

## THE DAYS AFTER A DEAL WITH IRAN

### CONGRESS'S ROLE IN IMPLEMENTING A NUCLEAR AGREEMENT

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Because American laws serve as the foundation for many of the U.S. and international sanctions limiting Iran's economic activities, it is important to understand the range of possible roles Congress might play in implementing a nuclear agreement with Iran. Although lawmakers will exercise proactive oversight of the terms of a nuclear deal with Iran and the ways in which it would be implemented, many observers believe—erroneously—that congressional action is required for the United States to provide the sanctions relief Iran hopes to receive as part of a nuclear deal. Many such observers further assume that Congress would block effective sanctions relief—and thus scuttle a deal—as a result of a visceral (and bipartisan) distrust of the Iranian regime, the reportedly outsized influence of the “pro-Israel lobby,” or reflexive Republican resistance to anything that the Obama administration could claim as a success (Donnelly, 2014; Rachman, 2013; Pillar, 2014).

In practice, Congress's ability to derail an Iran nuclear deal is quite limited. The executive branch has considerable executive and statutory authority to waive, suspend, or otherwise ease many of the economic restrictions on Iran, both because sanctions laws give the president such powers and because many of the sanctions were initially imposed (and could thus be reversed) by executive order (EO). Furthermore, the president is likely to veto any congressional effort to block implementation of a nuclear agreement, and Congress may not have the votes to override this presidential prerogative.

Congress could, however, take a wide range of actions affecting implementation of a nuclear deal. On one end of the spectrum, lawmakers could support a deal's implementation by removing statutory sanctions; on the other, it could withhold funds needed to execute the deal or nullify it through legislation. However, Congress is most likely to take a middle-of-the-road approach that enables the administration to provide sufficient sanctions relief to secure

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a deal with Tehran. If Congress does seek to strengthen the existing sanctions regime or reinstitute sanctions waived by the executive branch, such penalties are likely to be imposed only if Iran abrogates an agreement.

Despite bipartisan suspicions of Iran, partisan gridlock may prevent Congress from passing any legislation that affects the implementation of an Iran deal, thereby both enabling the administration to lift restrictions and allowing time-limited statutory sanctions to expire. If congressional leaders want to prevent a deal from going forward but are unable to pass legislation to do so, they may be able to extract concessions on the deal’s implementation by making the administration choose between implementation of the nuclear deal and other top priorities, such as confirmation of appointees, passage of legislation on other issues important to the administration, or passage of appropriations bills necessary to prevent the government from shutting down.

Once an agreement has been reached, congressional opposition to a deal could produce harmful consequences. Legislation that prevents the United States from following through on commitments made at the negotiating table could encourage Iran to resume high-level enrichment (which has been frozen, at least temporarily, during negotiations on a comprehensive settlement) and undermine global support for continued or expanded sanctions. These developments could simultaneously exacerbate the nuclear threat, leave the United States internationally isolated, and bolster arguments for the use of military force to degrade or eliminate Iran’s nuclear capability. The potential for such undesirable outcomes could make even the most ardent opponents hesitant to block implementation of a deal.

Short of blocking a deal with Iran, lawmakers could also take a range of steps that maintain pressure on

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## Assumptions About the Contours of a Final Deal

For the purposes of this analysis, the author assumes that if a final deal is reached between the P5+1 and Iran, it will likely be based on the following general principles:\*

- Iran may continue to enrich uranium, but with limits placed on the degree of enrichment, as well as on the number and types of centrifuges at Natanz and Fordo.
- The Arak heavy water reactor will be redesigned with no reprocessing and subject to International Atomic Energy Agency (IAEA) safeguards.
- Intrusive IAEA inspection of nuclear sites would be imposed; Iran agrees to sign and ratify the Nuclear Nonproliferation Treaty Additional Protocol, which permits IAEA access to nondeclared sites with little notification.
- Iran would share information with the IAEA on possible military dimensions of the program.

The author further assumes that the agreement will likely lead to the following commitments regarding sanctions relief:\*

- Sanctions will be removed gradually, over time, in response to verified Iranian compliance with its commitments under the agreement.
- U.S. commitments regarding sanctions relief will likely be limited to what the executive branch can implement under its existing authorities (i.e., without requiring that Congress pass new legislation).

The author also assumes that implementation of the deal will be a sufficiently high priority for the White House that any legislation proposing significant restrictions on the executive branch's ability to implement an agreement will be filibustered by at least one senator sympathetic to the administration's position and, if passed anyway, vetoed by the president. Thus, it is assumed that any such legislation would require a two-thirds majority in both chambers of Congress to take effect. (Sixty Senate votes are needed to overcome a filibuster, and a two-thirds majority in both chambers—67 senators and 290 House members—is necessary to override a presidential veto.)

\* These principles are derived from the elements for a comprehensive solution found in the Joint Plan of Action (JPOA, or JPA). The author is not predicting what the actual agreement will look like but rather using these plausible contours as a point of departure for this analysis.

Iran while facilitating implementation of a negotiated settlement. Congressional action that makes the cost of noncompliance clear to Tehran—e.g., legislation to reimpose sanctions if Iran fails to adhere to the agreement or even an open-ended authorization to use military force if Tehran reneges on its commitments—could give the White House the freedom to provide effective sanctions relief and strengthen the likelihood that Iran will follow through on its obligations. Congress could engage in aggressive oversight of a deal's execution, maintaining pressure on the administration by threatening to block

other White House priorities, including nominations for Senate-confirmed positions and legislation on unrelated issues. Congress could also offer positive incentives for Iran to comply with the terms of a deal by offering eventual statutory relief from sanctions if Tehran demonstrates—and international inspections verify—that it has dismantled research and enrichment capabilities that could lead to a nuclear weapon.

Existing prohibitions on U.S. trade with Iran stem from a wide range of statutes and EOs that were imposed to persuade Iran to abandon its nuclear program, cease

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*If the United States believes that Iran has reneged on its obligations, the executive branch could reimpose whatever sanctions it had lifted or waived on its own authority, and Congress could strengthen sanctions through new statutes.*

supporting terrorism, and improve its human rights performance. Executive branch officials have said they do not intend to waive nonnuclear sanctions, and many members of Congress have opposed sanctions relief as long as Iran continues to engage in terrorism and other objectionable behaviors. As a result, even though U.S. corporations would complain that sanctions relief would reward foreign companies while leaving them on the sidelines, it is highly unlikely that either Congress or the executive branch would lift prohibitions on U.S. business with Iran.

Because any sanctions relief offered by a deal will be put in place gradually, Congress will have many opportunities to affect the process by which the deal is implemented. Assuming that the United States and Iran demonstrate to each other that they are faithfully upholding their commitments, Congress may see fit over time to consider statutory relief of sanctions. Conversely, if the United States believes that Iran has reneged on its obligations, the executive branch could reimpose whatever sanctions it had lifted or waived on its own authority, and Congress could strengthen sanctions through new statutes.

This is the fifth in a series of RAND Perspectives that explore the “Day After” an Iran nuclear deal. It assumes that Iran and the P5+1 (the United States, United Kingdom, France, Russia, China, and Germany) reach a comprehensive agreement that meets both sides’ core interests by permitting Iran some continued nuclear enrichment capability, imposing a stringent inspection and verification regime, and requiring changes to the U.S. and international sanctions regime. It is not intended to recommend that Congress take any particular course of action, but rather to identify the range of

actions Congress could take and assess the likelihood and potential impacts of each.

This Perspective begins by examining the mechanisms by which sanctions can be lifted as part of a negotiated settlement, including statutory change, presidential waiver, and executive branch policy changes. It then identifies and assesses a spectrum of eight potential steps Congress could take to facilitate, hinder, or block implementation of a nuclear deal. It also considers the possibility that Congress would authorize the president to use military force in the event Iran fails to comply with an agreement, and assesses the potential impact such a step could have on efforts to resolve the Iran nuclear issue. Finally, it will identify some of the political influences that could affect the positions taken by members of Congress.

### **How Sanctions Can Be Modified**

Kenneth Katzman, an expert on the Iran sanctions regime at the Congressional Research Service (CRS), has called U.S. economic restrictions on Iran “a spider’s web of interlocking sanctions” that will be difficult to untangle (Katzman, 2014b). Congress has imposed many restrictions by statute; although these can only be lifted permanently by the passage of new laws, virtually all of them give the president authority to waive or suspend elements by determining certain facts or asserting that doing so is in the national interest.<sup>1</sup> Presidents have imposed sanctions through EOs, which can be modified or rescinded by the president and his successors through the issuance of new EOs or by Congress through a new law.

In some cases, Congress has codified in law restrictions originally put in place by executive branch action, such as an EO; such sanctions would require changes in both the law and the executive branch regulations to modify or remove. For example, after the Treasury Department designated the Iranian financial sector as a jurisdiction of primary money laundering concern under the terms of Section 311 of the USA PATRIOT Act (FINCEN, 2011), Congress codified this designation (and thus the resulting sanctions) in the fiscal year (FY) 2012 National Defense Authorization Act (NDAA).

Thus, for the money laundering restrictions to be lifted, Congress would have to revise the law and the Treasury Department would have to reverse its implementing guidance. Should the executive branch suspend sanctions initially imposed by EO or regulation, Congress could also codify such suspension into law.

The Treasury Department and other government agencies have issued hundreds of implementing regulations, sanctions designations, and other operational guidelines that enable sanctions to be executed, which can be altered or terminated through simple executive branch policy decisions or changes to the regulations and designations.<sup>2</sup>

Table 1 shows the means by which sanctions could be permanently terminated or temporarily waived, which vary depending on the legal authority under which sanctions were imposed.

New sanctions can also be imposed (or existing sanctions can be strengthened) through similar tools. Congress can do so in statute; the president—relying primarily on legislation such as the International Emergency Economic Powers Act (IEEPA) (P. L. 95–223), which allows the president to regulate commerce to address national security threats—can do so via a new EO; and executive branch agencies, to the extent permitted by statute and EOs, can issue new regulations or designate additional entities as being subject to sanctions.

### Statutory Change

Permanent termination of sanctions imposed by Congress in statute will require changes to the relevant statute. For example, Section 1245 of the FY2012 NDAA designates the Iranian financial sector as a money laundering concern, freezes all Iranian banks’ assets in

the United States, and denies foreign banks access to the U.S. financial system if they do business with the Central Bank of Iran. Congress would have to create a new statute to remove these restrictions (Steptoe and Johnson, 2012).

One key statute contains a “sunset” provision that causes the restrictions to expire unless proactively renewed.<sup>3</sup> The Iran Sanctions Act (ISA)—the first legislation that applied U.S. sanctions against Iran extraterritorially—requires the president to impose sanctions on foreign companies that invest a certain amount in Iran’s energy sector. It was first passed in August 1996 (as the Iran and Libya Sanctions Act, or ILSA) with a provision calling for its expiration five years later. Congress renewed the law three times—in 2001, 2006, and 2012 (see Table 2 on p. 28)—and the current statute is due to expire December 31, 2016.

### Presidential Waiver

The statutes that impose sanctions on Iran give the president broad authority to waive almost all of the sanctions under certain conditions.<sup>4</sup> In general, Congress grants the president waiver authority as a concession to the notion that the Constitution gives the executive branch primacy in the conduct of foreign affairs, as well as to ensure that the United States can react flexibly to emerging events (Rennack, 2014).

Congressional Research Service analyst Kenneth Katzman notes that a presidential waiver is the “easiest way to ‘un-apply’ sanctions” (Katzman, 2014b), as waivers typically require only that the president make a determination and report it to Congress. Although waivers can generally be renewed repeatedly, they do not enable the president to suspend sanctions permanently; nevertheless,

**Table 1: Means of Terminating or Waiving Sanctions**

If Sanctions Were Imposed by . . .	Sanctions Can Be Permanently Terminated or Temporarily Waived by . . .	Means of Termination or Waiver
Statute	Congress President (as specified in statute)	New statute Presidential determination or certification (as specified in statute)
Executive Order	Congress President	New statute New EO
Executive agency regulation or designation	Congress President Executive agency	New statute Policy guidance to agencies New regulation

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*Restrictions on Iran that have been imposed by executive branch action can be reversed by a similar action. In essence, if a president imposed a sanction under his own authority, the sitting president can revoke it.*

as Elizabeth Rosenberg of the Center for a New American Security (CNAS) writes (2014, p. 4), waiver authorities “are nonetheless powerful and may be sustained indefinitely or until certain sanctions statutes expire.” On the other hand, sanctions waived by the current president could easily be reinstated by the next president.

Generally, the president can waive sanctions upon determining that doing so is in the national interest of the United States—a very broad standard left up to the judgment of the executive branch (but which must be defended publicly if challenged). For example, the NDAA permits the president to waive sanctions on banks that do business with Iranian financial institutions for multiple periods of 120 days if he “determines that such a waiver is in the national security interest of the United States” (P. L. 112–81). Similarly, Section 301(a) of the Iran Threat Reduction and Syrian Human Rights Act imposes sanctions on officials and affiliates of the Iranian Revolutionary Guard Corps (IRGC), and Section 302(a) imposes penalties on persons who provide support to the IRGC or its affiliates or who engage in significant transactions with it. The law provides the president with the authority to waive both types of sanctions if he determines doing so to be in the national interest, and he can waive or even terminate Section 302 sanctions if he determines that the violator has ceased providing support to the IRGC or its agents.<sup>5</sup>

In some cases, issuance of a waiver requires more substantial groundwork. For example, Section 1245(d)(4)(D) of the FY2012 NDAA exempts foreign banks from sanctions for their transactions with Iranian financial institutions if the president determines that the country with jurisdiction over the bank has significantly reduced its purchases of oil from Iran. The law lays out specific steps that the executive branch must take to sup-

port its findings, which must be provided to Congress every 180 days for an exemption to remain in place.

### **Executive Branch Policy Changes**

Presidents’ authority to impose sanctions through EOs derives from IEEPA, which grants the president the authority to freeze assets and prohibit a range of trade and commercial activities “to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared.” President Jimmy Carter issued such a declaration regarding Iran in EO 12170 on November 14, 1979, ten days after Iranian militants seized the U.S. Embassy in Tehran and took 66 Americans hostage (EO 12170, 1979). As required by law, Carter and subsequent presidents have renewed the declaration of emergency on an annual basis since then under the National Emergencies Act, (P. L. 94–412).

The Obama administration renewed the declaration of emergency regarding Iran most recently on November 12, 2013, with an administration official describing it as “a routine renewal of the policy . . . to prevent it from expiring” (White House, 2013; CNN.com, 2013). President Bill Clinton declared a separate national emergency with respect to Iran in 1995 through EO 12957.<sup>6</sup> This emergency has also been renewed annually, with the most recent renewal ordered by President Barack Obama on March 12, 2014 because—despite the halt of Iran’s nuclear program under the JPOA—“certain actions and policies of the Government of Iran continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States” (White House, 2014).

Restrictions on Iran that have been imposed by executive branch action can be reversed by a similar action. In essence, if a president imposed a sanction under his own authority, the sitting president can revoke it. (This means, of course, that any decision made by President Obama under presidential authority could be further modified, or even reversed, by his successor.) Perhaps the most direct way to do so is by rescinding sanctions provisions contained in EOs. For example, EO 13622 (2012) prohibits the import of goods from a person who the Secretary of State determines has purchased a significant amount

of petroleum from Iran. The president can remove this restriction upon issuance of a new EO.

For any sanctions to take effect, the executive branch—generally the Departments of State or Treasury—must designate specific entities as meeting certain conditions and thus being subject to sanctions. As a result, the executive branch can choose *not* to designate individuals/entities as meriting sanctions in the first place (Katzman, 2014a), or it can “un-designate” entities that are already listed, which effectively lifts the sanctions on them. For example, EO 13606 freezes the U.S.-based property of persons, including those listed in an annex to the EO, who have enabled the Iranian government to have engaged in serious human rights abuses through the use of information technology (such as computer monitoring, user tracking, or network disruption). However, the EO also gives the Secretary of the Treasury authority “to determine that circumstances no longer warrant the blocking of the property” of designated persons, which would end the application of sanctions on those targets.

Similarly, the Treasury Department’s Office of Foreign Assets Control (OFAC), which administers and enforces economic and trade sanctions, maintains a list of Specially Designated Nationals (SDNs) to whom sanctions restrictions apply. OFAC can remove persons and entities from the SDN list if it determines that sanctions should no longer apply to them—a determination that could involve a fair amount of subjective analysis—or if the authorities for the underlying sanctions have changed (Feaver and Lorber, 2014).

Finally, some statutes give the president authority to permanently terminate some sanctions upon a determination of facts that, in most cases, would require Iran to have changed its domestic and foreign policies significantly. As a result, the president is unlikely to be able to exercise these authorities without incurring extensive political opposition. For example, Section 105(b) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) imposes sanctions (asset freezes and bans on financial transactions) on Iranian officials determined to be responsible for human rights abuses committed in the aftermath of the 2009 elections, but Section 105(d) allows the president to terminate these sanctions if he

certifies that Iran has released all political prisoners, ended human rights abuses of those engaging in peaceful political activity, investigated the killings and arrests of those who protested the elections and prosecuted those responsible, and committed to establish an independent judiciary. Barring drastic changes in Iranian domestic policy and governance, it would be extraordinarily difficult for the president to certify that Iran has met these requirements.

The ISA gives executive branch authority to terminate sanctions in the statute if it determines that Iran: (1) “has ceased efforts to design, develop, or acquire a nuclear explosive device, chemical or biological weapons, and ballistic missile technology”; (2) been removed from the list of state sponsors of terrorism; and (3) “poses no significant threat to U.S. national security or allies.”<sup>7</sup> The president could exercise quite a bit of independent judgment to determine that these conditions have been met. For example, because ISA requires the president to determine that Iran has ceased *efforts* to design or develop a nuclear device, the Intelligence Community’s assessment that Iran paused its nuclear weapons program could indicate that Iran has met this standard,<sup>8</sup> which would support a decision to terminate ISA sanctions without having to resolve the controversial question of whether Iran has permanently renounced this aspiration.

Similarly, just as the Secretary of State makes the determination to designate a country as a state sponsor of terrorism based on its repeated support for acts of international terrorism, the Secretary can also rescind such a designation after publication of a public notice and a six-month waiting period (U.S. Department of State, 2013 and 2014b).<sup>9</sup> That said, the political hurdles to removing a country from the state sponsors of terrorism list are enormous; as Georgetown

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## Congress will certainly have some say in how a deal is executed, but executive and legislative branch officials disagree on the role to which Congress is entitled.

University professor Daniel Byman has written (2008), “Once a country is listed it is hard to remove even if it does not support terrorism.” When the U.S. government has removed countries—as it did with Iraq after Saddam Hussein’s overthrow in 2004, Libya after it renounced its WMD program in 2006, and North Korea as part of a nuclear agreement in 2008, and as it appeared prepared to do with Cuba as of mid-December 2014 (Gehrke, 2014)—the U.S. decision had little to do with terrorism.<sup>10</sup>

The executive branch could argue that Tehran had not supported specific, identifiable individual acts of terrorism during the previous six months and had committed to refrain from doing so in the future—the requirements, under Section 6(j)(4)(B) of the Export Administration Act, for removing a country from the state sponsors of terrorism list without experiencing a change in regime. Even if no identifiable terrorist attacks take place for six months, however, such a claim would be difficult to justify given Tehran’s ongoing clandestine logistical, financial, and operational support to Hezbollah and to Shi’a militias in Iraq and to the abusive Assad regime in Syria. Certainly, such a determination would be politically controversial, as even a six-month moratorium on terrorist attacks will fail to convince politicians from either party that Iran had changed its stripes. Furthermore, the administration has pledged to maintain sanctions stemming from Iran’s support for terrorism and its abuse of human rights. As a result, the president is highly unlikely to invoke available authorities to remove Iran from the list of state sponsors of terrorism and terminate statutory sanctions.

### Ways in Which Congress Could Influence the Implementation of a Nuclear Deal

Congress will certainly have some say in how a deal is executed, but executive and legislative branch officials

disagree on the role to which Congress is entitled. Not surprisingly, many members of Congress believe that the White House must seek congressional input and approval. Republican Sen. John McCain of Arizona has argued that a nuclear deal would be more than just an ordinary diplomatic accord and thus would require Senate concurrence as a constitutional matter. “[T]his is really, in every aspect, a treaty that is being considered with Iran,” McCain said, “and I believe it requires the advice and consent of the United States Senate” (2014). (Interestingly, the leadership of the Iranian parliament has also asserted that it will have to approve any final nuclear agreement, perhaps demonstrating that legislatures everywhere insist on the authority to put their imprimatur on executive branch policymaking.)

House members, lacking a constitutional advice and consent role, have argued that Congress must be consulted because *statutory changes* to the sanctions regime would require congressional action. Rep. Eliot Engel of New York, the ranking Democrat on the House Foreign Affairs Committee, echoed this sentiment, telling a public forum, “The road to any permanent sanctions relief runs through Congress. Congress imposes sanctions, and only Congress can remove the sanctions” (2014).

Some lawmakers have threatened to block a deal if the president fails to provide it to Congress not just for review, but for legislative approval. Rep. Ileana Ros-Lehtinen of Florida, a senior Republican member (and former chairwoman) of the House Foreign Affairs Committee, asserted, “[T]he President must come to Congress and get approval before making any agreement . . . [W]hen it doesn’t, I think you will see many of us in Congress move to quickly block any sanctions concessions that the administration may be offering” (2014a).

But senior administration officials have asserted that the executive branch has the inherent authority to provide effective, if limited, sanctions relief without congressional approval through measures other than statutory change. During a July 2014 Senate Foreign Relations Committee hearing, Under Secretary of State Wendy Sherman noted to the Committee’s ranking Republican, Sen. Bob Corker of Tennessee, that although “we cannot lift any sanctions without congressional action[,] [w]e can, as

you said, suspend or waive under the current legislation” (Wendy Sherman, 2014). She pushed back on the notion that the administration would need to do anything more than “consult” with Congress. “If you are asking, Senator, whether we are going to come to Congress for legislative action to affirm a comprehensive agreement, we believe, as other administrations do, that the executive branch has the authority to take such executive action on this kind of a political understanding that might be reached with Iran.”

Although some members of Congress may be unhappy with merely being “consulted” about the progress of an agreement, such consultations do give the legislature some ability to shape a final agreement and the terms of its implementation. The administration will likely attempt to accommodate congressional priorities and concerns where it can do so without drastically altering the outcome it seeks to achieve. Even though the entire legislative body may not end up acting on a final agreement, certain members of Congress—particularly House and Senate leaders, chairmen and ranking minority members of key committees, and other influential individual members—will have some ability to influence the implementation of a nuclear deal through both quiet consultations and public hearings.

Of course, Congress can take action regardless of whether the administration proactively requests it to do so. The extent to which congressional leaders insist on affecting implementation of a deal may depend on whether they think the deal is acceptable. Many members of Congress who have stated opinions about nuclear negotiations have expressed concerns that, without congressional review, the executive branch will strike a deal that is harmful to American interests. For example, Sen. Corker has stated (2014) that “Congress must weigh in on any final deal, ensure Iranian compliance is strictly enforced, and provide a backstop to prevent a bad deal from occurring.”

Some members have specified what they hope a P5+1 deal with Iran would include. Senate Foreign Relations Committee Chairman Robert Menendez (D-NJ) and Sen. Lindsey Graham (R-SC) drafted a bipartisan letter to the president in which they argued that a deal must establish “a long-term and intrusive inspection and verification regime . . . that lasts at least 20 years” and require the

“snap-back of sanctions should Iran fail to keep its commitments.” They also urged that “any sanctions relief be phased in over a lengthy period of time to allow the opportunity to gauge Iranian compliance” and demanded that “the consequences for Iran of noncompliance or breach must be stipulated in the agreement” (Menendez and Graham, undated). They further suggested that Congress’s “willingness to consider legislation to provide sanctions relief will be based on resolution of all of these issues in the context of a final agreement with Iran,” indicating that the senators believe they are in a position to compel the executive branch to incorporate their minimum acceptable standards into an agreement. As Duke University political scientists Feaver and Lorber (2014) write, “If Congress is dissatisfied with the final terms of the deal on Iran’s nuclear program, it may be unwilling to back the administration’s promises” with supporting legislation (although, as stated, the executive branch could continue to act upon its own existing authorities).

The challenge, of course, is that 535 members of Congress will inevitably disagree about what the minimum acceptable provisions will be, making it difficult to assess whether Congress as a whole would accept any completed deal presented to them. Some members appear certain to reject any deal at all, given the near-certainty that Iran will only agree to a deal that allows it to maintain some nuclear capabilities. Rep. Ros-Lehtinen, for example, has stated (2014a), “[F]or me, the only acceptable Iran nuclear deal will be one in which Iran must dismantle its entire nuclear infrastructure and must not be allowed the capacity to enrich any uranium at all . . . Unfortunately the Obama administration with the P5+1 have already conceded that Iran should be allowed to enrich, and I categorically—categorically—disagree with that assessment.” Whether members who believe the administration has concluded

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a “bad” deal attempt to shape the implementation of a nuclear agreement or thwart it—or whether they would be able to muster sufficient support to do either one—remains to be seen. Few members of Congress, however, have articulated how Congress should support implementation of a “good” deal, despite the fact that the body is positioned to do that as well.

### Continuum of Potential Actions

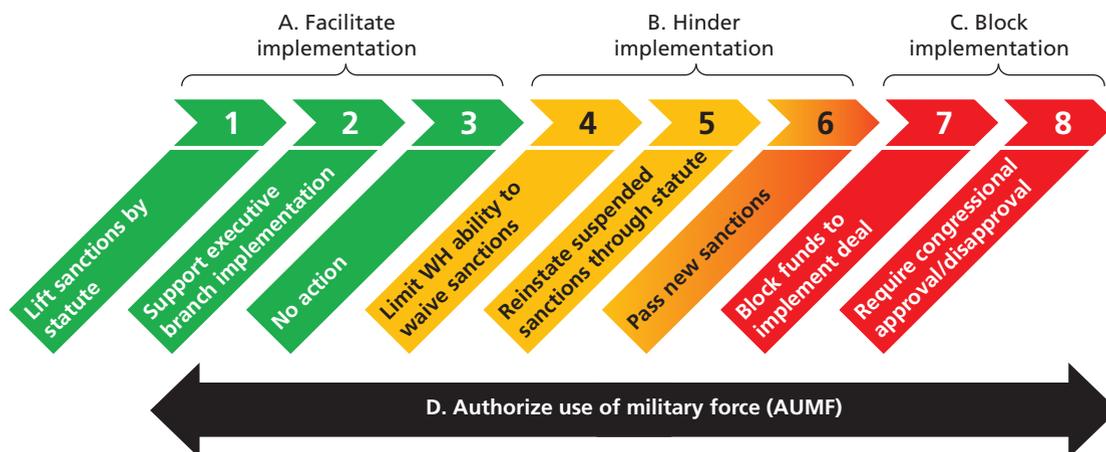
In considering what Congress might do to affect the implementation of a nuclear deal, it is important to consider the full spectrum of options available to it (illustrated in Figure 1). Congress could facilitate an agreement’s implementation with funding and statutory authorities to implement U.S. commitments. Conversely, it could complicate implementation by blocking funds or it could nullify a deal by passing a joint resolution of disapproval. There are a range of steps in between these extremes—including taking no legislative action at all, which would allow the executive branch to act within the bounds of its existing authorities; reinstating some of the sanctions that the administration offered to relieve; or passing additional or strengthened sanctions in an attempt to increase the pressure on Tehran.

Congress could also pass a legislative authorization to use military force (AUMF) if Iran fails to follow through on its commitments, either as a stand-alone measure or

as part of other legislative efforts along the spectrum. The impact of an AUMF could vary, depending on Congress’s intent and the context in which force is authorized. It could make the consequences of noncompliance clear to the Iranian government and thereby encourage Tehran to fulfill its commitments, or it could lead Iran, the European Union, and others to view Washington as seeking to derail an already agreed-to diplomatic settlement, thereby potentially scuttling a deal and isolating the United States from its allies on the Iran nuclear issue.

Although a wide range of factors will affect the actions Congress might take, the most probable courses of action fall in the middle of the spectrum. For reasons discussed in detail later, Congress is also unlikely to lift sanctions through statute (Option 1) or explicitly appropriate funds for the implementation of an agreement (Option 2)—at least not until Iran has demonstrated a track record of compliance with a negotiated agreement. Similarly, Congress is unlikely to limit the White House’s ability to waive sanctions, which would constrain but not prohibit the executive branch from offering economic relief to Iran (Option 4) because placing limits on the president’s waiver authority would not have much of an impact on the executive branch’s ability to provide sanctions relief and is therefore not likely to be acceptable either to members who want to support the president or to members who oppose an agreement. Finally, Congress

**Figure 1: Spectrum of Options Available to Congress**



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is unlikely to block implementation of a deal by withholding funds (Option 7) or voting to disapprove a deal (Option 8), primarily because scuttling an agreed-upon settlement would make the United States appear to be the deal's spoiler, which could lead to resumed Iranian high-level enrichment, increased U.S. isolation, and the weakening of the international sanctions regime. Congress is also unlikely to authorize the use of military force unless Iran has already demonstrated that it has failed to execute the agreement in good faith.

Congress is most likely to take one of three broad courses of action in the middle of the spectrum, depicted as Options 3, 5, and 6 in Figure 1:

3. Taking no legislative action at all, which would enable the executive branch to implement an agreement unimpeded.
5. Passing legislation that reinstates sanctions previously waived by the White House.
6. Passing legislation that adds to or strengthens the terms of existing sanctions.

Political gridlock makes it highly likely that Congress will be unable to take any legislative action at all (Option 3). If Congress decides to strengthen (or reinstate) the sanctions regime (Options 5 and 6), it will likely seek to do so only if Iran fails to follow through on the deal, which would enable the United States to place the blame for new sanctions on Iranian noncompliance; imposing sanctions unilaterally would make the United States appear to have undermined the deal, leading to unpalatable consequences similar to if Congress were to block the implementation of a deal entirely. All of these courses of action would enable the White House to implement a deal that offers sanctions relief through existing executive branch authorities.

### **A. Steps Likely to Facilitate Implementation of a Deal**

Three of the nine options available to Congress would, for the most part, facilitate implementation of an agreement as concluded by the P5+1 and Iran.

#### **1. Pass Legislation to Remove/Relax Statutory Sanctions**

One step Congress could take to facilitate a deal is to pass legislation that lifts statutory sanctions or changes them

to alleviate their impact on Iran. All sanctions imposed by statute need to be modified or rescinded by statute to be lifted permanently. As an example, Section 201 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (P. L. 112–158) amended the ISA to mandate the imposition of sanctions on any person or entity purchasing petrochemical products from Iran or helping Iran develop petrochemical products that exceed a certain market value (\$250,000, or \$1 million over a yearlong period). To permanently remove sanctions on trade and investment in Iranian petrochemicals—not just provide temporary presidential waivers—Congress would have to pass a new law rescinding this statutory language.

Although many bills have been proposed that call for sanctions on Iran to be fully implemented or even expanded, no legislation was introduced in the 113th Congress (2013–2014) that would have removed or relaxed sanctions on Iran. Moreover, although many members of Congress have expressed support for a diplomatic solution that prevents Iran from developing a nuclear weapon, none stated support for lifting statutory economic sanctions. (It is certainly possible that some members have been unwilling to take the politically risky step of expressing public support for sanctions relief in the absence of an agreement; such positions could shift in the aftermath of a signed nuclear agreement.)

In all likelihood, any legislation that relaxes sanctions would almost certainly be conditioned on verified Iranian compliance with the negotiated settlement and implemented gradually in response to Iranian actions. Indeed, in a joint statement issued a week after the November 2014 midterm elections, Sens. Menendez and Mark Kirk (R-IL)—lead sponsors of the bipartisan Nuclear Weapon Free Iran Act (S. 1881, also known as Menendez-Kirk), which called for expanded sanctions on Iran—stated,

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## *Legislation that permanently lifts specified sanctions in response to Iranian implementation of the deal would enable the executive branch to fully execute the agreement it concludes with Tehran.*

“Gradual sanctions relaxation would only occur if Iran strictly complied with all parts of the agreement” (Menendez, 2014).<sup>11</sup> Such legislation could specify milestones that Iran must meet (and the process for certifying it has done so) to trigger specific sanctions relief. For example, such legislation could repeal a certain statutory restriction on Iranian commerce once the executive branch (or the IAEA) has certified that Iran has taken steps or met standards specified by the agreement.

Should Congress take any action to repeal components of economic sanctions, it will almost certainly include provisions for sanctions to “snap back” in place (as Menendez and Graham suggested in their letter to the president) if it is determined that Iran has failed to meet standards or milestones specified. Snap-back terms have the potential to reinforce Iran’s incentives to abide by its commitments, reassure anxious allies, and constructively (from the executive branch’s point of view) channel congressional efforts to oversee the implementation of a nuclear agreement. Indeed, the concept of snap-back sanctions has support among national security experts in both parties who have worked on Iran nuclear issues,<sup>12</sup> suggesting that it might be acceptable to the Obama administration and to both parties in Congress.

Without such snap-back conditions, lawmakers are unlikely to pass sanctions relief legislation. Enough members are sufficiently skeptical of Iran’s intentions or convinced that the Iranian regime should remain isolated through sanctions that they are unlikely to sign on to bills that lift sanctions permanently. Moreover, many members are determined to preserve legislative prerogatives by sending a clear message to the White House that Congress intends to independently monitor Iran’s implementation of

the agreement and impose punitive measures if it believes Iran has fallen short.

Legislation that permanently lifts specified sanctions in response to Iranian implementation of the deal would enable the executive branch to fully execute the agreement it concludes with Tehran. Although some critics might allege that the inclusion of punitive snap-back provisions could derail the deal, such terms could encourage Iranian compliance by making clear to Tehran the consequences of failing to follow through on its commitments.

For Congress to pass legislation that removes or relaxes sanctions, the White House will need to convince Congress that the deal is the best way to prevent Iran from developing a nuclear weapon and that legislative sanctions relief is necessary for the agreement’s implementation—a very high bar to meet, particularly given that many lawmakers are suspicious of Iran’s intentions, convinced that the pain of sanctions is what drove Tehran to the negotiating table, and concerned that once sanctions are permanently lifted they will be extremely difficult to reimpose if Iran reneges on its promises.

Political realities in Washington make it unlikely that Congress would offer significant relief from statutory sanctions in the immediate aftermath of a deal. However, if Iran creates a track record of complying with its obligations, Congress will soon find itself under pressure from the White House, business groups, and foreign allies and partners (not to mention Iran) to provide some measure of legislative sanctions relief. If it does so, such relief will likely be contingent on verified Iranian compliance with the deal and implemented gradually in response to specific Iranian actions.

### **2. Support Executive Branch Implementation of a Deal**

Perhaps the most concrete way in which Congress can facilitate implementation of an agreement is to provide the executive branch with the authorities and funding to carry out U.S. commitments. For example, Congress could explicitly appropriate funds for U.S. officials to participate in or support international missions under IAEA auspices to inspect Iranian facilities and verify Iranian compliance, or it could authorize the Intelligence Community to provide information regarding Iran’s compliance to inter-

national inspectors. Even if the executive branch already has the inherent authority to engage in such activities, an unambiguous legislative endorsement would send a signal to Tehran that Congress will not prevent the United States from living up to its end of the bargain. Congress could make such authorities and funding contingent on regular updates and certifications from the executive branch that affirm Iran's continued compliance, thereby demonstrating that Congress intends to play an active oversight role in the implementation of the nuclear agreement.

Congress can also modify existing sanctions legislation in ways that expand the president's authorities to waive or suspend sanctions. Congress could also extend the duration of presidential waivers—most of which are limited to 120 or 180 days—to give private companies greater confidence that they would have sufficient time to conclude deals or see financial returns if they begin to conduct business in Iran.

Even mere signals that Congress will refrain from blocking implementation of an agreement could serve as critical confidence-building measures that encourage Iranian compliance. Congress could, for example, pass a nonbinding Sense of Congress resolution expressing support for an agreement, which would signal to Iran and to private companies considering investing in Iran that there are no plans to scuttle the deal (Rosenberg, 2014). Congress could also pass legislation requiring the executive branch to submit an agreement for congressional approval, then approve it. As an example, Rep. Trent Franks introduced the Iran Nuclear Agreement Accountability Act (H. R. 4967) in 2014. Had it passed, it would have required the president to submit any agreement to Congress within three days, and it specifies expedited procedures for a joint congressional resolution of approval or disapproval of any such agreement.<sup>13</sup> (The impact of a joint resolution of *disapproval* is discussed in the section regarding Option 8.)

Because the executive branch already believes it can implement a deal on its own authority without any support from Congress, neither a nonbinding Sense of Congress resolution nor a legally binding joint resolution of approval would affect the executive branch's execution of a deal. From a political perspective, however, either

measure would demonstrate that the agreement has a clear congressional imprimatur, thereby clearing the path for the executive branch to execute it as signed and provide sanctions relief under existing executive branch authorities. Furthermore, a joint resolution of approval would send a signal to non-American companies that Congress will not interfere with the executive branch's use of its own authorities to relax sanctions and thus encourage private corporations to do business there.

### 3. No Legislative Action

Congress may very well take no legislative action at all, in which case—assuming that the sanctions relief promised by the United States in the agreement is limited to what the executive branch can implement under its existing authorities—the administration will be free to implement an agreement as signed. Congressional inaction could be the result of several different dynamics.

- First, congressional leaders could consciously choose to allow the agreement to be implemented as signed. Different motives may contribute to such a decision. Supporters of a diplomatic settlement may believe that both parties will follow through, thereby enabling the deal to advance U.S. nonproliferation objectives without having to resort to additional sanctions or military force. Critics of the deal, expecting it to collapse, may believe that congressional inaction will leave the executive branch solely responsible for its expected failure, thereby leaving Congress in a better position to take decisive action later on.
- Second, congressional leaders may prove unable to muster veto-proof support for any new legislation. Even

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members who support new or reimposed sanctions have different motivations for doing so, hold different views on when such penalties should be triggered, and have varying levels of concern that repudiation of a negotiated agreement could lead to the use of military force. As a result, even if a significant number of members coalesce around a single approach, it may be difficult to get two-thirds of both chambers' members to express support. Furthermore, while many Democrats have expressed opposition to sanctions relief, some may prove reluctant to actually cast a vote that undermines a priority initiative of a president from their own party.

- Third, members on both sides of the political aisle may prefer to focus on messaging rather than working out legislation that has a significant chance of passing. Critics of Congress may call such dynamics “gridlock,” but it would not be uncommon for members of both parties to take principled stands on controversial issues rather than make the tough concessions necessary to pass laws—particularly in the midst of a presidential election campaign.

In the absence of new legislation, statutory sanctions imposed by the Iran Sanctions Act—which are at the heart of the existing sanctions regime—will expire on December 31, 2016, three weeks before the end of President Obama's term (Katzman, 2014b). Among the provisions that would expire are requirements that the president sanction companies investing in or trading with Iran's petroleum sector by prohibiting loans from U.S. financial institutions, limiting transactions with U.S. financial institutions, denying export licenses, prohibiting transactions in U.S.-based properties, denying visas to corporate officers, and other restrictions (Rennack, 2014). If the law sunsets without being renewed, non-American companies would face fewer obstacles to investing in the Iranian oil and gas industry, which

would allow Iran to modernize its energy sector and greatly increase its oil and gas production and revenues.

To retain maximum flexibility in providing sanctions relief in the wake of a nuclear deal, the president could also veto any attempt to renew the ISA without significant modifications that would make it easier to waive the restrictions imposed by the law (Katzman, 2014b). If congressional leaders do not think ISA could be renewed with a veto-proof majority, they could attempt to pass new legislation after the inauguration of the next president, who may share their opposition to sanctions relief or be reluctant to cast a veto on such prominent legislation so early in his or her tenure. Such efforts could extend the amount of time it takes for Iran to see the economic benefits of sanctions relief, as energy companies will not rush to invest in Iran if they believe Congress may renew sanctions soon after the ISA's expiration.

Even if Congress is unwilling or unable to pass new legislation that affects implementation of a deal, it would still be able to engage in proactive oversight of the agreement's execution and to request detailed information on Iran's compliance. Such efforts—which might include public hearings, closed (classified) briefings, and demands for written reports from the executive branch—could shape the public debate over a deal and influence the ways in which (or the pace at which) the administration follows through on the deal.

### ***B. Steps Likely to Hinder Implementation of a Deal***

If congressional majorities object to a nuclear agreement or to the sanctions relief terms contained therein, Congress could restrict the executive branch's ability to waive or suspend sanctions. It could also impose new statutory sanctions to increase economic pressure on Iran despite the terms of the agreement, which would likely hinder its implementation and could derail a deal entirely.

### **4. Limit the President's Ability to Waive Sanctions**

The president's authorities to waive statutory sanctions are generally constrained in some way; they typically require the president to certify that the suspension of the mandated sanctions is either necessitated by national interests and/

or merited because Iran has changed the policies that the sanctions were intended to influence. Once Congress gives the president waiver authority, it does not get to approve or disapprove the ways in which such authority is exercised.

That said, Congress can take steps to limit the breadth of the president's discretion. For example, it could demand—either through legislation or through normal oversight activities—that the executive branch provide frequent testimony or submit detailed reports on the implementation of an agreement, such as the details of Iran's compliance, the activities of entities that might be beneficiaries of sanctions relief, the actions that foreign corporations have taken in response to an agreement, diplomatic discussions with partner states, and other topics. By requiring that such details be provided in writing or in public hearings, Congress can make it more difficult for the executive branch to offer sanctions relief based on its own favorable interpretation of either the nuclear agreement or U.S. sanctions laws.<sup>14</sup>

More significantly, Congress could amend existing sanctions legislation to restrict the president's waiver authorities (Katzman, 2014b; Feaver and Lorber, 2014). As an example, the Iran Nuclear Compliance Act of 2013 (S. 1765), if it had passed, would have forbidden the president to “exercise a waiver of, suspend, or otherwise reduce any sanctions imposed in relation to Iran, whether imposed directly by statute or through an Executive order,” unless he certified to Congress that Iran (1) was in full compliance with its agreements with the P5+1, (2) was in full compliance with six U.N. Security Council resolutions regarding its nuclear program, and (3) had fully accounted for its weapons-related nuclear programs and was working to dismantle them. If Iran were to execute a deal in good faith, these certification requirements might not be hard to fulfill, but if questions remain about whether Iran has “fully” complied with the deal, such legislation in the future could prevent the executive branch from implementing sanctions waivers.

Other new legislation could create higher bars that prevent the executive branch from providing effective sanctions relief by, for example, requiring the president to certify developments that are extraordinarily difficult to demonstrate. The Iranian Sanctions Relief Certifica-

tion Act (S. 2667), if it had passed, would have prevented the president from waiving specific sanctions unless he certified every 60 days that the waiver would not cause Iran to receive funds that it would then use to support terrorist groups, develop missiles or nuclear weapons, or abuse human rights. It would be virtually impossible for the president to attest to such developments: Money is fungible, and a nuclear deal will not drive the Iranian regime to abandon its support for its terrorist proxies or improve its human rights performance. If applied to funds that might be released under a comprehensive agreement, such language in future legislation could prevent restricted funds from being turned over to Iran. Not insignificantly, it could also cause tensions between the United States and other countries whose adherence to the sanctions regime is needed, as most of the funds that would be generated by such sanctions relief would derive from deals with corporations, banks, and other entities based in Europe, Russia, and China.

Neither of these bills passed, but both would have given the president the power to determine whether the waiver standards were met—provisions that give the executive branch considerable discretion to interpret events favorably. For example, the Iran Nuclear Compliance Act (S. 1765) would have preserved such presidential discretion by calling for the reimposition of all sanctions that had been suspended or waived if the *president* received information indicating Iran was failing to comply with any nuclear-related agreement and determined that such information was credible and accurate. Congress could, however, deny the White House the ability to determine whether Iran's performance merits continued sanctions relief. The Iran Nuclear Negotiations Act (S. 2650) proposed in 2014, for example, would have triggered sanctions to snap back if an element of the *Intelligence Community* received information on Iranian noncompliance that *the Director of National Intelligence* (DNI) determined was credible and accurate. Because the DNI and the intelligence agencies under his purview are charged with

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*Congress can take steps to limit the breadth of the president's discretion.*

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## *If Congress felt that the administration's waiver of sanctions was unmerited or that Iran had failed to meet its obligations, it could pass legislation that reinstates the original sanctions.*

analyzing information objectively, the drafters of this bill made a clear effort to limit the White House's ability to be lenient with Tehran.

Congress could go further by revoking the president's authority to issue waivers at all. The proposed Sanction Iran, Safeguard America Act (the "SISA Act," S. 2672), for example, would have terminated sanctions waivers issued by the president in accordance with the JPOA by removing waiver provisions from the ISA, CISADA, the FY2012 NDAA, the Iran Threat Reduction and Syria Human Rights Act (P. L. 112–158), and the Iran Freedom and Counter-Proliferation Act. Although the White House intended these waivers to be temporary, the SISA Act would have prevented the president from issuing similar waivers in the future, which could hinder implementation of a comprehensive agreement. Congress is unlikely to eliminate presidential waiver authority entirely, however, as doing so would both undermine the executive branch's constitutional primacy on foreign policy and eliminate the flexibility needed to reach any diplomatic agreement.

### **5. Reinstatement Through Statute Sanctions that the Executive Branch Lifted**

If Congress felt that the administration's waiver of sanctions was unmerited or that Iran had failed to meet its obligations, it could pass legislation reinstating the original sanctions. On October 22, 2014, Rep. Ros-Lehtinen stated in a letter to the president that "the objective of the sanctions program was to force Iran to completely abandon its nuclear ambitions" and that it will not be possible to monitor and verify Iran's compliance with a deal. As a result, she wrote, if the administration reaches an unacceptable deal with Iran, Congress must work to reverse

any unilateral executive branch effort to relax sanctions (Ros-Lehtinen, 2014b).

The 113th Congress considered legislation to annul presidential waivers. The proposed Iran Nuclear Negotiations Act (S. 2650) and the proposed Iran Nuclear Compliance Act (S. 1765), for example, would have reimposed sanctions waived or suspended by the executive branch if Iran had failed to comply with an agreement with the P5+1. The Iran Nuclear Negotiations Act, however, had a second provision that would have "snapped back" sanctions. Section 5 of the bill would have reinstated by statute any sanctions that the president had waived, suspended, or reduced unless the president (1) submitted to Congress (presumably for approval or disapproval) any nuclear-related agreement reached with Iran and (2) certified that the agreement was comprehensive, long-term, addressed all key aspects of Iran's nuclear program, and was significantly longer in duration than any previous U.S.-Iran nuclear-related agreement.

Such legislation would actually elevate the legal status of some sanctions and make them harder for the executive branch to relieve in the future (Golove, 2014). Section 5 of the Iran Nuclear Negotiations Act would have imposed sanctions "by action of law" that had been both instituted and lifted by executive authority (through EOs, for example). Because sanctions imposed by statute can only be relaxed again through a new statute, such a provision would strip the president of his authority to modify such sanctions again in the future. Although Congress has been under considerable political pressure to refrain from instituting new statutory sanctions, language like that in Section 5 would have the same effect while appearing to shift responsibility for the reimposition of sanctions from Congress to the executive branch, as the direct trigger for the "snap back" would be the administration's failure to conclude an agreement that met Congress's ill-defined standards for comprehensiveness or duration.

Congress could also attempt to renew the restrictions contained in the Iran Sanctions Act, which, as noted, is due to expire in December 2016. By that time, the executive branch could form an opinion regarding whether waivers of ISA sanctions were adequate for the effective implementation of the agreement; if so, the president

may decide not to veto a straight renewal of the law. But if Congress attempts to renew the law with new limitations on presidential waiver authorities, or if the president believes that continued waiver of ISA sanctions is inadequate to implement the deal effectively, he may veto such legislation. Continued debates regarding ISA renewal could extend the amount of time it takes for Iran to see the economic benefits of sanctions relief; as stated above, companies will not rush to invest in Iran if they believe renewed sanctions are on the horizon.

## 6. Pass New Sanctions

There is broad support in Congress for strengthening the sanctions regime if diplomatic efforts fail to yield a nuclear agreement, if the terms do not meet congressional expectations, or if Tehran fails to implement the commitments it makes. Two days before Republicans won control of the Senate in the midterm elections in November 2014, Republican Sen. Mitch McConnell of Kentucky said, “What we ought to do, if we can’t get an acceptable agreement with the Iranians, is tighten the sanctions” (Lesniewski, 2014). A December 2013 letter to Senate Majority Leader Harry Reid signed by ten Senate committee chairmen stated, “If Iran fails at any time to abide by the terms of the JPA, or if the JPA is not succeeded by a final long-term agreement that verifiably ensures that Iran’s nuclear program is for entirely peaceful purposes, Congress should promptly consider new sanctions legislation.”<sup>15</sup> Similarly, Sense of Congress legislation in the House introduced by Rep. Franks (H. Con. Res. 109) “declares that new sanctions will be enacted and the arsenal of all legislative options will be evaluated for enactment if Iran breaks its commitments in the interim agreement or a comprehensive agreement.”

Many members of Congress believe that sanctions on Iran should be maintained, or even strengthened, as a way to continue punishing Iran for unacceptable behavior outside the nuclear realm (e.g., support for terrorism and human rights abuses). In a July 2014 letter to the president, 344 members of the House—noting that many of the sanctions are aimed at deterring Iranian support for proliferation, terrorism, money laundering, and internal repression—argued that “Iran’s permanent and verifiable

termination of all of these activities—not just some—is a prerequisite for permanently lifting most congressionally mandated sanctions” (Royce et al., 2014). The number of signatories to this letter represented 79 percent of the House’s members in the 113th Congress—enough to have overridden a presidential veto of legislation denying sanctions relief. Thus, it is possible Congress could impose new sanctions (or reimpose sanctions that had been lifted) by tying them to objectionable Iranian behavior outside the nuclear realm and thus outside the scope of an agreement. Senators opposing new sanctions argue that they could lead “Iran’s decision makers [to] conclude that the United States government was not negotiating in good faith—a view that Iranian hard-liners already espouse,” and thus hasten rather than delay Iran’s nuclear weapons program (Levin and King, 2014).

Nevertheless, Congress has already considered legislation that would impose new sanctions or expand existing ones irrespective of whether a comprehensive nuclear agreement is reached. The SISA Act, for example, would have expanded sanctions on oil, precious metals, autos, and financial institutions. The proposed Iran Export Embargo Act (S. 1001), which had 17 Senate cosponsors, would have blocked U.S. property transactions, financial transactions, trade, and insurance underwriting by any component or agent of the Iranian state. Similarly, the proposed Menendez-Kirk bill—a bipartisan measure with 59 Senate cosponsors (16 Democrats and 43 Republicans)—would have expanded sanctions on Iran’s construction, engineering, energy, shipping, shipbuilding, and mining sectors. Although Majority Leader Reid prevented the Menendez-Kirk bill from coming to a vote in the Senate as a means of giving the administration space to continue negotiations—as well as to head off a

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## *Unilateral, unprovoked expansion of sanctions by Congress could alienate U.S. allies and cause them to abandon U.S. insistence on maintaining a seemingly permanent sanctions regime, leading to U.S. isolation on the nuclear issue.*

presidential veto (Herb, 2014)— Sen. McConnell stated two days before the November 2014 midterm election that Menendez-Kirk is “the kind of thing a new Senate would be voting on” (Khan, 2014).

Some proposed legislation would have expanded sanctions for explicitly nonnuclear reasons, which could negate sanctions relief offered in a nuclear deal. The proposed Nuclear Iran Prevention Act (H. R. 850), widely referred to as Royce-Engel after its sponsors, would have required the executive branch to designate Iranian human rights violators and apply financial sanctions to them. The House Foreign Affairs Committee approved the bill unanimously and the full House passed it in a 400-20 vote, demonstrating broad bipartisan support for punishing Iran for its nonnuclear policies.

The impact of new sanctions will depend on whether they were triggered by Iranian noncompliance or congressional pique stemming from issues unrelated to Iran’s nuclear program. If sanctions are reinstated because Iran clearly reneged on its commitments and continued its nuclear program unabated, the deal will have collapsed as a result of Iranian cheating. In such a case, the international community can be expected to share Congress’s frustration and join the United States in imposing new limits on Iranian economic activity. Iran might not be caught quite so obviously red-handed, however; Tehran might well contest allegations of noncompliance, and countries that had already resumed trade and investment with Iran would be reluctant to halt such commerce and impose new restrictions.

However, if Congress institutes new sanctions even as Iran is faithfully implementing its end of the bargain, it will appear as if the United States has transformed the sanctions regime into an end in itself rather than as a tool

for achieving strategic counterproliferation objectives. Iran will inevitably see such steps as a repudiation of the United States’ own commitments under the agreement, regardless of whether such sanctions are linked to Iran’s nuclear program or to its performance on issues such as terrorism or human rights. Tehran would likely cite new sanctions as justification for walking away from the deal and resuming its nuclear program, and collapse of the agreement would be widely blamed on the United States.

Unilateral, unprovoked expansion of sanctions by Congress could therefore alienate U.S. allies and cause them to abandon U.S. insistence on maintaining a seemingly permanent sanctions regime, leading to U.S. isolation on the nuclear issue. Given that the sanctions’ effectiveness stems from their global application, CNAS’s Rosenberg and New York University Law School’s Zachary Goldman argue that new U.S. sanctions could undermine the international sanctions regime (Rosenberg and Goldman, 2014). If the U.S. objective is to find a peaceful solution that puts an end to Iran’s nuclear weapons program, new sanctions that take effect even if Iran is complying with the deal would undermine that objective (Rosenberg, 2014).

In sum, new sanctions designed to punish Iranian noncompliance with an agreement could encourage Iran to follow through on its commitments and thus help keep the deal on track, although Iran might portray such conditional sanctions as a duplicitous effort by the United States to keep sanctions in place permanently. However, if Iran complies with the agreement and the United States imposes additional punitive sanctions, the Iranian government could claim that Washington has breached the agreement and resume higher-level uranium enrichment. Other members of the P5+1 would likely express frustration with a U.S. insistence on penalizing Tehran despite its compliance with the deal, and international support for continued sanctions would diminish. As a result, Congress is only likely to impose new sanctions if they are triggered by Iranian noncompliance with a nuclear agreement.

### ***C. Steps Likely to Block Implementation of a Deal*** ***7. Block Funds to Execute an Agreement***

One of the most concrete ways Congress could affect implementation of a deal would be to use its power of the

purpose. Congress could prohibit the executive branch from spending money to implement an agreement, in which case no federal government resources (human or financial) could be used to draft new implementing regulations, participate in inspection and verification missions, explain the implications of sanctions reforms to corporations, or take any other measures that contribute to execution of a deal. The executive branch would probably be able to work around some funding restrictions—for example, the IAEA could lead inspection and verification efforts without U.S. participation or financial support—but a cutoff of funding would prevent the United States from implementing many elements of a deal. Congress could also impose narrowly written provisions that block implementation funding only for those elements it finds objectionable. For example, it could pass legislation allowing U.S. government experts to participate in IAEA inspection/verification efforts but prohibiting Treasury Department officials from drafting new regulations necessary to execute changes to existing sanctions.

One bill already proposed a cutoff of funds to execute an agreement. Section 3(d) of the Iran Nuclear Negotiations Act (S. 2650) would have prohibited the use of FY2014 State Department funds to implement a nuclear agreement—specifically including the implementation of waivers, suspensions, or other changes that reduce the impact of the sanctions regime—if the president refused to provide an agreement to Congress for its review or if Congress rejected an agreement by passing a joint resolution of disapproval.<sup>16</sup>

If the U.S. objective is to secure a deal that leads to a peaceful resolution of the Iranian nuclear threat, budget legislation that forces the United States to abandon an already negotiated settlement would yield perhaps the worst possible outcome: It would scuttle a deal that had been concluded after years of working toward and engaging in negotiations, undermine the prospects for a resumption of diplomatic efforts, encourage Iran to resume its nuclear program, alienate the rest of the P5+1, significantly complicate the United States' ability to reach international agreements in the future, and—with diplomatic solutions to the nuclear standoff no longer viable—potentially lead to increased calls for U.S. military action against Iran's nuclear facilities (Golove, 2014).

## 8. Disapprove Agreement

Congress could pass legislation that rejects a nuclear agreement and prevents the executive branch from implementing it. As discussed earlier, Congress and the administration continue to spar over the constitutional question of whether the executive branch has the inherent authority to negotiate a nuclear agreement with Iran. As a political matter, the administration has agreed to *consult* with Congress; while consultations that took place during the negotiations may have enabled the executive branch to factor congressional concerns into a final agreement, executive branch officials seem more inclined to inform members of Congress of the terms of a final agreement than to give the legislature any ability to alter it after the fact.

Nevertheless, as a legal matter, Congress could pass legislation requiring the executive branch to submit an agreement to Congress for its approval or disapproval. Several lawmakers have introduced legislation that would give Congress an opportunity to vote down an agreement. Rep. Franks introduced the Iran Nuclear Agreement Accountability Act (H. R. 4967), which would have required the president to submit any agreement to Congress within three days and which specified expedited procedures for a joint congressional resolution of approval or disapproval of any such agreement. Sen. Corker introduced an amendment to the U.S.-Israel Strategic Partnership Act (S. 462) containing virtually identical language as H. R. 4967, with one exception: It only contained provisions for a joint resolution of *disapproval*. The Corker amendment was clearly intended to empower Congress to block a nuclear deal, as it offered no option for endorsing one.

As discussed earlier, a joint resolution of *approval* would send a signal of congressional support for a deal but have little to no impact on the executive branch's ability to implement it. In contrast, if Congress were to pass a joint resolution of *disapproval*, it would effectively nullify the agreement by statute—much as the Senate's refusal to

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*A joint resolution of disapproval—if it could be passed over a presidential veto—would have an enormous impact; it would effectively kill a deal and remove any chance that the Iranian nuclear program could be contained through peaceful negotiations.*

provide advice and consent to a treaty prevents a treaty from taking effect. (The president could veto the joint resolution, but Congress could attempt to override the veto with a two-thirds majority in both chambers.) Similar to a scenario in which Congress withholds funds for the execution of a nuclear agreement, as described above, a joint resolution of disapproval could lead to a series of potential problems for the United States: It could drive Iran to resume high-level enrichment, alienate foreign partners and thus undermine the global sanctions regime, undermine the authority of future U.S. negotiators on any topic, and lead to increased calls for U.S. military action as the sole remaining way to put an end to Iran's nuclear program.

In sum, a congressional joint resolution of *approval* would present no legal or programmatic obstacles to implementation of a deal and send a powerful signal that Congress supports the executive branch's efforts to relax economic sanctions. Given that skepticism of Iran's intentions is widespread among lawmakers from both parties, however, Congress is unlikely to pass a joint resolution of approval. In contrast, a joint resolution of *disapproval*—if it could be passed over a presidential veto—would have an enormous impact; it would effectively kill a deal and remove any chance that the Iranian nuclear program could be contained through peaceful negotiations.

#### **D. Authorization to Use Military Force**

No matter which option Congress chooses to pursue, it could also vote to authorize the use of military force against Iran under certain circumstances—for example, if Iran is found to have violated the agreement. It could authorize the president to use force regardless of any such request from the White House. Such an authorization

could last for the duration of the nuclear agreement, or it could be time-limited (such as until the end of the current president's term).

In some legislation, Congress has made clear that it is *not* clearing a path to war. For example, the FY 2014 NDAA clearly stated, "Nothing in this Act shall be construed as authorizing the use of force against Syria or Iran." Other bills, however, both tacitly and explicitly authorized the use of force. For example, a Sense of the Senate resolution introduced by GOP Florida Sen. Marco Rubio (S. Res. 269) hinted at the continued viability of military force as one potential U.S. response to an Iranian failure to dismantle its nuclear infrastructure: "It shall be the policy of the United States that the Government of Iran will not be allowed to develop a nuclear weapon and that all instruments of United States power and influence remain on the table to prevent this outcome."

The proposed United States-Iran Nuclear Negotiations Act (H. R. 3292), introduced by Rep. Franks, similarly stated as a matter of policy that "Congress declares that the United States is wholly capable, willing, and ready to use military force to prevent Iran from obtaining or developing a nuclear weapons capability." More importantly, however, the bill provided legal approval for the president to use force preemptively to protect the United States from an eventual Iranian nuclear weapon. Section 4(b) of the bill stated that, pursuant to the War Powers Resolution, "Congress hereby acknowledges that this Act constitutes current consultation with the President on Iran in order to provide for swift application of all options to prevent Iran from obtaining a nuclear weapons capability and provides consent to the necessary and appropriate use of force against legitimate targets in Iran."

The stated intent of Rep. Franks' bill was not to leapfrog negotiations and jump-start a war, but rather "to maximize the United States' diplomatic influence to achieve . . . a negotiated settlement with the Government of Iran regarding Iran's nuclear weapons program." In other words, by preauthorizing the use of force, the bill would have made clear to Iran that failure of negotiations could easily lead to military consequences, thereby encouraging Tehran to conclude a deal. Congress could, of course, write similar legislation that authorizes force if at some future

point in time Iran breaks commitments it made under a deal, thereby promoting full Iranian compliance.

Authorizing the president to use military force could have one of two broad impacts. On one hand, it could improve the likelihood that Iran will comply with an agreement to avoid triggering a possible invasion, the threshold for which will have been lowered by the satisfaction of the requirement for congressional debate and authorization. On the other hand—particularly if Iran is following through on the commitments it made in an agreement—an AUMF could lead Iran, the European Union, and others to conclude that the United States is working to sabotage a deal, potentially driving Iran to walk away from its commitments and resume high-level enrichment and causing European countries to distance themselves from the United States on Iran.

In practice, however, it is extremely unlikely that Congress would actually pass an open-ended AUMF against Iran. If the president is unwilling to use force, an AUMF would be an empty gesture that makes the United States appear to prefer war over a peaceful diplomatic agreement that has already been concluded. Furthermore, Congress will almost certainly want to engage in oversight of the ways in which the president proposes to manage a military conflict, and preemptive authorization to use force would limit the president's need for such consultation. Moreover, Iran will still be implementing an agreement with the P5+1 long into the term of the next president, and Congress will be reluctant to give an unknown occupant of the Oval Office a clear path to war. Congress could put a time limit on an authorization, but even assuming an AUMF would intimidate Iran into complying with an agreement, doing so would simply convey to Iran that it only has to adhere to the terms of the agreement until the authorization runs out. In sum, unless Iran blatantly cheats on a deal or demonstrates it had been using negotiations to gain time to nurture a covert nuclear program, congressional passage of a preemptive AUMF is highly unlikely.

Rather than authorize the president to deploy the American military against Iran, Congress could take a related step that sends the same message to Tehran while enabling some members of Congress to burnish their pro-Israel credentials with key domestic constituencies:

It could authorize military assistance to Israel that would bolster that nation's ability to strike Iran's nuclear facilities. According to Rep. Brad Sherman (D-CA), "A second way to enhance the military option is to make sure that Israel has not only the 5,000-pound bunker-buster bombs that we have transferred, but also an appropriate number of GBU-57 30,000-pound bunker-buster bombs, also known as massive ordinance penetrator, and that we also transfer to Israel some of our surplus B-52 bombers capable of carrying a 30,000-pound bomb" (Brad Sherman, 2014).

Such sentiments were included in nonbinding Sense of Congress language contained in an initial version of the FY2014 NDAA that was not passed (H. R. 1960). Section 1266(c) of this bill read, "It is the sense of Congress that air refueling tankers and advanced bunker-buster munitions should immediately be transferred to Israel to ensure our democratic ally has an independent capability to remove any existential threat posed by the Iranian nuclear program and defend its vital national interests." The Senate passed similar language by a vote of 99–0 in a resolution on Israel (S. Res. 65) that included a Sense of Congress provision stating that "if the Government of Israel is compelled to take military action in legitimate self-defense against Iran's nuclear weapons program, the United States Government should stand with Israel and provide, in accordance with United States law and the constitutional responsibility of Congress to authorize the use of military force, diplomatic, military, and economic support to the Government of Israel in its defense of its territory, people, and existence."<sup>17</sup> [The identical language appears in Section 1272(b)(8) of the FY2014 NDAA and in Section 2(b)(5) of the Menendez-Kirk bill.]

Legislative provisions that would enhance Israel's unilateral ability to strike Iranian nuclear sites are intended

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*Unless Iran blatantly cheats on a deal or demonstrates it had been using negotiations to gain time to nurture a covert nuclear program, congressional passage of a preemptive AUMF is highly unlikely.*

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*While opposition to a deal may be sufficiently bipartisan to reach a veto-proof majority, the White House will put intense pressure on House and Senate Democrats to refrain from overriding a presidential veto of legislation that hinders a deal's implementation.*

primarily for rhetorical purposes, as the executive branch would almost certainly refrain from selling weapons, air frames, or other materiel to Israel for such a purpose. Nevertheless, such rhetoric enables lawmakers from both parties to take a tough stance on Iran while demonstrating unwavering support for Israel—a political two-fer with few concrete repercussions.

### **Influences on Congress**

A number of dynamics could influence the ways in which members of Congress decide to engage on the implementation of an Iran deal.

#### **Domestic Political Pressure**

The White House's decision to conclude a nuclear deal with Iran—not to mention the details of its terms—will, without question, be a highly politicized issue. A nuclear agreement is among the Obama administration's top foreign policy priorities. As a result, regardless of the merits of the deal's terms, some Democrats will support an agreement and some Republicans will oppose it. Partisan rhetoric will be intensified by the certainty that President Obama's foreign policy achievements will be intensely debated during the 2016 presidential campaign—particularly if Hillary Rodham Clinton, who was intimately involved in outreach to Iran on the nuclear issue as President Obama's first Secretary of State, is a candidate for the presidency. Given that Republicans won control of the Senate in November's midterm elections and now control both chambers of Congress, they may wish to debate the merits of an agreement for an extended period of time so as to cast doubt on the wisdom of the deal well into the presidential campaign.

Such political calculations may affect more than just campaign rhetoric; they may affect the positions that lawmakers take and the votes they cast. Just as many congressional Democrats seeking re-election in 2014 distanced themselves from a White House with sinking poll numbers, Democrats in the House and Senate campaigning for their own re-election in 2016 may find value in opposing a top White House foreign policy priority if the administration's approval ratings remain low. On the other hand, Democrats who have previously expressed support for strengthening sanctions on Iran—even to the point of cosponsoring bills that the president has threatened to veto, such as Menendez-Kirk—may not be willing to sink a Democratic president's signature foreign policy accomplishment by voting to override a veto. Thus, while opposition to a deal may be sufficiently bipartisan to reach a veto-proof majority, the White House will put intense pressure on House and Senate Democrats to refrain from overriding a presidential veto of legislation that hinders a deal's implementation. As a result, unless congressional Democrats have strong political imperatives to distance themselves from the Obama administration, there is little chance that both houses of Congress would actually be able to muster sufficient votes to override a veto.

#### **Support for Israel**

The Israeli government has repeatedly voiced its concerns about Iran's nuclear program. Prime Minister Benjamin Netanyahu has called Iran's nuclear program “an existential threat for Israel.”<sup>18</sup> In a speech to the U.N. General Assembly in September 2014, he argued vehemently that Iran is working to deceive the West into a deal that frees it from sanctions while allowing it to maintain a nuclear enrichment capability that it could use to develop nuclear weapons quickly. Such a deal, he argued, would enable “Iran, the world's most dangerous regime, in the world's most dangerous region, [to] obtain the world's most dangerous weapons” (Netanyahu, 2014).

Many members of Congress who are concerned about Israeli security—Republicans and Democrats—echo the prime minister's arguments. They express concern that even if Tehran signs a deal, Iran will continue to develop nuclear weapons that will endanger the United States and its allies,

including Israel, and that Iran should not be rewarded with sanctions relief as long as it supports Hezbollah, Hamas, and other groups that directly threaten Israeli security.<sup>19</sup>

Some members of Congress have directly linked their opposition to sanctions relief to the continued threat Iran poses to Israel. Rep. Ros-Lehtinen has stated (2014a, pp. 5–6) that she opposes any agreement that leaves Iran with any enrichment capacity because “Iran has nothing but evil intentions and [sic] toward our allies [and] the democratic Jewish state of Israel.” When Sen. Corker introduced his amendment to the U.S.-Israel Strategic Partnership Act that would have required the president to submit any deal to Congress for committee hearings and for a vote on a joint resolution of disapproval, he stated that he introduced the amendment to legislation on U.S.-Israeli relations because Iran’s nuclear capability is “the No. 1 issue that my friends in Israel, anyway, care about” (Pecquet, 2014). As noted, some members, including Rep. Sherman, have advocated the provision of military assistance to Israel that would enhance its own ability to attack Iranian military facilities, thereby maintaining an independent Israeli military deterrent that could prevent—or respond to—Iranian weaponization (Engel, 2014, p. 62).

Broadly speaking, support for Israel is widespread in Congress, and resolutions supporting Israel’s security and its right to self-defense typically pass with little or no opposition.<sup>20</sup> As a result, concerns about Israeli security in the wake of a nuclear deal may lead less-vocal members of Congress to withhold their support from a deal as well.

### **Iranian Actions in the International Arena**

Iranian actions in the international arena could serve as “wild card” scenarios that push Congress to take action. Certainly, any indication that Iran had been negotiating in bad faith—such as the discovery of a new covert nuclear facility or evidence that Iran had secretly been working to weaponize a nuclear device despite its repeated denials—could derail a deal and cause Congress to strengthen the sanctions regime.

As discussed, many lawmakers oppose relaxing sanctions on Iran in exchange for nuclear-related concessions as long as Tehran continues to provide support to terrorist groups. A dramatic terrorist attack traced back to Iranian-

supported organizations such as Hezbollah or Hamas, or a renewed offensive by these groups against Israel, could dramatically undermine congressional willingness to permit sanctions relief and may even generate greater congressional enthusiasm for additional sanctions. Even events short of violence, such as the interception of a shipment of Iranian-manufactured rockets to Hamas, could undermine congressional support.

U.S. officials have long criticized the Iranian government for providing military assistance and political support to the regime of Bashar al-Assad in Syria. If such assistance came to light—for example, if rebels captured Iranian-made weapons or Iranian military advisers working with the Syrian Army—congressional support for a deal would diminish. Similarly, graphic evidence of human rights abuses by Iran-backed Shi’a militias in Iraq could also undermine any effort to reward Iran.

Finally, congressional hostility toward Iran could increase if the Iranian government were to detain more American citizens without apparent justification. Members of Congress have complained bitterly about Tehran’s July 2014 arrest of *Washington Post* journalist Jason Rezaian, and U.S.-Iranian tensions were previously raised by Iran’s two-year detention of three American hikers from 2009–2011 (Goodman and Cowell, 2011), its 2011 arrest and conviction of a former U.S. Marine on espionage charges (Associated Press, 2014), and its 2007 arrest of Woodrow Wilson Center scholar Haleh Esfandiari (Wright, 2007). Members have spoken out against these arrests and introduced legislation calling for nuclear negotiations to be frozen until Iran releases all Americans detained unjustly (S. Res. 328); further unwarranted detentions could lead Congress to halt implementation of a deal. On the flip side, an Iranian decision to release detained Americans could bolster congressional support for—or at least reduce congressional opposition to—sanctions relief measures seen as rewarding Iran.

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*Iranian actions in the international arena could serve as “wild card” scenarios that push Congress to take action.*

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*The executive branch is unlikely to take advantage of waiver authorities available to the president to permit U.S. trade with Iran, and a comprehensive agreement is unlikely to provide opportunities for U.S. companies to do business in or with Iran.*

### **Economic Pressures**

Since the economic crisis that began with plummeting housing values and the collapse of the subprime mortgage market in 2006, economic recovery has been at the top of both parties' domestic agendas. It is notable, therefore, that the sanctions regime's cost to the U.S. economy—in terms of trade sacrificed and jobs not created—has generally not been a topic of debate. Some anti-sanctions advocates note that forgone trade with Iran represents lost jobs and income for Americans. According to the National Iranian American Council (NIAC), an advocacy group that has argued for sanctions to be lifted, "From 1995 to 2012, the U.S. sacrificed between \$134.7 and \$175.3 billion in potential export revenue to Iran. . . . On average, the lost export revenues translate into between 51,043 and 66,436 lost job opportunities each year" (NIAC, 2014). In case the message was lost on members of Congress, NIAC helpfully broke down its calculations of the cost of sanctions and the number of lost jobs by state. Despite the potential for lost trade and jobs, the council notes that members of Congress did not consider the sanctions' impact on the United States in any debates related to the Iranian nuclear issue (NIAC, 2014).

The resumption of Iranian oil exports could also benefit the American consumer by contributing to a reduction in oil prices. However, global oil prices have been declining (a trend that most analysts believe will continue), and increased U.S. domestic oil and gas production has helped reduce dependence on foreign energy imports. The national security implications of an Iranian nuclear capability clearly resonate with the American electorate far more than the domestic economic costs of continued prohibitions on trade and investment with Iran.

As a result, few U.S. corporations have bothered to lobby Congress on issues related to Iran sanctions. Reuters reported in late 2013 that the largest U.S. energy companies—including ExxonMobil, Chevron, ConocoPhillips, and Halliburton—had refrained from lobbying Congress to relax Iran sanctions, noting that the issue is "too hot to touch" (Gardner and Sullivan, 2013). (Some U.S. companies and industry associations had, however, argued against tightening sanctions further in ways that would hinder their ability to operate around the world [Drajem, 2010].) In terms of building political support for a resumption of U.S. trade with Iran, U.S. companies are starting from a very weak point. In addition, companies must choose their legislative battles, and the prospect of future business in Iran ranks lower than other lobbying priorities, such as taxation, employment, and environmental regulations.

Furthermore, many of the sanctions that prohibit American companies from trading with and investing in Iran are almost certain to remain in place. They are based on statutes and EOs that link such restrictions directly to Iran's support for terrorism and its human rights abuses, most of which predate concerns about Iran's nuclear program. Congress has no reason to lift such statutory prohibitions based on a nuclear agreement. For their part, executive branch officials have insisted on addressing nuclear issues in isolation from other policy concerns and are therefore not seeking an end to nonnuclear sanctions;<sup>21</sup> as Under Secretary of State Sherman told the Senate Foreign Relations Committee in July 2014, "Where it comes to our sanctions on terrorism, our sanctions on human rights, they will continue in place" (Wendy Sherman, 2014). As a result, the executive branch is unlikely to take advantage of waiver authorities available to the president to permit U.S. trade with Iran, and a comprehensive agreement is unlikely to provide opportunities for U.S. companies to do business in or with Iran.

If a nuclear deal leads to sanctions relief that enables non-American companies to resume doing business in Iran, U.S. companies and grassroots lobbying groups could increasingly emphasize the economic benefits of resuming American trade with Iran. U.S. corporations would almost certainly lobby Congress more aggressively to permit them to enter the market as well, arguing that

U.S. trade and investment will create jobs at home and that even delaying U.S. companies' entry into the Iranian market will endanger their ability to compete. However, such lobbying is unlikely to overcome deeply ingrained suspicions of the Iranian regime and criticism that revenues earned by Tehran from U.S. commerce would be used to support terrorism.

## Summary

Contrary to the view that Congress must act in order for promised sanctions relief to be implemented, the executive branch has extensive authorities to lift sanctions imposed by executive authority or to waive or suspend sanctions imposed by statute. Furthermore, by exercising a presidential veto, the White House could prevent Congress from imposing new sanctions or renewing existing ones, which will allow some critical sanctions—particularly those imposed by the Iran Sanctions Act—to expire in 2016.

This is not to say that Congress has no role in the implementation of a nuclear agreement. Indeed, Congress could take a range of steps that could either facilitate or thwart execution of a deal, including:

- removing or relaxing the sanctions by statute, thereby signaling to Iran (and companies seeking to do business there) its support for the agreement
- expressing its views on the agreement—whether positive, neutral, or negative—through a nonbinding Sense of Congress resolution and describing expectations for how the agreement should be implemented
- setting conditions for what would happen if Iran fails to comply with the agreement at some future point, such as reinstating sanctions or adding new sanctions—either with or without “snap-back” provisions—or preauthorizing use of military force
- placing obstacles on the path to implementation by limiting the executive branch's ability to waive sanctions, blocking funds for executing an agreement, or requiring the president to submit the agreement for potential congressional disapproval.

Taking any of these steps (even passage of a nonbinding resolution) will require proactive congressional action, which is difficult in Washington's current highly politi-

cized environment. That said, opposition to the Iranian nuclear program has created alliances between members of Congress on opposite ends of the political spectrum, meaning legislation that hinders or blocks implementation of an agreement could generate sufficient votes to pass. (Whether such legislation could be enacted into law over a presidential veto is unclear, but certainly possible.) Congress is unlikely to provide statutory sanctions relief, given that many lawmakers are sufficiently skeptical that Iran will comply with its obligations under a deal.

Should Congress actively oppose a nuclear deal, it could pass legislation that hinders its implementation, imposes new punitive sanctions, or even rejects a deal outright. Because implementation of a deal will be a top priority for the White House, however, Congress would have to pass such legislation with a veto-proof two-thirds majority in both chambers—an exceedingly difficult standard to meet. So, while a nuclear agreement will be subject to robust debate on Capitol Hill, in the end, Congress as a body is not likely to take action that directly affects the implementation of a nuclear deal. Key members of Congress—such as House and Senate leaders and the leadership of relevant committees—will have the ability to shape the executive branch's execution of a deal through consultations both formal and informal, but such input will only influence the implementation of sanctions relief at the margins.

If Congress does manage to scuttle a nuclear deal by passing legislation over the president's veto, it will send a signal that punitive economic sanctions are the objective of U.S. policy toward Iran rather than a tool to achieve denuclearization. In the aftermath of such a vote, Iran

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*If Congress does manage to scuttle a nuclear deal by passing legislation over the president's veto, it will send a signal that punitive economic sanctions are the objective of U.S. policy toward Iran rather than a tool to achieve denuclearization. In the aftermath, Iran would likely abrogate the agreement and resume high-level enrichment.*

would likely abrogate the agreement and resume high-level enrichment. European allies, frustrated that the United States seems unable to take “yes” for an answer, could pursue their own diplomatic dialogues with Tehran, which in turn could lead to the lifting of EU sanctions and the application of punitive measures against U.S. entities if the U.S. government sanctions European companies. As Sen. Jeff Flake (R-AZ) commented during a Foreign Relations Committee hearing, “allies may cut their own deal or move on without us” (Flake, 2014). With the resumption of Iranian enrichment, the weakening of the global sanctions regime, and the discrediting of diplomatic dialogue, military options for putting an end to Iran’s nuclear program would look increasingly viable. These potential consequences may act as a constraint on Congress’s willingness to kill a diplomatic resolution to Iran’s nuclear program by obstructing the administration’s promised sanctions relief.

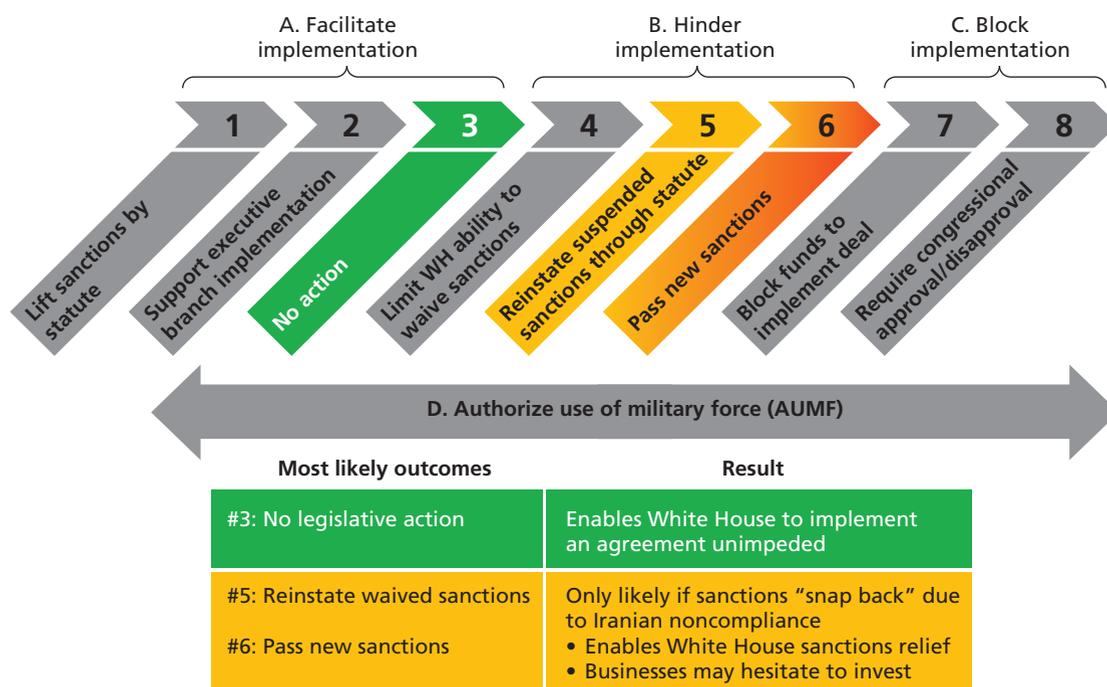
In the end, then, Congress is unlikely to relax sanctions by statute because of doubts that Iran will follow through, and it is unlikely to prevent the implementation of a negotiated settlement because of potentially dire con-

sequences. Thus, the most plausible congressional action is somewhere on the spectrum between facilitating and blocking implementation of an agreement.

Congress is most likely to take one of three broad courses of action in the middle of the spectrum depicted in Figure 2.

- Whether because of partisan gridlock, an inability to pass legislation over a presidential veto, or perhaps a desire to keep a contentious national security issue alive throughout the 2016 presidential campaign, Congress might take no legislative action at all (Option 3), which would enable the executive branch to implement an agreement unimpeded.
- Congress could pass legislation that reinstates sanctions waived by the White House (Option 5) or that strengthens the terms of existing sanctions (Option 6). Any such legislation is likely to impose or enhance sanctions only if Iran fails to implement the deal in a verifiable manner. Such a conditional reimposition of sanctions through snap-back provisions could actually enhance the likelihood that Iran will follow through on its commitments and improve the chances for

**Figure 2. Actions Congress Is Most Likely to Take**



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successful long-term implementation of an agreement. It would also demonstrate to European partners that the United States is only willing to reinstitute punitive sanctions if Iran reneges on the deal—thereby placing the blame for any resumption of sanctions on Tehran. The executive branch may view snap-back provisions positively, as they would only take effect if Iran fails to meet its obligations.

Congress is unlikely to pursue another option in the middle of the spectrum—passing legislation that limits the White House’s ability to waive sanctions (Option 4). Such steps would constrain the executive branch’s ability to offer promised sanctions relief to Iran but not prohibit it from doing so. The impact of such a course of action on the overall implementation of a deal is therefore likely to be quite limited and thus unappealing not only to lawmakers who oppose the provision of sanctions relief, but also to those who wish to support an administration-negotiated deal. Moreover, officials in both the executive and legislative branches of government (as well as perhaps the courts) would object to legislation that eliminates or substantially scales back the president’s waiver authority because such limits would make it difficult to reach any diplomatic solution to the Iranian nuclear issue.

Congress can be expected to work diligently to shape the ways in which the administration executes an agreement by exercising aggressive oversight and by applying leverage on unrelated issues of importance to the administration. Senators opposed to a deal’s terms could threaten to tie up the president’s agenda in the

Senate—for example, by filibustering nominees or blocking legislation on priorities unrelated to Iran—unless the White House makes significant concessions in the way it executes an agreement. The president could hold out against such pressure if execution of an Iran deal is his highest priority, but he may well make compromises on the implementation of an Iran agreement as long as they (1) provide sufficient incentives to Iran to continue abiding by limits placed on its nuclear program, and (2) enable him to make progress on other issues before Congress.

Although the executive branch can offer Iran a wide range of sanctions relief on the president’s own authority, the next president could scale back U.S. implementation or even repudiate a deal altogether a mere two years hence. Congressional approval for sanctions relief—or at least strong signals from Congress that it will not undermine a deal—would make clear that the United States is willing to provide durable, long-term sanctions relief and could engender more substantial Iranian modifications to its nuclear program in return. If Iran proves itself to be an untrustworthy partner, waived sanctions can easily be reinstated. However, over time, as both Washington and Tehran demonstrate to each other that they are indeed committed to following through on their obligations, the executive branch may seek statutory change as a means of further institutionalizing the agreement. If Congress is willing to allow the executive branch to provide sanctions relief on its own authority for a few years, and if Iran responds by faithfully executing the agreement, the prospects for statutory change may improve.

## Appendix

**Table 2: Selected Sanctions Statutes (Passed into Law)**

Law	Title	Became Law
P. L. 95–223	International Emergency Economic Powers Act (IEEPA)	December 28, 1977
P. L. 104–172	Iran-Libya Sanctions Act (ILSA) [amended to become Iran Sanctions Act (ISA)]	August 5, 1996; Extended 2001 (P. L. 107–24), 2006 (P. L. 109–293), 2012 (P. L. 112–158)
P. L. 111–195	Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA)	July 1, 2010
P. L. 112–81	FY2012 National Defense Authorization Act (NDAA)	December 31, 2011
P. L. 112–158	Iran Threat Reduction and Syrian Human Rights Act	August 10, 2012
P. L. 113–66	FY2014 NDAA	December 26, 2013

**Table 3: Proposed Legislation (Not Passed) Introduced in the 113th Congress (2013–2014)**

Bill	Title	Status	Lead Sponsor(s)	Cosponsors/ Vote Tallies
S. 1001	Iran Export Embargo Act	Introduced May 21, 2013	Sen. John Cornyn (R)	20 Republicans 0 Democrats
S.1765	Iran Nuclear Compliance Act	Introduced November 21, 2013	Sen. Bob Corker (R)	3 Republicans 0 Democrats
S. 1881	Nuclear Weapon Free Iran Act (Menendez-Kirk)	Introduced December 19, 2013	Sens. Robert Menendez (D) and Mark Kirk (R)	43 Republicans 16 Democrats
S.2650	Iran Nuclear Negotiations Act	Introduced July 23, 2014	Sen Bob Corker (R)	11 Republicans 0 Democrats
S.2667	Iranian Sanctions Relief Certification Act	Introduced July 23, 2014	Sen. Mark Kirk (R)	11 Republicans 0 Democrats
S. 2672	Sanction Iran, Safeguard America Act of 2014 (SISA Act)	Introduced July 28, 2014	Sen. Ted Cruz (R)	None
H. R. 850	Nuclear Iran Prevention Act (Royce-Engel)	Passed House July 31, 2013 (400–20)	Reps. Ed Royce (R) and Eliot Engel (D)	Yeas (222 R, 178 D) Nays (3 R, 17 D) Present (0 R, 1 D) No vote (9 R, 4 D)
H. R. 1960	FY2014 NDAA	Passed House June 14, 2013 (315–108)	Rep. Howard P. “Buck” McKeon (R)	Yeas (212 R, 103 D) Nays (18 R, 90 D) No vote (3 R, 8 D)
H. R. 4967	Iran Nuclear Agreement Accountability Act	Introduced June 25, 2014	Rep. Trent Franks (R)	10 Republicans 0 Democrats
H. R. 3292	United States-Iran Nuclear Negotiations Act	Introduced October 22, 2013	Rep. Trent Franks (R)	29 Republicans 0 Democrats

## Notes

<sup>1</sup>The extent to which a waiver must advance the national interest differs by statute, though the differences in statutory language have no legal impact on the president's authority to institute a waiver. As Katzman (2014c) writes,

The President has the authority to waive sanctions on firms determined to have violated ISA provisions. Under the original version of ISA [he may] waive sanctions if he certifies that doing so is *important* to the U.S. national interest (§9(c)). CISADA (§102(c)) changed the 9(c) ISA waiver standard to '*necessary*' to the national interest, and the Iran Threat Reduction Act modified the standard further to '*essential to the national security interests*' of the United States. For sanctionable transactions involving WMD equipment, the waiver standard, as modified by the Iran Threat Reduction Act, is '*vital to the national security interests of the United States.*'

Since the law does not define the distinctions between these standards, the difference is principally a rhetorical one that potentially complicates a president's ability to defend a waiver decision publicly. As an example, it could be argued relatively easily that it was in the national interest for the United States to waive restrictions on Iranian pistachio and carpet exports in March 2000 in order to show Iranians that sanctions are meant to target the regime and not ordinary civilians. It might be more difficult to make a convincing public case that permitting Iranian pistachio exports was "vital to the national security interests of the United States," but executive branch officials could certainly make that argument if required. The pistachio/carpet waiver was a modification to an earlier executive order and so did not actually need to meet either statutory standard. For more on this see Sanger (2000).

<sup>2</sup>The regime of economic sanctions on Iran is so complicated that experts cannot even agree on how many laws and EOs apply them. A State Department fact sheet (2014a) lists seven statutes and 11 EOs. International Crisis Group analyst Ali Vaez claims nine statutes and 16 EOs. Journalist and Atlantic Council Senior Fellow Barbara Slavin (2014) cites ten statutes and 26 EOs. Finally, the Center for Arms Control and Non-Proliferation cites nine laws and 12 EOs (Kattan, 2013).

<sup>3</sup>Sunset provisions are generally intended to ensure laws do not remain in effect beyond their usefulness simply because Congress cannot or will not devote the time or political capital to revising them.

<sup>4</sup>For details on the president's authority to waive or terminate existing sanctions on Iran, see Abdi and Cullis (2014).

<sup>5</sup>Waiver of Section 301 sanctions requires a certification that the waiver is "*vital* to the national security interests of the United States," while waiver of Section 302 sanctions requires that the waiver merely be "*essential* to the national security interests of the United States." (P. L. 112-158).

<sup>6</sup>Pursuant to the emergency he declared in EO 12957 on March 15, 1996, Clinton imposed a wide range of prohibitions on trade with Iran in EO 12959 on May 6, 1995 (EO 12959, 1995).

<sup>7</sup>See p. 2 of Katzman (2014a). Section 401 of CISADA provides for termination authority under similar conditions, namely if the president determines that Iran no longer meets the requirements for designation as a state sponsor of terrorism and has stopped efforts to develop or acquire nuclear, chemical, and biological weapons and ballistic missile technologies (P. L. 111-195).

<sup>8</sup>See, for example, "Key Judgments from a National Intelligence Estimate on Iran's Nuclear Activity," (2007), and Risen and Mazetti (2012).

<sup>9</sup>See also p. 4 of Rennack (2014) and p. 5 of Katzman (2014a). If Congress believed removing Iran from the list would truly be a step too far, it could prevent the removal of a country from the state sponsors of terrorism list through a joint resolution. The president could then veto the joint resolution, although a two-thirds majority of both houses could override the veto.

<sup>10</sup>For a discussion of the political factors that influence inclusion on or removal from the state sponsors of terrorism list, see Peed (2005).

<sup>11</sup>Note that all bills referred to in this paper that were introduced in the 113th Congress but were not enacted into law are considered dead. They may be reintroduced in the 114th Congress.

<sup>12</sup>See, for example, proposals endorsed by both Robert Einhorn (2014), a former nonproliferation official in the Obama administration, and Steven Hadley (2014), former national security adviser to President George W. Bush.

<sup>13</sup>A joint resolution of Congress, when passed and signed by the president, has the same force of law as a bill. Joint resolutions are typically used when the content of the legislation is declaratory—such as the approval or disapproval of executive branch agreements. See Library of Congress (undated).

<sup>14</sup>In exercising oversight of the implementation of the Iran-Libya Sanctions Act (ILSA), the precursor to the ISA, Congress imposed burdensome reporting requirements that made it more difficult for the executive branch to disregard violations of the law by firms in allied states.

<sup>15</sup>Although the letter argues that new sanctions would be acceptable if Iran fails to live up to its commitment under the JPA, the senators would presumably make the same argument if Iran were to fail to abide by a final agreement as well (Johnson et al., 2013).

<sup>16</sup>Oddly, this provision only prohibits the use of FY2014 State Department funds, thus implicitly allowing the administration to execute sanctions reform with funds appropriated to another agency or funds appropriated to the State Department in subsequent fiscal years.

<sup>17</sup> Despite language that clearly endorses *Israel's* right to take military action in self-defense against Iran's nuclear weapons program, Section 2 of S. Res. 65 states clearly that, "Nothing in this resolution shall be construed as an authorization for the use of force or a declaration of war" by the United States.

<sup>18</sup> Quoted in Goldberg (2009). See, also, Spetalnick (2014).

<sup>19</sup> Karim Sadjadpour, conference call on Iran sponsored by Oxford Analytica, May 22, 2014; Kaye (2014).

<sup>20</sup> During recent fighting between Israel and Hamas, for example, a House resolution (H. Res. 657) affirming "support for Israel's right to defend its citizens and ensure the survival of the State of Israel" passed without objection on a voice vote. The Senate passed a nearly identical resolution (S. Res. 498) by unanimous consent less than a week later.

<sup>21</sup> Although the JPOA (and thus, one can assume, an eventual comprehensive agreement) addresses "nuclear-related" sanctions, actual sanctions laws and regulations make few clear distinctions as to which sanctions are "nuclear related" and which are related to other aspects of Iranian behavior. In a July 9, 2014, letter to the president, 344 members of the House of Representatives made this argument, writing, "[T]he concept of an exclusively defined 'nuclear-related' sanction on Iran does not exist in U.S. law. Almost all sanctions related to Iran's nuclear program are also related to Tehran's advancing ballistic missile program, intensifying support for international terrorism, and other unconventional weapons programs" (Royce et. al., 2014).

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## About This Perspective

One of a series of RAND Perspectives on what Middle East and U.S. policy might look like in “the days after a deal,” this Perspective examines the possible roles that Congress might play in implementing a final nuclear agreement between Iran and the United States, United Kingdom, France, Russia, China, and Germany (the P5+1).

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