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Decertification of Iran Deal Threatens Reinstatement of Sanctions

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President Trump announced Friday that he will not certify the Joint Comprehensive Plan of Action (JCPOA), the landmark 2015 agreement that eased sanctions on Iran in exchange for curbs on Iran's nuclear program. Although the President's decision by itself does not mandate the immediate reinstatement of any nuclear-related U.S. sanctions on Iran, the decision allows Congress to introduce legislation for consideration on an expedited basis to reinstate any statutory sanctions on Iran that the United States agreed to lift pursuant to the JCPOA. The President stopped short of making this request, however, calling on Congress instead to establish "trigger points" that would automatically reinstate sanctions if certain criteria are met. The Administration could also seek to use the decision as leverage to renegotiate the terms of the Iran deal more broadly.

As background, the Iran Nuclear Agreement Review Act of 2015 requires the President to certify every 90 days that Iran is living up to its commitments under the JCPOA and that the suspension of sanctions under the agreement remains appropriate and vital to U.S. national security interests. Although President Trump certified the deal twice this year, he has repeatedly derided the agreement and recently signaled that he would decline to certify it again at the next deadline on October 15. The President's decision to decertify the agreement opens a 60-day window in which Congress may introduce legislation that would reinstate all statutory sanctions on Iran that were eased as part of the JCPOA.

While Congressional support for such legislation is far from clear, the prospect of reinstating sanctions creates significant risk and uncertainty for companies that have relied on the United States'

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commitments under the deal to pursue business opportunities in Iran during the 21 months since "Implementation Day" of the JCPOA. As part of the agreement, for example, the United States lifted most "secondary sanctions" targeting foreign persons doing business with Iran; authorized foreign subsidiaries of U.S. companies to conduct business with Iran in certain cases; and removed hundreds of persons from the Office of Foreign Assets Control's (OFAC) Specially Designated Nationals and Blocked Persons List. Reversing these commitments would require companies to alter their corporate structure and policies, wind down contracts, and make other significant changes to their business operations. Moreover, the European Union (EU) and other parties to the JCPOA have indicated that they will continue to support the agreement, and the EU could potentially employ "blocking" laws to prohibit European companies from complying with U.S. nuclear-related sanctions on Iran.

President Trump called on Congress to establish trigger points that would automatically reinstate sanctions if certain criteria are met. For example, U.S. Senators Bob Corker and Tom Cotton are said to be preparing legislation that would require sanctions to automatically "snap back" if Iran were determined to be capable of producing a nuclear weapon within a year. Other conditions could potentially address Iran's ballistic missile program and support for terrorist groups as well as the "sunset" provisions of the JCPOA that allow Iran to resume certain nuclear activities in the future. The President threatened to terminate the deal if a solution cannot ultimately be reached with Congress and U.S. allies. In the event of a sanctions snapback, the U.S. has provided guidance stating that non-U.S., non-Iranian persons likely would have a 180-day period to wind down any operations in or business involving Iran that was consistent with U.S. law and undertaken pursuant to a written agreement entered into prior to reinstatement of the sanctions. The U.S. government would also generally permit the receipt of payment for goods and services that were lawfully provided and delivered prior to snapback pursuant to a written agreement. However, the provision of any additional goods or services to Iran during the 180-day period, other than those necessary to wind down Iranian business, would generally be prohibited.

Whether this is the administration's ultimate goal is unclear, however. The President's decision to decertify the JCPOA does not require Congress to introduce any legislation that could potentially reinstate the nuclear-related sanctions that were lifted as part of the agreement. The President could also have simply reinstated the sanctions himself without Congressional approval. The Administration may therefore be seeking to use the decertification and threat of sanctions as leverage to renegotiate the terms of the JCPOA. Whether the administration will be successful in this regard remains to be seen, as any attempt to renegotiate the deal is likely to encounter significant resistance from Iran, the EU, and other parties to the agreement.