

June 26, 2019

Iran Sanctions Update

United States Sanctions Iran's Supreme Leader and the Supreme Leader's Office, and Expands Sanctions Authorities Targeting Iranian Officials and Front Companies; Foreign Financial Institutions That Conduct Transactions for the New Sanctions Targets Also May Be Sanctioned

SUMMARY

On June 24, 2019, President Trump signed Executive Order 13876 "Imposing Sanctions with Respect to Iran" (the "E.O.").¹ The E.O. imposes sanctions on the Supreme Leader of the Islamic Republic of Iran (the "Supreme Leader"), the Supreme Leader's Office (the "SLO"), and any person determined by the Secretary of the Treasury:

- to be a person appointed by the Supreme Leader or the SLO to a position as a state official of Iran or as the head of any entity located inside or outside of Iran that is owned or controlled by one or more entities in Iran;²
- to be a person appointed to one of the above-listed positions by any person appointed by the Supreme Leader or the SLO;
- to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of any person sanctioned under the E.O. (a "Sanctioned Person");
- to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any Sanctioned Person; or
- to be a member of the board of directors or a senior executive officer of an entity that is a Sanctioned Person.

Effective immediately, all property and interests in property of the Supreme Leader and the SLO that are in the United States, that subsequently come within the United States, or that subsequently come within the possession or control of any U.S. person, must be blocked (*i.e.*, frozen) and may not be transferred, paid, exported, withdrawn, or otherwise dealt in. The same restrictions will apply to any other Sanctioned

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Person at the time the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), acting under authority delegated by the Secretary of the Treasury, designates them as such pursuant to the E.O.

The E.O. also authorizes the Secretary of the Treasury to impose sanctions on foreign financial institutions³ that knowingly conduct or facilitate any significant⁴ financial transaction for or on behalf of any Sanctioned Person. Specifically, the Secretary of the Treasury may prohibit or impose strict conditions on the opening or maintenance of U.S. correspondent accounts or payable-through accounts by such foreign financial institutions. This "secondary sanction" mirrors the sanctions available under the Iranian Financial Sanctions Regulations adopted under the authority of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and is designed to force non-U.S. financial institutions to cut off the Sanctioned Person, even if that financial institution is not otherwise subject to U.S. jurisdiction, under the threat of losing access to the U.S. financial system, including dollar clearing.

Finally, the E.O. includes the typical provisions prohibiting transactions that evade or avoid, have the purpose of evading or avoiding, cause a violation of, or attempt to violate any of the prohibitions in the E.O., as well as any conspiracy to violate such prohibitions.

IMPLICATIONS

The E.O. was issued in direct response to the increasing tensions between Iran and the United States, coming less than a week after Iran's downing of an unmanned U.S. aircraft over the Strait of Hormuz and just days after President Trump's reported decision to call off planned retaliatory military strikes, and is a continuation of the economic pressure campaign with respect to Iran the Administration has been pursuing following the United States' [withdrawal](#) from the Joint Comprehensive Plan of Action.⁵

The United States has long maintained a near-comprehensive embargo on Iran and has, since February 2012, required the blocking of all property and interests in property of the Government of Iran, including its political subdivisions, agencies, and instrumentalities, as well as persons owned or controlled by, or acting for or on behalf of that government.⁶ Under this authority, in 2013, OFAC sanctioned the Execution of Imam Khomeini's Order, which it described as "a major network of front companies controlled by Iran's leadership" that "work[s] on behalf of the Iranian Government and operate[s] in various sectors of the Iranian economy and around the world, generating billions of dollars in profits for the Iranian regime each year."⁷ Thus, the E.O. does not, as a practical matter, significantly expand OFAC's sanctions authority; its financial effect will depend to a large extent on the ability of OFAC to find and designate the often hidden companies holding assets on behalf of the Supreme Leader and the bonyads (charitable foundations) under his control.

Beyond its financial effects, the E.O. delivers a significant political statement. The E.O.'s explicit authority for the designation of board members and senior executive officers of a Sanctioned Person, a provision

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not found in other executive orders, may be intended to signal to such individuals (and similarly influential individuals) that they may soon be a target of the Administration's increasing economic pressure. Consistent with this message, according to press reports, Secretary of the Treasury Steve Mnuchin broke from the Department of Treasury's longstanding precedent of not revealing sanctions actions until they are effective to announce that, in connection with the issuance of the E.O., OFAC will be designating Iran's foreign minister, Javad Zarif, pursuant to the E.O later this week.⁸

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ENDNOTES

- ¹ *Executive Order 13876, Imposing Sanctions with Respect to Iran* (June 24, 2019), available at <https://www.whitehouse.gov/presidential-actions/executive-order-imposing-sanctions-respect-iran/>.
- ² The terms “state official” and “head” of an entity are not defined in the E.O., and have not been used in prior executive orders or OFAC regulations or guidance.
- ³ Consistent with the definition in the Iranian Financial Sanctions Regulations, the E.O. broadly defines foreign financial institutions as “any foreign entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. The term includes, but is not limited to, depository institutions, banks, savings banks, money service businesses, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, dealers in precious metals, stones, or jewels, and holding companies, affiliates, or subsidiaries of any of the foregoing.” *Id.* at § 8(c); see also 31 C.F.R. § 561.308.
- ⁴ The E.O. does not provide a definition of the term “significant”; however, in published guidance relating to other authorities employing this term, OFAC has stated that it will consider the following in determining whether a transaction is significant: (1) the size, number, and frequency of transactions; (2) the nature of the transaction(s); (3) the level of awareness of management and whether the transaction(s) are part of a pattern of conduct; (4) the nexus between the transaction(s) and a blocked person; (5) the impact of the transaction(s) on statutory objectives; (6) whether the transaction(s) involve deceptive practices; and (7) such other factors that the Secretary of the Treasury deems relevant on a case-by-case basis. See, e.g., 31 C.F.R. § 561.404; OFAC FAQs: *Iran Sanctions*, available at https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx.
- ⁵ Under the Joint Comprehensive Plan of Action (“JCPOA”), which was reached by the P5+1 (China, France, Germany, Russia, the United Kingdom, and the United States), the European Union, and Iran in July 2015, the United States committed to provide relief from certain nuclear-related sanctions targeting Iran in exchange for Iran’s implementation of key nuclear-related measures designed to ensure that its nuclear program would remain exclusively peaceful. See https://eeas.europa.eu/delegations/papua-new-guinea/3244/joint-statement-by-eu-high-representative-federica-mogherini-and-iranian-foreign-minister-javad-zarif-vienna-14-july-2015_en. Following President Trump’s May 8, 2018 decision to withdraw from the JCPOA, the U.S. government re-imposed all of the sanctions previously lifted pursuant to its commitments under the JCPOA.
- ⁶ *Executive Order 13599, Blocking Property of the Government of Iran and Iranian Financial Institutions* (February 5, 2012), available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_eo_02062012.pdf.
- ⁷ *Treasury Targets Assets of Iranian Leadership* (June 4, 2013), available at <https://www.treasury.gov/press-center/press-releases/Pages/jl1968.aspx>. Contemporary press reporting described the Execution of Imam Khomeini’s Order as being under the sole control of Iran’s Supreme Leader. See Steve Stecklow, Babak Dehghanpisheh and Yeganeh Torbati, *Khamenei controls massive financial empire built on property seizures*, Reuters (November 11, 2013), available at <https://www.reuters.com/investigates/iran/#article/part1>.
- ⁸ Edward Wong, *Trump Imposes New Economic Sanctions on Iran, Adding to Tensions*, The New York Times (June 24, 2019), available at <https://www.nytimes.com/2019/06/24/us/politics/iran-sanctions.html?searchResultPosition=2>.

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