

Background on the Countering Iran’s Destabilizing Activities Act of 2017 (S. 722)

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S. 722 would limit the President’s ability to adhere to U.S. commitments under the JCPOA. Specifically, § 8 of the bill would require the President to provide certification that a person designated pursuant to EO 13382 and 13224 has not engaged in activities for which they were designated for the three-month period preceding any potential de-listing. However, the U.S. is scheduled to de-list a number of Iranian persons and entities designated pursuant to EO 13382 on Transition Day. § 8 of the bill could thus impede the President’s ability to adhere to U.S. commitments and remove those parties from U.S. sanctions lists on the pre-determined schedule. This would be a clear violation of the JCPOA.

The bill would also mandate the re-imposition of sanctions on Iranian entities that were de-listed pursuant to the JCPOA – measures that could constitute a clear violation of the nuclear deal. § 4 of the bill mandates the President to impose sanctions on any person engaging in activities that materially contribute or that pose a risk of materially contributing to Iran’s ballistic missile program. While § 4 of the bill replicates the sanctions authorities currently provided to the President via Executive Order 13382, the bill would mandate the President to utilize these authorities to impose sanctions on persons engaged in Iran’s ballistic missile program, as well as on persons and entities that provide material support for such designated parties. For example, this bill would require the President to impose sanctions on an Iranian bank if that Iranian bank provides financial services to an Iranian government entity designated for engaging in activities that materially contribute to Iran’s ballistic missile program. It does not matter whether the financial services provided to the entity are in regards to activities unrelated to Iran’s ballistic missile program (e.g., the payment of government employee salaries). Such a designation would re-impose sanctions on Iranian banks that were delisted pursuant to the JCPOA. Considering that the JCPOA prohibits the re-imposition of sanctions lifted under the nuclear accord, the re-imposition of sanctions on Iranian banks – as an example – would likely constitute a JCPOA violation.

S. 722 would designate the IRGC a terrorist group – a designation anathema to the U.S. defense and intelligence establishment. Specifically, the bill would sanction the IRGC pursuant to Executive Order 13224, which is the foundational order to the U.S.’s Specially Designated Global Terrorist Sanctions Program (“SDGT Program”). While this designation would have no appreciable sanctions impact – as it is duplicative of existing sanctions authorities – it could have serious consequences for U.S. personnel on the ground in Iraq, subjecting them to retaliation from Iran-backed militia groups. Last month, when the Trump administration outlined its plans to designate the IRGC a terrorist group, the Pentagon and intelligence officials pushed back and forced the administration to rethink its approach. The Pentagon’s pushback against U.S. plans to designate the IRGC a terrorist group recall the Joint Chiefs of Staff’s opposition to such

designation back during the Bush administration. For Congress to designate the IRGC a terrorist group over the vocal opposition of the U.S. defense and intelligence establishment would be not just irresponsible, but would risk the lives of Americans.

Additionally, the legislation would also provide the President with new sanctions authorities, including one related to persons engaged in human rights abuses in Iran and one related to persons engaged in activities that materially contribute to Iran's supply of conventional weapons. Without knowing how the President will exercise these new sanctions authorities, it is unclear what implications such provisions may have for U.S. adherence to its JCPOA commitments. Until Congress has more clarity as to the Trump administration's policy outlook towards Iran, however, it should hold its fire before encouraging the President to utilize his sanctions authorities and target Iran.

In addition to these concerns, the bill is highly unlikely to accomplish its main objectives – i.e., to push back against and deter Iranian activities deemed anathema to U.S. interests. No sanctions proponent has plausibly identified, for instance, how these sanctions would change Iran's calculus regarding the testing of ballistic missiles or its activities in Iraq and Syria. Those aspects of Iranian behavior that the legislation seeks to target would, if anything, worsen as a result of this bill.

Finally, S. 722 would undercut Iranian moderates at the worst possible time and could help elect a hardline President in May. Iran is set to begin its presidential campaign and hold its presidential elections on May 19. Passage of this bill would be a political liability for Iran's moderate candidate – President Hassan Rouhani – while strengthening the hand of Iranian hardliners who view their struggle with the United States as a zero-sum game. In giving credence to Iranian hardline views – that the U.S. is an implacable foe who seeks to leverage Iranian compromise into Iranian submission – Congress could dramatically upset the predicted course of Iran's upcoming elections and hand victory to Iranian hardliners.

