

President Trump Issues Executive Order Re-Imposing Iran Sanctions, Signals Aggressive Enforcement to Come

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On August 6, 2018, President Trump issued [Executive Order \(“E.O.”\) 13846](#), further implementing his May 8, 2018 [decision](#) to terminate the United States’ participation in the Joint Comprehensive Plan of Action with Iran (“[JCPOA](#)”). The following day, as certain re-imposed sanctions took effect, the President signaled that such sanctions would be aggressively implemented and enforced, [tweeting](#) that: “[t]he Iran sanctions have officially been cast. These are the most biting sanctions ever imposed, and in November they ratchet up to yet another level. Anyone doing business with Iran will NOT be doing business with the United States.”

E.O. 13846 reinstates provisions of prior E.O.s 13574, 13590, 13622, and 13645 that had been revoked in [January 2016](#) to implement the JCPOA, and consolidates those provisions, along with provisions of E.O.s 13628 and 13716, into a single document that provides implementing authority for and additional tools related to secondary sanctions provided for under the Iran Sanctions Act of 1996, as amended (“[ISA](#)”), the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, as amended (“[CISADA](#)”), the Iran Threat Reduction and Syria Human Rights Act of 2012 (“[TRA](#)”), and the Iran Freedom and Counter-Proliferation Act of 2012 (“[IFCA](#)”).

E.O. 13846 additionally [broadens the scope](#) of certain of these provisions, including by adding authorities to impose blocking or correspondent account sanctions on persons (including foreign financial institutions) providing support or services to, or facilitating significant financial transactions on behalf of, certain sanctioned persons, expanding the menu of available sanctions for certain significant transactions involving petroleum and petroleum and petrochemical products that will become sanctionable after November 5, 2018, and prohibiting

U.S.-owned or -controlled foreign firms from engaging in transactions with certain blocked persons.

The issuance of E.O. 13846 coincided with the end of the 90-day “wind-down” period for certain types of activities permitted under or consistent with the JCPOA. As discussed in our prior [blog post](#) regarding the U.S. withdrawal from the JCPOA, as of August 7, 2018, the following Iran-related secondary sanctions are once again in effect:

- Sanctions on the purchase or acquisition of U.S. dollar banknotes by the Government of Iran;
- Sanctions on Iran’s trade in gold or precious metals;
- Sanctions on the direct or indirect sale, supply, or transfer to or from Iran of graphite, raw, or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes;
- Sanctions on significant transactions related to the purchase or sale of Iranian rials, or the maintenance of significant funds or accounts outside the territory of Iran denominated in the Iranian rial;
- Sanctions on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and
- Sanctions on Iran’s automotive sector.

Other Iran-related sanctions, including secondary sanctions related to energy, shipping, insurance, and certain financial services, will be re-imposed following the conclusion of the 180-day wind-down period that ends on November 4, 2018. As of November 5, 2018, all U.S. sanctions (both primary and secondary) that had been waived or lifted under the JCPOA will be re-imposed and in full effect.

The Treasury Department’s Office of Foreign Assets Control (“**OFAC**”) issued [new](#) answers to frequently asked questions (“**FAQs**”) concerning E.O. 13846, and [updated](#) existing FAQs relating to IFCA to make conforming changes. OFAC also updated its [statement](#) and [FAQs](#) concerning the Administration’s implementation of the President’s May 8, 2018 announcement terminating U.S. participation in the JCPOA. Most notably, this update includes new FAQs providing additional guidance on the scope of permissible wind-down activity. Among other things, these FAQs:

- Clarify that a non-U.S., non-Iranian person may receive payments after the end of the relevant wind-down period for goods or services that were fully provided and delivered during the relevant period, provided that the goods or services were provided or delivered pursuant to a contract or written agreement entered into prior to May 8, 2018 and the relevant activities were consistent with U.S. sanctions in effect at the time of delivery or provision. (FAQ 2.4). For wind-down authorizations applicable to U.S. persons or U.S.-owned or -controlled foreign entities, however, all payments must be received during the applicable wind-down period, unless specifically licensed by OFAC. (FAQ 2.5).
- Explain that OFAC looks to industry standards to determine whether goods or services are “fully provided or delivered,” and as a general matter, considers this to have occurred where the party providing or delivering the goods or services has performed all actions and satisfied all obligations necessary to be eligible for payment or other agreed compensation. With respect to goods, at a minimum title to the goods must have transferred to the relevant party. (FAQ 2.3).
- Note that OFAC generally does not view as sanctionable new Iran-related contracts or business activities entered into and completed during the relevant wind-down period that are: (1) in furtherance of a contract or written agreement entered into prior to May 8, 2018 and consistent with the JCPOA; and (2) necessary or ordinarily incident to the wind-down of activities under such contract or agreement. (FAQ 2.6)
- Explain that transactions by non-U.S., non-Iranian persons that involve exports to Iran of humanitarian goods (agricultural commodities, food, medicine, or medical devices) or consumer goods that are not expressly targeted by U.S. sanctions generally are not sanctionable unless they involve certain persons on the SDN List, including designated Iranian financial institutions or the Islamic Revolutionary Guards Corps, or involve otherwise sanctionable conduct. In the case of consumer goods, OFAC notes that such transactions should also not involve U.S. persons or the U.S. financial system, unless the activities or transactions are licensed by OFAC or exempt. (FAQ 2.7)