

# On October 15, President Trump Plans to Decertify the Iran Nuclear Agreement

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## What does decertification mean?

For the time being, decertification is a solely U.S. issue. Under the Iran nuclear agreement (known as the Joint Comprehensive Plan of Action, or JCPOA), Iran agreed to limits on its nuclear program in exchange for relief from U.S. and UN sanctions. Soon after the JCPOA was signed, the U.S. Congress passed the Iran Nuclear Agreement Review Act (INARA). That law requires the president to certify to Congress every 90 days that Iran is meeting the terms of the nuclear agreement and that continuing to waive sanctions on Iran is vital to the security interests of the United States. President Trump has stated that on October 15, he will decertify Iran under INARA on the grounds that continuing to waive sanctions is not in the national security interests of the United States.

## Will U.S. secondary sanctions be reinstated automatically?

U.S. sanctions that were lifted pursuant to the JCPOA will not be automatically reinstated upon decertification. The reinstatement of U.S. sanctions under INARA would require action from Congress. All the signatories of the JCPOA, and many in President Trump's own cabinet, have expressed the desire to keep the JCPOA intact.

## **What will the U.S. Congress do in response?**

Much speculation surrounds how Congress will respond, but the basic choice is whether to re-impose sanctions against Iran or not.

The sanctions option would be relatively simple: the INARA contains language for a bill to reinstate U.S. sanctions against Iran, as well as against non-U.S. persons dealing with Iran. That bill would effectively restore U.S. Iran sanctions to the very aggressive program that was in place before the nuclear agreement went into effect in January 2016.

The INARA sets a deadline of 60 days after decertification for Congress to reimpose Iran sanctions. Congress could let that period lapse, and do nothing in response to the decertification. That would leave JCPOA sanctions relief in place for the time being. But it would also leave in place the provision requiring the President to certify Iran every 90 days. In that case, President Trump would face the choice in January of whether to decertify again, or to change his mind – neither of which would be politically comfortable for the President. For that reason, President Trump has requested that Congress amend INARA to lift the certification requirement. If that happens, U.S. sanctions relief would remain in place, and the President would be relieved of the irritant of the certification requirement.

## **Will UN sanctions be reinstated?**

UN sanctions against Iran would not be reinstated as a result of decertification. Implementation of the nuclear agreement included not only suspension of U.S. sanctions, but also those imposed by the United Nations. The UN Security Council endorsed the JCPOA. And the International Atomic Energy Agency, a UN body, has determined that that Iran is in compliance with the deal to date. For those reasons, there is no indication that the UN (or any of its member states) will reinstitute sanctions against Iran as a result of President Trump's decertification.

## **What would the reimplementation of pre-2016 U.S. sanctions look like?**

Prior to the JCPOA, the United States maintained a series of secondary sanctions, meaning that non-U.S. entities, particularly banks, could be sanctioned for certain transactions with Iran. It is likely that non-U.S. banks would be the primary target of reimplemented sanctions because impeding the use of global financial systems has been one of the most effective means of isolating Iran.

If those sanctions were reimposed, non-U.S. persons could be subject to U.S. sanctions, including a sanction prohibiting non-U.S. banks from using U.S. correspondent or payable-through accounts to process U.S. dollar transactions, for certain transactions with Iran. Re-instatement of the pre-2016 sanctions would subject the following transactions to penalties, even if they occur outside the United States and even if they are conducted by non-U.S. persons:

- A bank conducting transactions with the Central Bank of Iran (CBI) and most other Iranian financial institutions;

- A bank engaging in significant transactions related to the Iranian Rial or providing U.S. banknotes to the Iranian government;
- A bank providing financial messaging services to CBI or other Iranian banks;
- Any non-U.S. entity engaging in significant financial transactions in the energy, shipping, or automotive sectors; and
- Any non-U.S. entity purchasing, subscribing, or facilitating the issuance of Iranian sovereign debt, including government bonds.
- All non-U.S. subsidiaries of U.S. companies would be required to cease transactions with Iran.

## **How will the other parties to the JCPOA respond?**

If Congress reimplements pre-2016 sanctions against Iran, the United States will likely be considered in breach of the JCPOA. The JCPOA's "snapback" provision permits Iran to re-start its nuclear weapons program and automatically reinstitutes EU sanctions on Iran.

The other parties to the JCPOA may wish to develop a solution to continue waiving UN and EU sanctions, in the effort to maintain the limits on Iran's nuclear program. However, if the U.S. sanctions are reinstated, particularly those secondary sanctions against banks, non-U.S. Iran business would be significantly impeded, and Iran would have little incentive to uphold its end of the JCPOA.

## **What should I be doing now to prepare for the coming changes?**

As we reported [here](#), the threat of an end to the JCPOA is real, even though the October 15 decertification may not cause it automatically. Any non-U.S. company (and any non-U.S. subsidiary of a U.S. company) that is doing or contemplating business in Iran should have a ripcord option. We will continue to update our clients on the latest changes from Washington, but companies must be prepared for a return, possibly a sudden return, to the stringent financial restrictions on Iran business that were in place two years ago.

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