

Iran Nuclear Agreement Review Act Becomes Law

May 29, 2015

EXECUTIVE SUMMARY

On May 22, 2015, President Obama signed into law the Iran Nuclear Agreement Review Act of 2015 (“**INARA**”). Passed by substantial bipartisan majorities in the House and Senate,¹ INARA establishes a mechanism for Congressional review of any new agreement reached between the United States and Iran related to Iran’s nuclear program, including through the ongoing negotiations between the five permanent members of the United Nations Security Council plus Germany (the “**P5+1**”) and Iran.

As described in more detail below, INARA limits the President’s ability to grant Iran relief from sanctions imposed by statute, allots Congress a period during which to review a new nuclear agreement, imposes certain reporting and certification requirements on the executive branch, and provides for expedited Congressional consideration of bills reinstating sanctions in the event of a finding of Iranian noncompliance with a nuclear agreement.

The passage of INARA has no immediate effect on the application of the U.S. sanctions regime and does not alter obligations to comply with the sanctions’ prohibitions, which remain in force. The provisions of the statute and some of their implications are discussed in further detail below.

BACKGROUND

As previously reported, on November 24, 2013, the P5+1 and Iran reached a preliminary agreement (the “Joint Plan of Action” or “**JPOA**”) to freeze elements of Iran’s nuclear program in exchange for temporary relief from certain economic sanctions and the repatriation of certain blocked funds held outside of Iran. Negotiations toward a contemplated final agreement, or “Joint Comprehensive Plan of Action” (“**JCPOA**”), have since been extended twice by consensus of the parties. On April 2, 2015, several of the negotiating parties announced that they had reached an understanding on the parameters of a JCPOA. As of this writing, negotiations are continuing toward a self-imposed June 30, 2015 deadline, although Iranian officials are already publicly speculating that the date may need to be extended yet again.

INARA is a product of extended debate within Congress, and between Congress and the executive branch, on the terms of a possible nuclear agreement with Iran, Congress’s role in reviewing or approving any such agreement, and the President’s authority to revoke, suspend, or waive Iran sanctions unilaterally. INARA’s text explicitly recognizes that a vote by Congress is not required for a nuclear agreement with Iran to “commence.”² However, it maintains that only Congress can “permanently modify or eliminate” the sanctions that Congress imposed through legislation (referred to in INARA as “statutory sanctions”³).

¹ The Senate passed S.615 on May 7, 2015 by a vote of 98-1. The House passed H.R.1191 on May 14, 2015 by a vote of 400-25. The President signed the bill into law without ceremony on May 22, 2015. INARA amends the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011, et seq., inserting a section on “Congressional Review and Oversight of Agreements with Iran” into the subchapter on “International Activities.”

² INARA, Pub. L. No. 114-17, sec. 2, § 135(c)(1)(C).

³ *Id.* § 135(c)(1)(E). The term “statutory sanctions” is not defined in INARA. The phrase is sometimes used to refer to sanctions imposed by Congress through legislation (e.g., the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“**CISADA**”)), in contrast to sanctions imposed by the President by Executive Order. A nonbinding “sense of Congress” section in (*cont.*)

KEY PROVISIONS OF THE STATUTE

Congressional Review Period and Restrictions on Statutory Sanctions Relief

INARA directs the President, within five calendar days after reaching an agreement with Iran, to transmit to Congress the full text of the agreement,⁴ a report by the Secretary of State assessing the adequacy of the agreement's safeguards as well as the Secretary of State's own and the International Atomic Energy Agency's ability to verify Iranian compliance with the agreement, and a Presidential certification that the agreement meets certain standards.⁵

During the 30- or 60-day Congressional review period,⁶ “the President may not waive, suspend, reduce, provide relief from, or otherwise limit the application of statutory sanctions with respect to Iran under any provision of law or refrain from applying any such sanctions pursuant to” a nuclear agreement with Iran (the “**INARA Restrictions**”).⁷ INARA outlines several possible courses of action that Congress may take during the review period and their consequences for the enforcement of any nuclear agreement with Iran.⁸ If Congress either passes a joint resolution during the review period stating that Congress favors the agreement, or if the review period ends without a joint resolution on the agreement, the INARA Restrictions cease. If Congress passes a joint resolution of disapproval of the agreement during the review period, the INARA Restrictions remain in place for at least 12 calendar days following the date of passage of the joint resolution of disapproval. If the President vetoes the Congressional joint resolution of disapproval, the INARA Restrictions remain in place for 10 calendar days following this veto, pending a “Congressional reconsideration of a joint resolution of disapproval.”⁹ There is no specific provision in INARA setting forth the consequences of a Congressional override of a Presidential veto. Presumably, in such case the resolution of disapproval would be sustained, and the INARA Restrictions would remain in place.

Congressional Oversight and Possible Reinstatement of Statutory Sanctions

INARA directs the President to keep Congress “fully and currently informed of all aspects of Iranian compliance with respect to an agreement” and specifies several main categories of reporting responsibilities.¹⁰

Following the commencement of a new nuclear agreement, the President is directed to “determine” not less than every 90 calendar days “whether the President is able to certify” to Congress that “Iran is transparently, verifiably, and fully implementing the agreement,” “has not committed a material breach” and “has not taken any action . . . that could significantly advance its nuclear weapons program,” and that

(cont.)

INARA suggests a further distinction between sanctions imposed on Iran for nuclear activities and other sanctions imposed on Iran, expressing a Congressional expectation that “United States sanctions on Iran for terrorism, human rights abuses, and ballistic missiles will remain in place under an agreement.” INARA, sec. 2, § 135(d)(7)(A).

⁴ The term “agreement” is defined to include, *inter alia*, any implementing materials, technical or other understandings, or related agreements. *Id.* § 135(h)(1).

⁵ The President is directed to certify, *inter alia*, that “the agreement includes the appropriate terms, conditions, and duration of the agreement’s requirements with respect to Iran’s nuclear activities” and that the President determines that the agreement meets a list of specified policy goals. *Id.* § 135(a)(1)(C).

⁶ If the transmittal occurs before July 10, 2015 or after September 7, 2015, the duration of the review period is 30 calendar days. If the transmittal occurs between July 10, 2015 and September 7, 2015, the duration of the review period is 60 days. *Id.* § 135(b)(1)–(2).

⁷ *Id.* § 135(b)(3).

⁸ See *id.* §§ 135(b)(3)–(5), (c)(2)(A)–(C). A separate “exception” section states that the INARA Restrictions do not apply to any new deferral, waiver, or other suspension of statutory sanctions pursuant to the JPOA if that deferral, waiver, or other suspension is made not later than 45 calendar days before the President’s transmittal of a new agreement and its accompanying materials to Congress. *Id.* § 135(b)(6)(B).

⁹ *Id.* § 135(b)(4)–(5).

¹⁰ *Id.* § 135(d)(1).

“suspension of sanctions related to Iran pursuant to the agreement is—appropriate and proportionate to the specific and verifiable measures taken by Iran with respect to terminating its illicit nuclear program; and vital to the national security interests of the United States.”¹¹

Within 10 days of “receiving credible and accurate information relating to a potentially significant breach or compliance incident by Iran,” the President is directed to submit the information to Congress. Subsequently, within 30 days of the submission, the President must make a determination whether there has been a “material breach” and whether it has been cured.¹²

The President is also directed to provide Congress with a semi-annual report on Iran’s compliance with an agreement, ballistic missile program, human rights record, and support of terrorism, as well as an assessment of all of the sanctions relief provided to Iran.¹³

If the President fails to submit a compliance certification in any given 90-day period or if the President determines that there has been an uncured material breach of an agreement, INARA provides for expedited procedures in both the House and the Senate to consider legislation reinstating in full any statutory sanctions on Iran that were “waived, suspended, reduced, or otherwise relieved pursuant to an agreement.”¹⁴

CONCLUSION

We will continue to monitor the course of the P5+1 negotiations, the treatment of any resulting nuclear agreement under the procedures outlined in INARA, and ongoing discussions about the precise nature of the sanctions relief to be effected pursuant to any agreement.

In the meantime, the limited sanctions relief provided for by the JPOA remains in effect. U.S. persons and their foreign subsidiaries continue to be generally prohibited from engaging in most transactions involving Iran. Even under a contemplated JCPOA, certain U.S. sanctions on Iran or Iranian persons are expected to continue. In addition, the State and Treasury Departments have emphasized that the United States Government will continue to enforce U.S. sanctions laws and regulations against those who engage in prohibited or sanctionable activities.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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¹¹ *Id.* § 135(d)(6).

¹² *Id.* § 135(d)(2), (3).

¹³ *Id.* § 135(d)(4).

¹⁴ *Id.* § 135(e)(2)(B).