chief Legal Officer of HSBC recently remarked in a *Wall Street Journal* op-ed:

Washington has warned repeatedly that the Islamic Revolutionary Guard Corps controls broad swaths of the Iranian economy. The IRGC remains sanctioned by both the U.S. and the EU because of the central role it plays in Iran's illicit conduct. When the U.S., EU, and U.N. removed sanctions from several hundred Iranian banks and companies, there were no assurances that the conduct of those banks and companies had changed. . . . Our decisions will be driven by the financial-crime risks and the underlying conduct. For these reasons, HSBC has no intention of doing any new business involving Iran. Governments can lift sanctions, but the private sector is still responsible for managing its own risk and no doubt will be held accountable if it falls short.²²

Risks Facing Boeing

Given the opacity of Iran's economy and the likelihood that Iranian companies with whom Western firms are doing business are owned or controlled by designated parties, the risks Western firms face in dealing directly or indirectly with supporters of terrorism, human rights abuses, and weapons proliferation remain high.

In the case of Boeing's proposed sale of up to \$25 billion worth of new aircraft and associated services, these risks are even higher. In late June, Boeing agreed to a Memorandum of Understanding with Iran Air to sell aircraft to the Iranian company.²³ While execution of the contract is contingent on U.S. Government approval, the United States Department of the Treasury is likely to grant the necessary specific licenses, as such sales were contemplated as part of the JCPOA negotiations and were the primary reason for OFAC's issuance of its new Statement of Licensing Policy related to aircraft sales to Iran.²⁴

But unlike the situation faced by many European companies eager to re-enter Iran but uncertain as to whether their counterparties are owned or controlled by the IRGC or other designated parties, in this case Iran Air is well known to have engaged in illicit activities on behalf of the regime. Iran Air was designated by the United States Department of the Treasury in 2011 for serving as one of the primary transportation tools of the IRGC. According to the Treasury announcement at the time:

²² Stuart Levey, "Kerry's Peculiar Message About Iran for European Banks," *Wall Street Journal*, May 12, 2016, <http://www.wsj.com/articles/kerrys-peculiar-message-about-iran-for-european-banks-1463093348>.

²³ Robert Wall, "Boeing Signs Deal to Sell Jets to Iran's State Airline," *Wall Street Journal*, June 21, 2016.

²⁴ The OFAC Licensing Policy states, "Consistent with U.S. foreign policy and the United States' commitment with respect to sanctions reflected in Section 5.1.1. of Annex II to the Joint Comprehensive Plan of Action of July 14, 2015 (JCPOA), the following Statement of Licensing Policy establishes a favorable licensing policy under which U.S. and non-U.S. persons may request specific authorization from OFAC to engage in transactions for the sale of commercial passenger aircraft and related parts and services to Iran, provided such transactions do not involve any person on OFAC's Specially Designated Nationals and Blocked Persons ('SDN List'). . . . [S]pecific licenses may be issued on a case-by-case basis . . . provided that licensed items and services are used exclusively for commercial passenger aviation." Note that this same language is contained in Annex II of the JCPOA.



Iran Air has provided support and services to [Iran’s Ministry of Defense and Armed Forces Logistics] MODAFL and the IRGC through the transport and/or transfer of goods for, or on behalf of, these entities. On numerous occasions since 2000, Iran Air shipped military-related electronic parts and mechanical equipment on behalf of MODAFL. . . . Iran Air has shipped military-related equipment on behalf of the IRGC since 2006, and in September and November 2008, Iran Air shipped aircraft-related raw materials to a MODAFL-associated company, including titanium sheets, which have dual-use military applications and can be used in support of advanced weapons programs. Rockets or missiles have been transported via Iran Air passenger aircraft, and IRGC officers occasionally take control over Iran Air flights carrying special IRGC-related cargo. The IRGC is also known to disguise and manifest such shipments as medicine and generic spare parts, and IRGC officers have discouraged Iran Air pilots from inspecting potentially dangerous IRGC-related cargo being carried aboard a commercial Iran Air aircraft, including to Syria. Additionally, commercial Iran Air flights have also been used to transport missile or rocket components to Syria.²⁵

While Iran Air was de-designated as part of the JCPOA, the illicit activity that led to the designation does not appear to have changed. According to Emanuele Ottolenghi at the Foundation for Defense of Democracies, who systematically tracks Iran Air flight destinations for indications that the company is sending illicit goods or fighters to Syria and Lebanon, “Iran Air planes recently flew known resupply routes to Syria – on June 9 from Abadan while using the Tehran-Damascus flight number, and on June 8 and 15 from Tehran while using the now-defunct Najaf-Tehran flight number.”²⁶ Given Iran Air’s historical record of supporting the IRGC, President Assad, and Hezbollah, in addition to recent indications that it has not changed such activity, Boeing risks selling aircraft and associated parts and services that will be directly used by designated parties for sanctionable purposes.²⁷ Further, Iran has a long history of employing sanctions evasion techniques, meaning that even if Boeing believes Iran Air is employing these aircraft for commercial purposes, the airline could be surreptitiously using them to support illicit activity.

These risks are also likely the reason that Boeing and Airbus have reportedly had significant difficulty finding financial institutions to provide the necessary financing for these sales. Wolfsberg Group banks have been highly reluctant to provide financial services on either of these two proposed deals, in large part because of the illicit financing risks that remain in Iran.²⁸

²⁵ “Fact Sheet: Treasury Targets Commercial Infrastructure of IRGC, Exposes Continued IRGC Support for Terrorism,” United States Department of the Treasury Press Release, June 23, 2011. *Available at* <https://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>.

²⁶ Emanuele Ottolenghi, “The Risks of The Iran-Boeing Deal,” *The Hill*, June 21, 2016. <http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-risks-of-the-iran-boeing-deal/>.

²⁷ Note too that even if Boeing were to sell these aircraft or services to other Iranian airlines—or if Iran Air were to lease these aircraft to other Iranian airlines—significant risks would remain. As the Treasury Department has detailed, many of Iran’s airlines also assist the regime in transporting weapons and other illicit goods.

²⁸ The Wolfsberg Group banks include: Banco Santander, Bank of America, Bank of Tokyo-Mitsubishi UFJ, Barclays, HSBC, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, J.P. Morgan Chase, Societe Generale, Standard Chartered, and UBS.



Indeed, in February of this year Airbus executives publicly pleaded with European banks to provide financing to facilitate Airbus's proposed \$27 billion sale of 118 aircraft to Iran.²⁹

Financial firms' fears are well founded: one of the most powerful sanctions provisions still in place following Implementation Day is §104(c)(2)(E)(i) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. This provision prohibits opening or maintaining U.S. correspondent or payable through accounts for foreign financial institutions found to have knowingly facilitated a transaction or provided financial services to the Iranian Revolutionary Guard Corps, its agents or affiliates, or any other person designated in connection with proliferation of WMDs or delivery systems or support for terrorism. In this case, if Iran Air, working on behalf of the IRGC, used these commercial airliners to deliver arms or personnel to Syria or to Hezbollah, whichever foreign bank providing such services to the seller of the airplanes could potentially lose its correspondent account access to the United States, a virtual death sentence for global banks.

Given these risks, absent explicit U.S. legal assurances that financing such transactions is permitted, reputable financial institutions in the United States and Europe will likely remain on the sidelines and continue exercising an abundance of caution when asked to provide services in connection with these airplane sales.

On this point, moreover, some analysts believe that if Boeing and Airbus were to secure banking services from reputable financial institutions for these agreements, this would signal a change in banks' risk appetite for re-entering the Iranian market; in effect, securing such financial services could serve as a bellwether and would be the start of the return of significant levels of financial services in connection with Iranian business. While this risk exists—and is almost certainly what Iran is hoping to achieve as part of a broader strategy of financial integration without changing its underlying illicit conduct—what is perhaps most striking with the signing of these large contract terms is that, despite the huge dollar figures, reputable banks remain unwilling to provide services related to them. This reluctance—combined with numerous conversations with many of these financial institutions' executive staffs and compliance officers—suggests that the likelihood of large financial institutions returning to bank Iran-related business remains low.

The bottom line is that international financial institutions are rightly concerned about doing business with Iran generally, and in particular if the counterparty in the transaction is Iran Air or another Iranian entity that has been previously designated and likely continues to engage in prohibited activity. The impetus should be on Iran to clean up Iran Air's act and ensure that it is not providing assistance, directly or indirectly, to designated entities like the IRGC. Until it does, financial institutions and respected U.S. and European companies should be reluctant about entering into any deals with Iran Air or similar companies.

Safety for Iran's Aviation Sector

²⁹ Fabio Benedetti Valentini and Ladane Nasseri, "Europe's Banks are Staying Out of Iran," *Bloomberg*, May 2, 2016, <http://www.bloomberg.com/news/articles/2016-05-03/europe-s-banks-haunted-by-u-s-fines-for-go-iran-deals-amid-boom>.



While selling aircraft to Iran pose significant risks that this equipment will be used to support Syrian President Bashar al-Assad, Hezbollah, or Houthi forces in Yemen, there are also legitimate reasons, both economic and more importantly safety, for Iran to acquire new commercial aircraft. Most notably, the Iranian commercial airline industry's safety record in recent decades has been abysmal, due in part to the antiquated nature of its Western fleet and the fact that it has had to rely on sub-standard Russian planes.

Four out of 40 fatal crashes of the Russian-made Tupolev Tu-154 have occurred inside Iran, killing almost 450 people.³⁰ Iran's attempt to use Ukrainian planes while working towards aviation self-sufficiency has caused fatalities as well: "The decade and a half following Antonov's decision to license production of its An-140 to Iran has seen no more than a dozen IrAn-140s roll off the assembly line, no fewer than four accidents involving the type and a regulatory ban on all flight operations by the aircraft."³¹ The failure of the IrAn-140 dashed the hopes of Mahmoud Ahmadinejad's minister of roads and transportation, who asserted that the project would help Iran "compete with the foreigners" and achieve "independence from trade with Western powers."³²

According to one report, "[i]n the last 25 years there have been more than 200 accidents involving Iranian planes, resulting in 2000 deaths and many more debilitating injuries. With this abysmal safety record, the odds an Iranian air passenger will die on a flight are 100 times higher than those for passengers on the world's major carriers."³³

While the risks of doing business with Iran Air remain high, especially considering the company's past and likely continued support for terrorism, there are certain legitimate reasons to sell these aircraft to companies in the Islamic Republic. As discussed below, there may be ways to structure contracts to limit Iran's ability to use these aircraft for nefarious purposes, including by requiring verification that the aircraft are not being used for such activities. However, Congress and the Administration should clearly understand that such measures may be limited in reach and ultimately unable to stem Iran's illicit use of these aircraft.

Congressional Opportunities

This Committee has an important role to play in ensuring that Iran is unable to continue supporting Syrian President Bashar al-Assad and Hezbollah and engaging in destabilizing activities in the region. Congress should work to ensure that the impetus remains on Iran to clean up its financial act and cease attempting to use legitimate channels of business—such as connections to the international financial system and the purchase of commercial aircraft—for illicit purposes.

³⁰ Fred Weir, "Iran airline crash: What's the Russian jet's safety record?" *Christian Science Monitor*, July 15, 2009, <http://www.csmonitor.com/World/Global-News/2009/0715/iran-airline-crash-whats-the-russian-jets-safety-record>.

³¹ "How Iran's aerospace dream began and ended with the licence-built IrAn-140," *Flight Global*, Nov. 25, 2014, available at <https://www.flightglobal.com/news/articles/analysis-how-iran39s-aerospace-dream-began-and-ended-with-the-licence-built-406044/>.

³² "Iranian Airplane Crashes Expose Weaknesses in 'Self-Sufficiency,'" *Al-Monitor*, Aug. 21, 2014, available at <http://www.al-monitor.com/pulse/originals/2014/08/iran-airplane-crash-sanctions-parts-sufficiency.html>.

³³ Amir Handjani, "Sanctions Cause Iranian Airplane Crashes," *The Hill*, Aug. 20, 2014, <http://thehill.com/blogs/congress-blog/foreign-policy/215406-sanctions-cause-iranian-airplane-crashes>.



The three proposals put forth today, H.R. 5608 (“the Ex-Im Prohibition Bill”), a bill to prohibit U.S. financial institutions from providing banking services related to airplane sales (“Financial Institutions Prohibition Bill”), and a bill to prohibit OFAC from providing specific licenses to airplane companies such as Boeing to sell and service this equipment (“Aircraft Licensing Prohibition Bill”), are carefully calibrated to keep the pressure on Iran and ensure that U.S. equipment and taxpayer dollars are not used to support President Assad or Hezbollah’s terrorist activities. The Ex-Im Prohibition Bill and the Financial Institutions Prohibition Bill in particular make it clear that the United States, while honoring its obligations under the JCPOA, will not provide Iran with additional, un-bargained-for benefits such as direct financing of these sales.

Aircraft Licensing Prohibition Bill

This legislative proposal, which prohibits OFAC from issuing a specific license under the guidelines suggested by OFAC’s “Statement of Licensing Policy for Activities Related to the Export Or Re-Export to Iran of Commercial Passenger Aircraft and Related Parts and Services,” firmly keeps the pressure on Iran to curtail its support of terrorism, and in particular its use of commercial airplanes to support such activities. By denying OFAC the authority to issue such specific licenses—which would apply to any potential sale by Boeing but also to other sales where U.S. primary sanctions jurisdiction is implicated, including likely in the context of the Airbus sale given the amount of U.S. origin goods that make up sophisticated Airbus aircraft—the legislation would effectively be signaling to Iran that using commercial aircraft to support terrorism will have serious consequences. Note however that a legislative proposal that completely blocks the sale of U.S. aircraft to Iran may violate U.S. obligations under the JCPOA. In particular, under Section 5.1 of Annex II of the JCPOA, “[t]he United States *commits* to . . . Allow for the sale of commercial passenger aircraft and related parts and services to Iran by licensing the (i) export, re-export, sale, lease or transfer to Iran of commercial passenger aircraft for exclusively civil aviation end-use, (ii) export, re-export, sale, lease or transfer to Iran of spare parts and components for commercial passenger aircraft, and (iii) provision of associated serviced, including warranty, maintenance, and repair services and safety-related inspections, for all the foregoing, provided that licensed items and services are used exclusively for commercial passenger aviation.” By prohibiting such sales, the United States may be in breach of its obligations.

An amended legislative proposal could ensure that the United States was not in breach of the JCPOA and would also address a core issue that policymakers have encountered in recent years: how to effectively unwind sanctions in exchange for a change in behavior. In the case of preventing these sales to Iran Air, the logic is clear: Iran Air has supported—and may continue to be supporting—terrorism. We want that activity to stop, and are unwilling to allow the sale of aircraft to Iran Air unless it does. However, if Iran Air stops its support for terrorism and ceases engaging in sanctionable activities in an independently verifiable way, the United States should also be prepared to put these aircraft sales back on the table. Otherwise, Iran Air has no incentive to stop working closely with the IRGC and other designated parties.

While this legislative proposal currently—and rightly—puts pressure on Iran Air to change its activities, it does not yet provide a way to lift that pressure if Iran Air independently and



verifiably changes its activity. One way to achieve such relief would be to simply repeal the legislation if it can be verified that Iran Air—and any of its affiliates—are no longer engaged in sanctionable activity.

Another way would be to add additional language into this legislative proposal specifying that OFAC could not provide specific licenses for aircraft sales to Iran Air or any other Iranian airplane company until it had been independently verified that the ultimate end user of the aircraft was not engaged in a range of sanctionable activity under U.S. law, such as providing arms and other support to Syria or Hezbollah or aiding in sanctions evasion. In addition, the legislation could specify that the license would need to be immediately revoked if at any point during the delivery of the aircraft or associated maintenance services (which would likely be a necessary part of any sale of aircraft), it was independently determined that the ultimate end users of the aircraft were engaged in such activity.³⁴ In this way, the legislation could keep the pressure directly on Iran Air to both verify that it had ceased its illicit activities before providing these planes and that it would not go back to engaging in illicit conduct once it had the planes and parts in its possession. Such an approach would also have the added benefits of incentivizing Iran Air to change its behavior and would potentially improve the safety record of the country's aging fleet. An additional benefit of this approach would be to ensure that the United States remained committed to its legal obligations under the JCPOA.

A third approach would be to require that the contract itself be structured in a particular way that put the impetus on Iran Air to continually prove that it is no longer engaged in illicit activity. For example, OFAC could require Boeing and Airbus to stagger the delivery of the aircraft and make subsequent deliveries contingent on independent verification that they are not being used for sanctionable activities. Likewise, OFAC could require that the contract be structured to limit future delivery on where the planes are permitted to fly (for example, a contractual limitation saying that the planes cannot be flown to Damascus and that if any delivered aircraft are detected to have violated such a provision, the remainder of the contract would be void). Similarly, OFAC could require that the contract be structured to require Iran Air to prepay funds into an escrow account, whereby Iran Air would forfeit those funds if they misused any of the aircraft. Elements of these contractual requirements could be added to the legislation, for example by requiring that any specific license granted by OFAC must require that the contract contain these provisions.

While these suggested modifications to the legislative proposal may strengthen our ability to change Iran Air's illicit behavior, Congress and the Administration should recognize that even

³⁴ Note that Annex II of the JCPOA, footnote 12, broadly specifies similar requirements. However, passing legislation requiring OFAC issue specific licenses only if these requirements are fulfilled will ensure that these strict conditions will be met. The relevant language in footnote 12 reads "Licenses issued in furtherance of Section 5.1.1 will include appropriate conditions to ensure that licensed activities do not involve, and no licensed aircraft, goods, or services are re-sold or re-transferred to, any person on the SDN list. Should the United States determine that licensed aircraft, goods, or services have been used for purposes other than exclusively civil aviation end-use, or have been re-sold or re-transferred to persons on the SDN List, the United States would view this as grounds to cease performing its commitments under Section 5.1.1 in whole or in part."



with rigorous monitoring and an aggressive enforcement posture, serious risks still remain that Iran will use these planes for nefarious activities. Nevertheless, if implementation of the JCPOA is viewed as an ongoing and long-term process, then the United States should be thinking creatively about how to use targeted sanctions unwinding as a way to achieve its strategic goals. Such proposed modifications to this legislative proposal—which would permit specific licenses *only if* Iran Air ceases its support for terrorism and related activities and continues to refrain from providing such support, might actually force the Iranian regime to make some hard choices about not using its airlines to facilitate illicit or dangerous activities. This targeted unwinding could advance the strategic goal that Iran not misuse its airlines and financial system to benefit terrorists or proxies or to intensify its nefarious international behavior.

Financial Institutions Prohibition Bill

This legislative proposal, which prohibits OFAC from authorizing a transaction by a U.S. financial institution ordinarily incident to the export or re-export of a commercial passenger aircraft to the Islamic Republic of Iran, likewise ensures that the financing for such a sale cannot be conducted by a U.S. financial institution. It is one thing to consider permitting the sale of commercial aircraft to Iran under the OFAC Statement of Licensing Policy, which was bargained for in the JCPOA. It is another to proactively tell U.S. and foreign financial institutions—through a specific or general licensing process—that they can bank such activities. Given Iran’s history of abusing the international financial system, the United States should refrain from providing legal authorization to any financial institution that wants to re-enter Iranian markets in all but the rarest of circumstances (e.g., providing financing for the shipment of humanitarian goods).

While this legislative proposal appropriately ensures that U.S. financial institutions will be unable to provide financial services for these contracts, it leaves open two significant gaps.

First, OFAC already issued General License I, which allows for U.S. persons to enter into and engage in all transactions ordinarily incident to the negotiation of, and entry into, contracts eligible for authorization under the Statement of Licensing Policy. Such language could cover associated financial services. As currently written, it is unclear whether the legislative proposal would nullify a general license that is already in force. To foreclose this option, the Committee may want to amend this legislative proposal in a way to nullifies General License I.

Second, the proposed legislative language leaves open a significant gap for foreign financial institutions to provide such services. For example, the language only prohibits OFAC from authorizing a transaction by a U.S. financial institution. Under this language, a foreign financial institution could apply for and receive a specific license from OFAC to provide these banking services. In order to close this loophole, this Committee may want to consider changing this language to read, “The Secretary of the Treasury may not authorize a transaction by a U.S. financial institution (as defined under section 561.309 of title 31, Code of Federal Regulations) that is ordinarily incident to the export or re-export of a commercial passenger aircraft to the Islamic Republic of Iran or any transaction involving a foreign financial institution and having a U.S. nexus that is ordinarily incident to the export or re-export of a commercial passenger aircraft to the Islamic Republic of Iran.” This modification will ensure that the U.S. financial



system is not used in a transaction with or on behalf of Iran, either by a U.S. financial institution or by a foreign financial institution where a U.S. nexus exists.

Ex-Im Prohibition Bill

H.R. 5608 prohibits the Ex-Im Bank from guaranteeing, insuring, or extending credit involving any entity that does business with the Government of Iran or an entity that is created under Iranian law. As noted in the context of the Financial Institutions Prohibition Bill, while the United States should fulfill its obligations under the JCPOA, it should not be proactively encouraging companies to do business in Iran, particularly given the real and regulatory risks that exist in the country.³⁵ The JCPOA does not obligate the United States to encourage businesses to begin transacting there, and the United States should not be in a position of encouraging foreign companies to go into Iran while simultaneously telling U.S. firms that they cannot do business there because of Iran's continued support for terrorism, its human rights abuses, and its ballistic missile proliferation.

Beyond not encouraging firms to do business in Iran, the United States should not be in the business of providing taxpayer dollars to subsidize contracts with Iran. As discussed, Iran continues to support terrorism and other illicit activities, and the real possibility exists that the regime will use these aircraft for nefarious purposes. While it is one thing to consider permitting U.S. companies to sell these aircraft to Iran with strict limitations on how they can be used, it is wholly another to use U.S. taxpayer dollars to help subsidize the sale. The American people should not have their hard-earned money spent in a way that could end up lining the pockets of the IRGC or propping up Syrian President Bashar al-Assad.

H.R. 5608 will appropriately prevent the Ex-Im Bank from providing these financial benefits to Iran. However, the legislative proposal could be amended to ensure that it prevents the activities Congress is rightly concerned about while not being overbroad.

First, as currently written, the language of the proposal may not block the provision of financing related to the sale of Boeing aircraft to Iran Air. For example, the language prohibits such benefits in connection with a transaction involving "an entity that is created under Iranian law." It is unclear whether this phrase would include, for example, an Iranian LLC or a foreign subsidiary of an Iranian LLC. The Committee should consider adjusting this language and providing a definition for what constitutes an entity created under Iranian law in order to ensure that Iran will not be able to use sophisticated corporate structures to evade the prohibition.

Second, the legislative proposal prohibits the Ex-Im Bank from providing financial services in connection with any transaction dealing with the Government of Iran, an entity created under

³⁵ Some within the United States Government have taken the opposite view, encouraging increased economic integration with Iran. In recent months, U.S. Secretary of State John Kerry has reportedly met with European financial institutions to encourage them to do permissible business in Iran. *See*, Silvia Sciorilli Borrelli, "EU Banks to Meet John Kerry to Discuss Iran Business," *Politico*, May 20, 2016, <http://www.politico.eu/article/eu-banks-to-meet-john-kerry-to-discuss-iran-business-europe-sanctions/>. These financial institutions—which clearly recognize the risks of doing business in the jurisdiction—have remained reluctant to move into Iranian markets and continue to refrain from doing business there.



Iranian law, or an operation in Iran. This language prohibits Ex-Im Bank financing for significantly more transactions than aircraft sales to Iran. While understandable, there could be certain situations in which Ex-Im financing would be appropriate and acceptable (e.g., Ex-Im Bank financing related to humanitarian exports to Iran). The Committee may want to adjust the language of this legislative proposal to ensure that, in some circumstances, the Ex-Im Bank could provide assistance.

Moving Forward

As we approach the one-year anniversary of the JCPOA, Congress's role in pressuring Iran to cease its support for terrorism, ballistic missile development, and human rights abuses remains as important as ever. While sanctions on Iran have been partially unwound, real and regulatory risks remain in the country, and the private sector must exercise extreme caution when considering doing business with Iran or with Iranian persons.

Boeing's proposed sale of commercial aircraft to Iran Air in particular presents significant risks that such equipment will be used for illicit purposes. Congress can and should take steps to limit that risk as much as possible. These legislative proposals are steps in that direction, and with minor modifications, they can help the United States shape Iran's behavior and limit its ability to use this equipment for illicit purposes.

Thank you for your time. I look forward to your questions.

