



What's Next for the JCPOA? Trump and the Looming Deadline

By Richard Nephew

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On January 11, the president is likely to announce whether the Joint Comprehensive Plan of Action (JCPOA) will remain in place for the next few months or face an immediate crisis. The president is required on that day to once again consider whether the JCPOA – the deal struck between Iran and the United States, China, France, Russia, the United Kingdom and Germany to ensure the Tehran’s nuclear program remains peaceful - is in the U.S. national security interest and whether Iran is complying with its terms. It is almost certain that he will affirm the latter, but decline the former, as he did on October 13, 2017. Congress will then have another 60-day period to consider whether to snap back sanctions against Iran or to do nothing, as it did during the fall of 2017.

More importantly, the president’s decision will be a factor in determining whether the United States will continue to waive sanctions against Iran in order to comply with the U.S. commitments in the JCPOA. All of the statutory sanctions suspended pursuant to the JCPOA are due for waiver between January 12-17 (with some ambiguity as to what is due when as a result of the Trump Administration’s failure to publish its waiver documentation as the Obama Administration did). On January 12, the waiver for sanctions covering the requirement for significant reductions in foreign oil purchases is due. On January 13, the waiver for sanctions covering essentially the rest of the sanctions regime (e.g., with respect to insurance, shipping, or banking) is due. By either January 16 or 17, the waiver for the Iran Sanctions Act restrictions on oil and gas investment is due (though this may have been included in the broader set of waivers due on January 13). Overall, by mid-January, the United States is obligated pursuant to the JCPOA to waive these sanctions. It is unclear whether the president will authorize such a course of action. This short paper identifies four options open to the Trump administration and their likely implications if enacted, while acknowledging that there are potential hybrid variants of these scenarios that could also emerge.

Setting the Context

Before the recent wave of protests in Iran, it was widely expected in Washington that the president would grudgingly continue with the waivers that have been in place since January 2016 during the Obama administration. The current president had issued an ultimatum to the effect that, unless the negotiating parties improved the terms of the JCPOA or Congress acted to create pressure on the Iranians to make the necessary concessions, he would reconsider his decision to permit the waivers to continue. But, given opposition in Congress and around the world for threatening the JCPOA, few thought that he would prompt a crisis now. Expectations were that throughout 2018 the president would demand changes to the JCPOA and, after building a legitimate sense that he had tried to find diplomatic ways out, stop permitting the sanctions to be waived only as a last resort. After all, there was general concern in Washington from both sides of the



partisan aisle that the United States would be viewed as the sole reason for the demise of the JCPOA, particularly as this would leach away support for a return to aggressive sanctions.

However, with the recent Iranian political turmoil, the calculus inside the Trump Administration may be shifting. Prominent voices outside of the Administration are suggesting continued sanctions relief will undermine Iranians seeking change in the system. Many of these voices have argued that the sanctions that are currently suspended should be re-imposed or that entirely new ones should be pursued. This, the argument goes, would show support for the protesters and help generate the pressure on the Iranian system necessary to prompt real change (even regime change). On the other hand, others have insisted such a move would deflect attention away from Iran's internal problems on an international level and, within Iran, give the leadership an opportunity to divert blame for domestic economic issues to the United States. Even if the decision to re-impose sanctions is recent, the Iranian government has been arguing that the United States has been quietly undermining the provision of sanctions relief from the start. Iranian leaders could and probably would suggest that the United States was finally being open about what the Iranian government surmised for a long time.

Ultimately, the only real outstanding question is what Donald Trump thinks and will choose to do. Contacts within his administration and those outside of government have reported that the decision is effectively a “coin flip” now, with a variety of options in play, including the following:

Option 1: Keep at a Simmer with the Status Quo

The baseline scenario is that the Trump Administration continues to waive the sanctions while putting pressure on the Iranian government and others to improve the terms of the JCPOA. Certification of the national security value of the JCPOA is neither achievable nor necessary in this vision, though there could be increasing complications for Trump's narrative if he is seen agreeing to the national security value of waiving sanctions for an agreement he insists is contrary to U.S. national security. Still, as a legal matter, there are ways to avoid conflict between these statements and, politically, so long as the president can argue that he has a strategy to make the JCPOA great again, it is probably sustainable to do so for at least the next set of waiver decisions.

In this scenario, there would be no impact on energy markets, other than a marginal improvement in the level of certainty that those seeking to invest in Iran may take from a decision to keep the waivers and the JCPOA alive for another period of time. However, this scenario envisions an ongoing debate over this question throughout 2018. Considering that there will need to be another certification decision in April 2018, as well as a renewal of waivers in May 2018 (for oil purchases) and July 2018 (for essentially everything else contained in the statutory sanctions relieved in the JCPOA), there will be many other points of friction along the way in 2018.

Option 2: Turn Up the Heat by Setting a Deadline for Waiver Termination

In this scenario, the Trump Administration would continue to waive sanctions but set a date in 2018 for their termination, absent either Congressional legislation that “fixes” the JCPOA by establishing sanctions snap-back if Iran expands its nuclear program as JCPOA restrictions come off, or improvements in the deal itself.



This would have the benefit of increasing the pressure on Congress and the international community to “fix” the problems identified without jumping over the precipice at this particularly unsettled time in Iran.

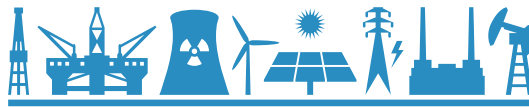
The main downside to this scenario, of course, is that it would establish a further redline that the Trump Administration would be forced to manage. It is not clear that the Trump team wants to ratchet up the sense of pressure on itself, let alone the expectations that would arise from people outside of government who are seeking a tougher approach toward Iran. From the perspective of the energy sector, establishing a redline along these lines would continue to chill investment in Iran and reduce Iran’s incentive to continue to abide by the terms of the JCPOA. There may therefore be some energy market implications, though probably not in terms of immediate Iranian oil and gas supply. The problems would be more nascent and anticipated than near term or concrete.

Option 3: Set Fire to the Kitchen by Terminating the Waivers

The president could simply elect to kill the JCPOA—as he said he might in October 2017—by terminating the sanctions waivers. It’s true, as European and other governments have noted, that the JCPOA is a multinational agreement. Consequently, US renunciation of sanctions relief might not immediately result in the collapse of the JCPOA. But the deal was based in no small part on the necessity of US sanctions relief to permit European and Asian companies to restore their economic ties with the country. Even if compliance with a US snapback decision was far from comprehensive, there would still likely be companies and banks that would elect to walk away from Iran rather than risk being isolated from US markets. As a result, though the JCPOA may not die as an immediate outcome of a US decision to halt sanctions waivers, the JCPOA would be mortally wounded by the decision.

Under President Obama, the Treasury Department issued guidance to the effect that a decision to snap-back sanctions would include a 180-day wind-down period for those businesses that re-engaged with Iran as intended under the JCPOA. The Trump Administration could continue with that policy or it could change it to make sanctions have immediate effect or shorten the wind-down period. The 180-day period is generally not required under U.S. law (in fact, U.S. law anticipates more immediate effect), and so this is a matter for executive discretion. The only exception to this general observation is with respect to requirements to reduce purchases of Iranian oil. In this matter, the structure of U.S. law would require the Executive Branch to report within 180 days of sanctions being once more “live” as to whether significant reductions had been made by countries purchasing Iranian oil. The law does not specify exact amounts and the Obama administration adopted a general rule of thumb that 20 percent reductions would be sufficient (with China allotted some greater flexibility given the overall amount of its purchases). The Trump administration could decide to link these two events, with oil reductions required by day 180 along with a restart of the rest of U.S. sanctions, or it could decide to push the starting point of reductions back to a different date.

Regardless, there would be substantial market turmoil (not to mention political upset) with such a decision. Contacts in the energy trading community suggest that few in the market expect that the Trump administration could end the waivers as soon as mid-January and, consequently, there is little planning being done with this in mind.



Option 4: Light a Long Fuse Instead

Instead of killing the waivers outright, the Trump administration could even choose a hybrid approach, announcing a decision to terminate the waivers but set in the future. As with other sticky political problems (such as on immigration with respect to the Dreamers), the president could elect to look tough now but make an offer to resolve the situation in the future, provided additional concessions are made by interested parties. In this way, the Trump team could potentially sign off on waiver terminations at a set date – similar to what was described in Option 2 – but leaving flexibility to reverse that decision in the future. Unlike under Option 2, however, there probably would be considerable market concern with this scenario. Option 2 is, in essence, a more aggressive form of the status quo, with deadlines attempting to serve as a motivating factor in order to maintain the current situation. Markets have essentially accepted the use of waivers as less than ideal, but not destabilizing enough to avoid Iran altogether. In this scenario, however, the market reaction could be severe, as companies and banks decide that the most likely outcome of the process is not more of the same, but rather a complete change in the status of the JCPOA and sanctions relief.

Conclusion

It is more than a little ironic that the same people who argued that the JCPOA would have no effect on the internal dynamics of the country because of the entrenched power of elites are now suggesting that, having witnessed at least some of the frustrations of the Iranian people with those elites, only re-imposition of sanctions can help free those people from tyranny. As JCPOA supporters in 2015 noted, one of the benefits of the JCPOA is that it puts the onus back on Tehran to address the legitimate demands of the Iranian population for economic opportunity, even if supporters could not guarantee what the outcome of that debate would be. I noted in testimony¹ to the Senate Foreign Relations Committee in July 2015 that the Iranian population would resent and potentially reject any attempt by the Iranian government to deny them the benefits of the JCPOA and its promise of economic openness. This appears to be at least one element of the frustration now boiling in some quarters in Iran.

Iranian political and economic grievances are not new. They are not the product of decisions made by the Iranian government solely in the past year or two. Rather, these are grievances that were part of the rationale for the Iranian revolution in the 1970s and they are relatively simple, natural complaints: a demand for a fairer share of the wealth of the country and greater freedoms within it. Achieving these demands could take a number of forms, depending on how Iranians choose to respond to the challenges now confronting them. Some inside of Iran may argue that the system as needs to be replaced entirely while others suggest that reforms are not only more prudent (in order to avoid the chaos and bloodshed of other internally riven societies in the Middle East), but also achievable if the government is given time and space to do so.

People outside of Iran who are interested in its future should be free to express support for those in Iran seeking to solve their country's problems. But, they should take some of their own advice from 2015 and have a measured set of expectations for how much change can be prompted by outsiders. There is a difference between helping to set the context for a debate in another country and seeking to steer it. Just as JCPOA supporters were cautious – perhaps to a fault – to make clear that they could not guarantee changes

¹ <http://energypolicy.columbia.edu/research/testimony/senate-committee-foreign-relations-sanctions-and-jcpoa>



in Iran desired by the United States, so too do those who advocate for the re-imposition of sanctions have a responsibility to temper their enthusiasm with caution. A decision to re-impose JCPOA-suspended sanctions could increase the pressure on the Iranian government and result in changes for the better, or it could lead to the isolation of the United States internationally and the deflection of blame for Iran's economic conditions onto the United States as an easily identifiable foil.

About the Author

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The views represented in this commentary represent those of the author.