

---

# Hughes Hubbard & Reed

## Final Snapback Sanctions Against Iran Take Effect

### Client Advisories

Hughes Hubbard & Reed LLP • A New York Limited Liability Partnership  
One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

Attorney advertising. Readers are advised that prior results do not guarantee a similar outcome. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. For information regarding the selection process of awards, please visit <https://www.hugheshubbard.com/legal-notices-methodologies>.

---

**November 6, 2018** – As we previously [described](#), and in accordance with [Executive Order 13846](#) (reported on [here](#)), the final U.S. secondary sanctions against Iran that were lifted as part of the U.S.’s participation in the Joint Comprehensive Plan of Action (“JCPOA”), popularly known as the Iran nuclear deal, “snapped back” into effect on November 5, 2018. Also on November 5, as part of the snapback action, the Office of Foreign Assets Control (“OFAC”) [added](#) over 700 parties to the Specially Designated Nationals (“SDN”) list, [amended](#) the Iranian Transactions Sanctions Regulations (“ITSR”) to reflect and implement Executive Order 13846, and [issued](#) new Frequently Asked Questions (“FAQs”) regarding the snapback of sanctions.

### End of Wind-Down Period and Snapback of Secondary Sanctions

On May 8, 2018, President Trump first announced that, following its withdrawal from the JCPOA, the U.S. would fully re-impose secondary sanctions on Iran that were lifted under the JCPOA in January 2016. The re-imposition of sanctions was to occur in two stages, one completed on August 7, 2018, and the second now completed on November 5, 2018.

Effective at 12:01 am EST on November 5, 2018, the U.S. government re-imposed secondary sanctions related to:

- Iran’s port operators, and shipping and shipbuilding sectors;
- petroleum-related transactions;
- transactions by foreign financial institutions with the Central Bank of Iran and providing specialized financial messaging services to the Central Bank of Iran;
- providing underwriting services, insurance, or reinsurance; and
- Iran’s energy sector.

In accordance with section 220 of the Iran Threat Reduction and Syria Human Rights Act of 2012, certain Iranian financial institutions will no longer be permitted access to specialized financial messaging services. Specifically, these services are prohibited from being provided to the Central Bank of Iran or any Iranian financial institution

designated in connection with Iran's support for terrorism or its proliferation of weapons of mass destruction ("WMD") and WMD delivery systems. In apparent reaction to this, the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") had reportedly suspended a number of Iranian banks' access to its messaging system.

As a result of the snapback, non-U.S. persons doing business with Iranian counterparties now run the risk of being subject to U.S. sanctions if they deliver goods or services to those Iranian counterparties and if those goods or services are covered by the secondary sanctions. However, non-U.S. businesses that are still owed payment from Iranian counterparties for goods and services that were "fully provided or delivered" prior to November 5, 2018, and pursuant to agreements in place prior to May 8, 2018, are permitted to receive that payment. According to FAQ guidance released by OFAC, "[a]ny payments would need to be consistent with U.S. sanctions, including that payments could not involve U.S. persons or the U.S. financial system," unless the payments are exempt or otherwise authorized by OFAC. (U.S. parties seeking payment from Iranian counterparties after November 5 must seek a specific license from OFAC, which OFAC said it will evaluate on a case-by-case basis.) Additionally, non-U.S. parties, including foreign financial institutions, could be subject to sanctions for knowingly engaging in certain "significant transactions" involving an Iranian person on the SDN List; in an FAQ, OFAC advises such non-U.S. parties to seek guidance from OFAC before proceeding with the transaction. OFAC will look to industry standards to determine when goods and services are "full provided or delivered," but has advised that this term generally means that "the party providing or delivering the goods or services has performed all the actions and satisfied all the obligations necessary to be eligible for payment or other agreed-to compensation."

The U.S. government has also waived the applicability of secondary sanctions for some transactions involving the purchase of Iranian oil by eight countries that would otherwise now be prohibited. Specifically, eight countries – China, India, Italy, Greece, Japan, South Korea, Taiwan and Turkey – will be given six-month waivers to continue purchasing oil and petroleum products from Iran. As a condition of the waivers, the countries will reportedly have to pay for the oil exclusively through a barter system, to limit the ability of the Iranian government to use oil sales to fund its military or nuclear activities. Further, the countries will have to reduce their purchases over time if they expect to receive future additional waivers. The Trump administration is also granting "narrow and temporary waivers" to allow continued conversion work at three Iranian civil nuclear facilities. OFAC is expected to release fact sheets more specifically describing these waivers soon.

## **New SDN Designations**

Also on November 5, 2018, OFAC designated or re-designated over 700 parties onto its SDN list, including 50 Iranian banks and subsidiaries, more than 200 individuals and ships, Iran's state-run airline Iran Air, and more than 65 of its planes. According to Treasury Secretary Steven Mnuchin, over 300 of the parties added to the SDN list are new parties being designated for the first time.

Further, new FAQ guidance explains that OFAC has re-designated some of the parties under new authorities, such as Executive Orders 13224 (related to counterterrorism), 13382 (WMD proliferation), and 13553 (human rights abuses). OFAC explained that, "[a]s new information became available, OFAC determined that these persons met one or more of the criteria for designation under OFAC's other designation authorities." Some of these parties have been re-listed under new unique identification numbers ("UIDs"); OFAC has provided a mapping table to trace how these parties were added back to the SDN list.

Secretary Mnuchin warned that OFAC is prepared to add additional parties to the SDN list that facilitate significant transactions on behalf of prohibited Iranian parties. Specifically, he stated, "We will impose sanctions on foreign financial institutions that knowingly engage in certain significant transactions with the Central Bank of Iran and designated Iranian financial institutions. We know that these transactions are critical to a network that fuels the

radical ambitions of the [Islamic Revolutionary Guard Corps] and its Quds Force, which siphons millions of dollars away from legitimate activities to fund terrorism across the region.”

## **ITSR Amendment**

On November 2, 2018, OFAC released a draft amendment to the ITSR that became effective on November 5. The amendment does two things. First, the amendment adds back certain regulations that were removed as part of the U.S.’s participation in the JCPOA and removes reference to the Executive Order 13599 List. (The Executive Order 13599 List was created in connection with the U.S. participation in the JCPOA to identify Iranian parties that had been removed from the SDN list, but met the definition of the terms “Government of Iran” or “Iranian financial institution” and continued to be parties whose property and interests in property were blocked pursuant to Executive Order 13599 and section 560.211 of the ITSR.)

Second, the amendment broadens earlier licenses that allowed U.S. persons to engage in transactions necessary and ordinarily incident to the sale of real property in Iran and transfer the proceeds to the United States to include the sale of personal property. To qualify, the personal property must have been acquired prior to the individual becoming a U.S. person or must have been inherited from persons in Iran. New [FAQ](#) guidance clarifies that “[a]uthorized transactions include engaging the services of any persons in Iran necessary for the sale, such as an attorney, funds agent, or real estate broker, provided such person is not a person whose property and interests in property are blocked pursuant to any part of 31 CFR chapter V, other than persons whose property and interests in property are blocked solely pursuant to Executive Order 13599 as the Government of Iran.”

## **Impact on Companies**

November 5, 2018 represents a full return to U.S. sanctions policy against Iran prior to the JCPOA. While non-U.S. parties that engaged in business with Iran under the relief granted pursuant to the JCPOA should have wound down their business prior to November 5, they still may be owed fees and payments under agreements entered into before May 8, 2018. Although the snapback sanctions legally permit them to collect that payment (so long as the Iranian counterparty is not an SDN and the payment is not otherwise prohibited), their practical ability to do so may be limited, especially if payment is made through Iranian financial institutions that are now denied access to the SWIFT system.

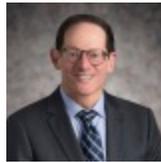
All companies conducting global business should also prepare for increased compliance measures to avoid facilitating significant transactions on behalf of an Iranian counterparty. As we previously have [described](#), U.S. authorities are preparing for increased efforts by the Government of Iran to launder money to lessen the economic impact of U.S. secondary sanctions. Further, with the addition of hundreds of new SDNs, companies should be extra vigilant about screening and conducting thorough due diligence on their customers and counterparties.

Finally, the coming weeks will be an opportunity to see how strictly the Trump administration plans to enforce the secondary sanctions. Although OFAC has been somewhat liberal so far with waivers granted concurrently with the sanctions snapback, the U.S. government has adopted a tough tone regarding enforcement. For example, [FAQ](#) guidance makes clear that “[t]he wind-down period has ended and the United States intends to fully enforce the sanctions that have come back into effect.” In an [op-ed](#) published in the Financial Times, Secretary Mnuchin also warned that “[t]he Treasury will strictly enforce our sanctions. We will not tolerate banks, companies or other entities that seek to circumvent our actions. We will view them as complicit in funding Iran’s malign ambitions.” As the [EU](#) and others look for ways to continue to support the Iranian economy and government, OFAC and other U.S. authorities could increase enforcement to pressure non-U.S. companies to cut ties with Iran.

## Related People



**Ryan Fayhee**



**Alan G. Kashdan**



**Tyler Grove**

## Related Areas of Focus

International Trade

Sanctions, Export Controls & Anti-Money Laundering