Treasury and State Announce New Humanitarian Mechanism to Increase Transparency of Permissible Trade Supporting the Iranian People

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FinCEN identifies Iran as jurisdiction of primary money laundering concern

WASHINGTON – Today, the U.S. Departments of the Treasury and State announced a new humanitarian mechanism to ensure unprecedented transparency into humanitarian trade with Iran. This mechanism will help the international community perform enhanced due diligence on humanitarian trade to ensure that funds associated with permissible trade in support of the Iranian people are not diverted by the Iranian regime to develop ballistic missiles, support terrorism, or finance other malign activities. Concurrently, Treasury's Financial Crimes Enforcement Network (FinCEN) identified Iran as a jurisdiction of primary money laundering concern under Section 311 of the USA PATRIOT Act, and issued a new rulemaking to protect the U.S. financial system from malign Iranian financial activities.

"This administration remains committed to the unfettered flow of humanitarian aid to the Iranian people, who have suffered for forty years under the mismanagement of this corrupt regime. This new humanitarian mechanism will help international companies that seek to engage in permissible humanitarian trade with Iran to ensure that they do not run afoul of sanctions," said Treasury Secretary Steven T. Mnuchin. "Iran is a jurisdiction of primary money laundering concern that deliberately ensures that there is no transparency in their economy so they can export terrorism around the world. FinCEN's action further exposes the characteristics of Iran's deceptive financial conduct to the international community as part of our maximum pressure campaign to shut off the Iranian regime's illicit sources of revenue."

PROCESS FOR NEW HUMANITARIAN MECHANISM

Treasury and State will establish a process to help ensure that participating governments and financial institutions commit to conducting enhanced due diligence to mitigate the higher risks associated with Iran-related transactions. A stringent framework is crucial given that Iran continues to be the world's largest state sponsor of terrorism and the regime continues to fail to implement key anti-money laundering and countering the financing of terror (AML/CFT) safeguards, as set by the Financial Action Task Force (FATF), the global standard-setting body for combating money laundering and terrorist financing.

"FinCEN's action designating Iran as a jurisdiction of primary money laundering concern underscores the need for enhanced due diligence in a country that has systematically obfuscated its support for terrorism and ignored international anti-money laundering standards. This humanitarian mechanism offers a process for enhanced due diligence to help mitigate the high risk of doing business in a country whose repressive leaders remain intent on diverting resources to fund terrorism," said Sigal Mandelker, Treasury Under Secretary for Terrorism and Financial Intelligence. "Through this new mechanism, no revenue or payment may flow to the Iranian regime. This framework will provide unprecedented transparency to help ensure that humanitarian goods entering Iran actually reach the Iranian people."

"The Iranian regime oversees a vast network of corruption designed to evade sanctions, generate money for terrorists, and enrich Iran's clerics," said Brian Hook, State Department Special Envoy to Iran. "A new humanitarian channel will make it easier for foreign governments, financial institutions, and private companies to engage in legitimate humanitarian trade on behalf of the Iranian people while reducing the risk that money ends up in the wrong hands. The U.S. will continue to stand with the Iranian people."

While the U.S. has consistently maintained broad exceptions and authorizations to support humanitarian transactions with Iran, this new mechanism will assist foreign governments and foreign financial institutions that conduct appropriate enhanced due diligence to establish payment mechanisms for legitimate humanitarian exports.

The humanitarian mechanism will require foreign governments and financial institutions that choose to participate in the mechanism to conduct enhanced due diligence and provide to Treasury a substantial and unprecedented amount of information, with appropriate disclosure and use restrictions, on a monthly basis, as described in guidance provided by OFAC outlining specific requirements PDF.

This mechanism includes a number of safeguards to prevent any sanctionable dealings with persons on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List) that have been designated in connection with Iran's support for terrorism or WMD proliferation.

If foreign governments or financial institutions detect potential abuse of this mechanism, pursuant to the requirements of the humanitarian mechanism, they must immediately restrict any suspicious transactions and provide relevant information to Treasury. Provided that financial institutions commit to implement these stringent requirements, the humanitarian mechanism will enable them to seek written confirmation from Treasury and State regarding sanctions compliance.

This mechanism, designed solely for the purpose of commercial exports of humanitarian goods to Iran, can be used by U.S. persons and U.S.-owned or -controlled foreign entities, as well as non-U.S. entities. Of course, U.S. persons and U.S.-owned or -controlled entities must still comply with existing requirements under the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA), as implemented in OFAC's regulations. In line with the United States' long standing policy of allowing for the sale of agricultural commodities, food, medicine, and medical devices to Iran, OFAC will also continue to consider other requests related to humanitarian trade with Iran as appropriate. Treasury encourages interested parties to reach out to OFAC for more detailed consultations.

IMPLICATIONS OF SECTION 311 ON IRANIAN FINANCIAL INSTITUTIONS

Pursuant to Section 311 of the USA PATRIOT Act, FinCEN issued a final rule prohibiting the opening or maintaining of a correspondent account in the United States for or on behalf of an Iranian financial institution. The rule also prohibits foreign financial institutions' correspondent accounts at covered U.S. financial institutions from processing transactions involving Iranian financial institutions. FinCEN based the rulemaking on its finding that Iran is a foreign jurisdiction of primary money laundering concern.

"FinCEN's action is based on its finding that international terrorists and entities involved in missile proliferation have transacted business in Iran, and that Iran is a jurisdiction characterized by a high level of institutional corruption and weak AML/CFT laws," said FinCEN Director Kenneth A. Blanco. "This action seeks to protect international financial institutions from the wide range of illicit finance risks emanating from this jurisdiction."

Section 311 of the USA PATRIOT Act authorizes FinCEN to alert U.S. financial institutions to foreign jurisdictions, foreign financial institutions, classes of transactions, or types of accounts that it finds to be of primary money laundering concern, and, if necessary, order them severed from the U.S. financial system.

While extensive U.S. and international sanctions on Iran largely prohibit U.S. financial institutions from facilitating, directly or indirectly, transactions by Iranian financial institutions, this action requires U.S. financial institutions to apply special due diligence to their correspondent accounts to further guard against their improper indirect use by Iranian banking institutions. It also subjects U.S. financial institutions to penalties under the Bank Secrecy Act if they violate provisions of the final rule. Furthermore, it protects the U.S. financial system from Iran's illicit financial activities by ensuring that U.S. financial institutions are not exposed to the Iranian regime's support for terrorist groups, advancement of its ballistic missile program, and its fueling of armed conflicts in Syria, Afghanistan, Yemen, and elsewhere.

FinCEN's decision to take this action as a final rule is in the interest of U.S. foreign policy and consistent with the Administrative Procedure Act.

FACTORS BEHIND FINCEN'S FINDING

The Iranian regime is the world's leading state sponsor of terrorism, and FinCEN found evidence that international terrorist groups, including Hizballah and HAMAS, have transacted business in or with Iran and rely on Iranian financial support. Estimates indicate that the Iranian government has historically provided approximately $700 million of Hizballah's estimated $1 billion annual budget. Iran's support to HAMAS is estimated to be in the tens of millions of dollars per year and as high as $300 million per year.

FinCEN's action builds on Treasury's Office of Foreign Assets Control's (OFAC) September 20, 2019 designation of the Central Bank of Iran (CBI) under its counterterrorism authority, Executive Order (E.O.) 13224, as amended by E.O. 13886. The CBI has been intimately involved in facilitating the movement of funds to terrorist groups, and senior CBI officials, acting in their official capacity, have procured currency and conducted transactions for Iran's Islamic Revolutionary Guard Corps Qods Force (IRGC-QF), which was designated by OFAC in connection with terrorism and human rights abuses. As OFAC stated, in 2018 and 2019, the CBI has provided billions of dollars and euros to terrorist organizations, including the IRGC, IRGC-QF, and the IRGC-QF's terrorist proxy, Hizballah. The CBI has also worked to supply foreign currency and funding to the IRGC-QF and Iran's Ministry of Defense and Armed Forces Logistics, also OFAC-designated for terrorism.

FinCEN also found that the Iranian regime continues to engage in deceptive financial practices, such as the use of front companies and shell companies, to facilitate the advancement of its ballistic missile arsenal. With more than ten types of ballistic missiles in its inventory or in development, some of which are inherently capable of delivering a nuclear explosive device, Iran has the largest ballistic missile program in the Middle East—a major challenge to nonproliferation efforts in the region.

Iran has consistently been identified by non-governmental organizations as one of the most corrupt countries in the globe, and FinCEN found that institutionalized corruption in Iran is widespread in its economy. According to FinCEN's information, in early 2018, after hearing complaints about corruption, Iran's Supreme Leader, Ali Husseini Khamenei, issued a directive requiring Iran's armed forces to sell the private companies they owned. However, because Khamenei permitted the armed forces to use revenue from the sales to then purchase shares in the same companies, the directive appeared to be a gesture to placate public pressure, not a genuine effort to lessen the role of the IRGC and its components such as the Basij militia in the economy or curb corruption. Additionally, in late 2017, IRGC officials were aware of corruption and mismanagement at an IRGC economic development firm, estimating the cost of the corruption to be approximately $5.5 billion in losses, debts, and funds required for a capital injection to facilitate the firm's dissolution.

This culture of economic corruption is further compounded by Iran's continued failure to adequately address its AML/CFT deficiencies, as identified by the Financial Action Task Force (FATF). To protect the international financial system from abuse, the FATF has therefore re-imposed several countermeasures on Iran and called on its members and urged all jurisdictions to advise their financial institutions to apply enhanced due diligence with respect to business relationships and transactions with natural and legal persons from Iran.

RESOURCES:

- Information from OFAC on the specifics of this humanitarian mechanism
- FinCEN's final rule related to Iranian financial institutions