

United States Senate

WASHINGTON, DC 20510

October 25, 2016

The Honorable Jacob Lew
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue
Washington, D.C. 20220

Dear Secretary Lew:

It is difficult for the American people to keep track of the nearly daily revelations of new and unwarranted unilateral concessions provided by the administration to Iran to shore up the failing nuclear deal. In your capacity as Treasury Secretary, Americans expect that you will work to keep the U.S. and international financial systems free of Iran's efforts to support terrorism, human rights abuses, and development of ballistic missiles. We were disappointed to see that the Obama Administration has relieved some of the ballistic missile sanctions. We are also disappointed that your department made it easier for Iran to conduct U.S. dollar transactions and engage in international business that will help fund its terrorist activities.

It was extremely troubling to learn that the Obama Administration made a secret commitment to support the premature lifting of the UN sanctions against Bank Sepah and Bank Sepah International. The delisting of these entities from U.S. sanctions per the terms of the Joint Comprehensive Plan of Action clearly demonstrates the flawed nature of the deal. It is unclear to us how the Obama Administration can justify the delisting—and certainly the premature delisting—of an Iranian financial institution that the Treasury Department described as the “financial linchpin of Iran’s missile procurement network.” These actions occurred while Iran has continued to develop ballistic missiles, a direct threat to our allies in the region, especially Israel. Earlier this year, Iran launched two missiles inscribed with “Israel must be wiped out” in Hebrew, and this summer Iran attempted to launch a modified North Korean missile with a maximum range of 2,500 miles.

We respectfully request answers to the following questions:

1. President Obama at a press conference on July 15, 2015 said that: “We are not taking the pressure off Iran with respect to arms and with respect to ballistic missiles.” How does the United States secretly agreeing to the removal of the UN sanctions on Bank Sepah and Bank Sepah International fit with this statement?
2. On July 7, 2015 former Chairman of the Joint Chiefs of Staff General Martin Dempsey in testimony before the Senate Armed Services Committee said: “We should -- under no circumstances should we relieve pressure on Iran relative to ballistic missile capabilities and arms trafficking.” Do you agree with this statement? Does the lifting of U.S. and UN sanctions against Bank Sepah and Bank Sepah International not relieve pressure on Iran relative to ballistic missiles and arms trafficking?

3. Ahmad Derakhshandeh, the Chairman and Managing Director of Bank Sepah, is subject to UN sanctions after being delisted from U.S. sanctions. A *Wall Street Journal* article on September 29, 2016 stated that: “U.S. officials said there was a desire in Washington to harmonize the U.N. sanctions list with the U.S.’s” as the reason for agreeing to lift the UN sanctions against Bank Sepah and Bank Sepah International. Please confirm whether this assertion is correct.
4. The *Wall Street Journal* article on September 29, 2016 further stated that “U.S. officials... believed Iran had earned more sanctions relief.” Please describe the rationale for giving Iran additional concessions beyond the Iranian persons delisted from the U.S. sanctions list without a change in Iranian behavior.
5. On March 21, 2007 then-Under Secretary of the Treasury Stuart Levey in Testimony before the Senate Committee on Banking, Housing, and Urban Affairs stated that: “Bank Sepah has engaged in a range of deceptive practices in an effort to avoid detection, including requesting that other financial institutions take its name off of transactions when processing them in the international financial system.” Has the United States received assurances that Bank Sepah will not engage in these practices? If so, please provide a copy of these assurances.
 - a. In the same testimony then-Under Secretary Levey stated: “Bank Sepah provides direct and extensive financial services to Iranian entities responsible for developing missiles capable of carrying weapons of mass destruction.” Has the United States received assurances Bank Sepah will not provide these financial services to Iranian entities? If so, please provide a copy of these assurances.
 - b. Also in that same testimony then-Under Secretary Levey stated: “Since at least 2000, Bank Sepah has provided a variety of critical financial services to Iran's missile industry, arranging financing and processing dozens of multi-million dollar transactions for [the Aerospace Industries Organization (AIO)] and its subordinates.” Has the United States received assurances Bank Sepah will not provide these financial services to AIO and its subordinates? If so, please provide a copy of these assurances.
 - c. Then-Under Secretary Levey also said: Bank Sepah “has also facilitated business between AIO and North Korea's chief ballistic missile-related exporter, [North Korean Mining Development Trading Corporation (KOMID)].” Has the United States received assurances Bank Sepah will not facilitate business between AIO and KOMID? If so, please provide a copy of these assurances.
6. On May 25, 2016 Acting Under Secretary of the Treasury Adam Szubin in testimony before the House Foreign Affairs Committee stated: “With respect to their ballistic missile program, I think sanctions are a key piece, I think we do need to keep the pressure on and I find particularly important those brokers, procurement agents who are helping to mask the ultimate end user.”

- a. When did the United States last designate brokers and procurement agents that are aiding Iran's ballistic missile program?
- b. Are these undesignated brokers and procurement agents now allowed to use Bank Sepah and Bank Sepah International to process payments for Iran's ballistic missile program?
- c. Can these undesignated brokers and procurement agents conduct U.S. dollar transactions outside the U.S. financial system per updated Frequently Asked Questions (FAQ) C.7.?

We were dismayed to see the recent changes the Office of Foreign Assets Control made to the Iran-related FAQs. It is noteworthy that your department issued these troubling changes late on a Friday afternoon before a federal holiday.

We respectfully request answers to the following questions about these changes:

7. An updated section to FAQ C.7. allows U.S. dollar transactions outside the U.S. financial system as long as those transactions do not include those persons on the Specially Designated Nationals List (SDN List). OFAC's "50 Percent Rule" states that entities that are 50 percent or more owned, directly or indirectly, by a blocked person are considered blocked. The OFAC guidance also specifically states "The property and interests in property of such an entity are blocked regardless of whether the entity itself is listed in the annex to an Executive order or otherwise placed on OFAC's list of Specially Designated Nationals."
 - a. Does OFAC plan to add to the SDN List all the entities related to the Islamic Revolutionary Guard Corps (IRGC) that meet the threshold for the "50 Percent Rule"?
 - b. How are financial institutions supposed to discern whether the entities they are providing U.S. dollar transactions for are blocked persons per the "50 Percent Rule"?
8. On May 25, 2016 Acting Under Secretary of the Treasury Adam Szubin in testimony before the House Foreign Affairs Committee stated: "Some companies [and] banks around the world continue to have concerns about doing business in Iran. Some...are concerned about their financial transparency, the designation of Iran as a high- risk jurisdiction by FATF, the Financial Action [Task Force], the world standard setting body for anti-money laundering and counter-terrorist financing. Others are noting concerns about corruption as well as regulatory and other obstacles to conducting business in Iran, and still others cite Iran's provocative behavior outside the nuclear file including its active support for terrorism and its ballistic missile testing. As President Obama said recently, Iran has to understand what every country in the world understands which is businesses want to go where they feel safe, where they don't see massive controversy, where they can be confident that transactions are going to operate

normally. As Iran purs[ues] more business, it is incumbent on Iran to address such problems to undertake meaningful reforms and create an environment in which businesses feel secure.”

- a. Has Iran addressed the issues related to their financial transparency?
 - b. Have the corruption, regulatory, and other obstacles to conducting business in Iran improved since January 2016?
 - c. Wouldn't you agree that Iran's "active support for terrorism and its ballistic missile testing" has continued since January 2016?
 - d. Has Iran made "meaningful reforms and create[d] an environment in which businesses feel secure" since January 2016?
9. New FAQ M.12. states: "OFAC does not expect a non-U.S. financial institution to repeat due diligence its customers have performed on an Iranian customer unless the non-U.S. financial institution has reason to believe those processes are insufficient." However, in May 2016 the Treasury Department took a significant step forward to combat money laundering in finalizing the Customer Due Diligence (CDD) Rule that requires U.S. financial institutions to fulfill three requirements: "(1) identifying and verifying the identity of the beneficial owners of companies opening accounts; (2) understanding the nature and purpose of customer relationships to develop customer risk profiles; and (3) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information."
- a. Why is the Treasury Department allowing different standards for CDD between the U.S. financial institutions and non-U.S. financial institutions?
 - b. By promoting a weaker system of due diligence outside the United States, is the Treasury Department increasing the danger that Iranian transactions will transit the U.S. financial system? If not, what protections are in place to prevent this possibility?
 - c. On March 24, 2016 the Treasury Department sanctioned supporters of Mahan Air and the press release stated: "In order to support its illicit activity, Mahan Air often uses complicated transactions through a series of intermediary companies and individuals – such as the individuals and companies identified above – to negotiate sales contracts, and *these companies deliberately fail to disclose Mahan Air as the end-user of the purchased equipment.* For example, *these intermediaries may use false invoices* to obtain aircraft maintenance services for Mahan Air (emphasis added)." If Mahan Air is using intermediary companies and individuals and false invoices, how can non-U.S. financial institutions be confident of the due diligence done by its customers who may have an incentive to obfuscate Iran's activities?

- d. On January 17, 2016 the Treasury Department issued a press release that OFAC “today designated 11 entities and individuals involved in procurement on behalf of Iran’s ballistic missile program. OFAC sanctioned Mabrooka Trading Co LLC (Mabrooka Trading) – based in the United Arab Emirates (UAE) – and its China- and UAE-based network that have been involved in procuring goods for Iran’s ballistic missile program. *This network obfuscated the end user of sensitive goods for missile proliferation by using front companies in third countries to deceive foreign suppliers* (emphasis added).” It can be assumed that the non-U.S. financial institutions involved in these transactions performed an inadequate level of due diligence and this new FAQ lowers that threshold. In light of the changes to the FAQ, how does the administration plan to prevent these types of sanctionable transactions from occurring?
10. New FAQ M.10. states: “It is not necessarily sanctionable for a non-U.S. person to engage in transactions with an entity that is not on the SDN List but that is minority owned, or that is controlled in whole or in part, by an Iranian or Iran-related person on the SDN List.”
 - a. As noted in Question 7, not all blocked persons are listed on the SDN List. Is it the Treasury Department’s contention that transactions with an entity controlled in whole or in part by the IRGC or its agents or affiliates is not necessarily sanctionable?
 - b. Is the level of acceptable minority ownership by blocked persons 49.9% or below?
11. On September 17, 2015 Acting Under Secretary of the Treasury Adam Szubin in testimony before the Senate Committee on Banking, Housing, and Urban Affairs stated: “So perhaps I can actually offer some reassurance. The sanctions on the IRGC, the parent organization which apply to all of their subsidiaries, are just as sweeping under our human rights designation as they would be under terrorism designation. And so all of those concerns about their subsidiaries coming into revenues, those are currently prohibited. And any foreign company that does business with an IRGC subsidiary, I’ll just be very specific, [Khatam al-Anbya] or Sepanir, which is an oil and gas sector, those are IRGC-subs that remain on our list and are not coming off.”
 - a. Please explain how reducing the requirement for non-U.S. financial institutions to conduct due diligence to ensure they are not conducting transactions on behalf of the IRGC or its agents or affiliates will reduce the likelihood of processing these transactions.
 - b. Please state for the record that if a non-U.S. financial institution processes a significant transaction for the IRGC or its agents or affiliates that it would be subject to secondary sanctions and that none of these changes to the FAQs alters that due diligence requirement.

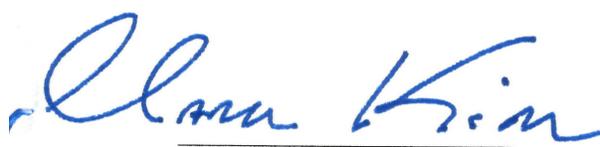
Despite Iran's increased support for its terrorist proxies, continued ballistic missile development, and hostile acts against Israel and the United States, the administration continues to grant Tehran unwarranted concessions. These concessions are making the deeply flawed agreement even worse. We ask you to explain how providing a 'green light' to Iran's ballistic missile program, as well as making it easier for the world's worst state sponsor of terrorism to do business and make money, serve U.S. national security interests. We hope the security of Americans—not a misguided desire to save a failed agreement at any costs—will serve as the touchstone for the administration's decisions going forward.

We look forward to receiving your response in a timely manner.

Sincerely,


Marco Rubio
U.S. Senator


Kelly Ayotte
U.S. Senator


Mark Kirk
U.S. Senator


David Perdue
U.S. Senator


Thom Tillis
U.S. Senator


Tom Cotton
U.S. Senator


Pat Roberts
U.S. Senator


Jim Inhofe
U.S. Senator

Susan M. Collins

Susan M. Collins
U.S. Senator

Johnny Isakson

Johnny Isakson
U.S. Senator

Ted Cruz

Ted Cruz
U.S. Senator

Shelley Moore Capito

Shelley Moore Capito
U.S. Senator

David Vitter

David Vitter
U.S. Senator

Dan Sullivan

Dan Sullivan
U.S. Senator

John Thune

John Thune
U.S. Senator