



441 G St. N.W.
Washington, DC 20548

May 23, 2014

The Honorable Edward R. Royce
Chairman
Committee on Foreign Affairs
House of Representatives

Iran: State Leads an Interagency Process to Determine Whether to Impose Sanctions under Section 5(b) of the Iran Sanctions Act

Dear Mr. Chairman:

Iran’s efforts to develop its nuclear program threaten regional and global security and present significant challenges to the United States. The United States and other nations have imposed sanctions on Iran that have adversely affected the Iranian economy.¹ In November 2013, the United States participated in multilateral talks with Iran regarding the possibility of providing sanctions relief if Iran addressed international concerns about its nuclear program. These talks resulted in an agreed-upon joint plan of action to explicitly block near-term Iranian pathways to a nuclear weapon and allow further talks to reach a long-term comprehensive solution. The sanctions relief provided for the duration of the talks is currently scheduled to conclude in July 2014.

U.S. sanctions on Iran include those specified in the Iran Sanctions Act of 1996 (Iran Sanctions Act).² Section 5(b) of the Iran Sanctions Act authorizes sanctions on persons engaging in various activities that involve weapons of mass destruction or other military capabilities and are related to Iran.³ You requested that we review how the Department of State (State) has implemented the sanctions provisions in Section 5(b). This report describes the process State and other relevant U.S. agencies use to determine whether to sanction persons under Section 5(b).

To determine the process State and other relevant U.S. agencies use to determine whether to sanction persons under Section 5(b), we obtained documentation and interviewed State officials. We interviewed agency officials at the Department of Energy and the Department of Commerce (agencies identified by State as relevant to the sanctions determination process), and obtained corroborating documentation about their roles in making this determination. In

¹For a description of the effects of sanctions on Iran, see GAO, *Iran: U.S. and International Sanctions Have Adversely Affected the Iranian Economy*, [GAO-13-326](#) (Washington, D.C.: Feb. 25, 2013).

²Iran and Libya Sanctions Act of 1996, Pub. L. No. 104-172, 110 Stat. 1541, 1543, as amended. The name of the law was changed to Iran Sanctions Act of 1996 in 2006 by the Iran Freedom Support Act, Pub. L. No. 109-293.

³Under section 14(15) of the Iran Sanctions Act, in general, the term “person” means (i) a natural person; (ii) a corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization or group, and any governmental entity operating as a business enterprise; and (iii) any successor to any entity described in clause (ii). Also, the term “person” does not include a government or governmental entity that is not operating as a business enterprise.

addition, we compared the agencies' criteria with the relevant requirements in Section 5(b). We obtained documentation from State about the number of sanctions imposed under Section 5(b). We interviewed State officials to obtain additional context relating to the sanctions process. We also reviewed the Federal Register for notifications of Section 5(b) sanctions for the time period August 10, 2012, to May 20, 2014.

We conducted this performance audit from January 2014 to May 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Section 5(b) of the Iran Sanctions Act requires the President to impose sanctions on any person who has engaged in a transaction that meets all of the following criteria:⁴

- The activity must have occurred on or after August 10, 2012.
- A person must have exported or transferred, or permitted or otherwise facilitated the transshipment of, any goods, services, or technology or other items to any other person.
- The person must have known or should have known that the export, transfer, or transshipment of the goods, services, technology, or other items would likely result in another person exporting, transferring, transshipping, or otherwise providing the goods, services, or technology or other items to Iran.
- The person must have known or should have known that the export, transfer, transshipment, or other provision of the goods, services, technology, or other items to Iran would contribute materially to the ability of Iran to (I) acquire or develop chemical, biological, or nuclear weapons or related technologies or (II) acquire or develop destabilizing numbers and types of advanced conventional weapons.⁵

Section 5(b) also requires the President to impose sanctions on persons engaged in certain joint ventures linked to Iran and involving the mining, production, or transportation of uranium.⁶ The President has delegated the decision to impose Section 5(b) sanctions to the Secretary of State.⁷

⁴This requirement is subject to certain exceptions. For example, the President shall not be required to apply or maintain section 5(b)(1) and (2) sanctions in instances including certain contracts for the procurement of defense articles or to humanitarian items. Pub. L. No. 104-172, § 5(f), as amended.

⁵Pub. L. No. 104-172, § (5)(b)(1), as amended.

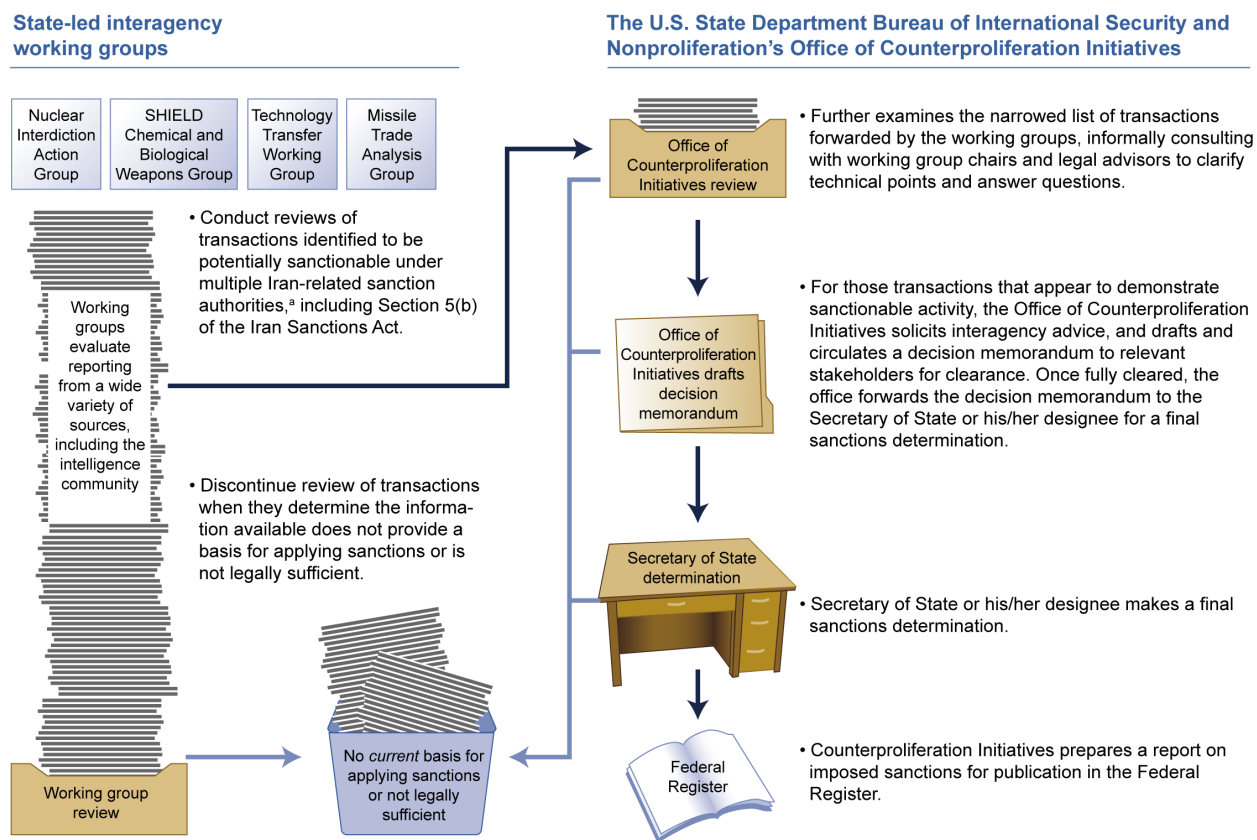
⁶Pub. L. No. 104-172, § (5)(b)(2), as amended.

⁷Delegation of Certain Functions and Authorities under the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, 75 Fed. Reg. 67025 (Sept. 23, 2010).

State Leads the Process to Determine Whether to Sanction Persons under Section 5(b) of the Iran Sanctions Act

State’s Bureau of International Security and Nonproliferation’s Office of Counterproliferation Initiatives leads an interagency process to evaluate whether a person’s activities are potentially sanctionable under Section 5(b) of the Iran Sanctions Act or under one or more of other multiple Iran-related sanctions authorities.⁸ Figure 1 illustrates the process for identifying persons meeting sanctions requirements under Section 5(b). The process begins with four State-led interagency working groups. These groups are the Nuclear Interdiction Action Group, the SHIELD Chemical and Biological Weapons Group, the Technology Transfer Working Group, and the Missile Trade Analysis Group.

Figure 1: Process for Identifying Persons Meeting Sanctions Requirements under Section 5(b) of the Iran Sanctions Act



Source: GAO analysis based on U.S. State Department data. | GAO-14-598R

^aThe four working groups include, for example, members from the Department of Energy, the Department of Commerce, and the intelligence community, among others. These working groups are responsible for identifying potential violations of multiple proliferation-related sanctions authorities, including Section 5(b) of the Iran Sanctions Act.

⁸State has authority to impose Iran-related sanctions under multiple authorities, including the Iran Sanctions Act, as amended; the Iran, North Korea, and Syria Nonproliferation Act; Section 1245 of the National Defense Authorization Act of 2012; and the Iran Threat Reduction and Syria Human Rights Act. See e.g. 75 Fed. Reg. 67025; Delegation of Authority Under the Iran Nonproliferation Act of 2000, 65 Fed. Reg. 56209, (Sept. 11, 2000); Exec. Order No. 13599, 77 Fed. Reg. 6659 (Feb. 5, 2012); Exec. Order No. 13628, 77 Fed. Reg. 62139 (Oct. 9, 2012).

Each working group is chaired by a State official and consists of representatives from several U.S. government departments and agencies such as the Departments of Defense, Commerce, Homeland Security, Treasury, and Energy; the Federal Bureau of Investigation; and various intelligence community agencies. U.S. government officials who participate as subject matter experts on the working groups said that they advise State on transactions related to their respective areas of focus. For instance, the Nuclear Interdiction Action Group, the SHIELD Chemical and Biological Weapons Group, and the Technology Transfer Working Group are responsible for examining sources, including intelligence reports, that may be relevant to provisions of Section 5(b) related to nuclear weapons, chemical and biological weapons, and advanced conventional weapons, respectively. The Missile Trade Analysis Group is responsible for monitoring transfers of missile proliferation concern that are considered relevant to Section 5(b).

Officials from the Office of Counterproliferation Initiatives stated that the working groups are responsible for regularly evaluating reports to identify transactions that are potentially sanctionable under one or more of the multiple Iran-related nonproliferation sanction authorities, including Section 5(b) of the Iran Sanctions Act. State officials said these reports come from a variety of sources, including the intelligence community. Working group representatives said they are in regular communication and meet biweekly or monthly to discuss these reports and their findings to determine whether transactions meet the criteria for sanctions. According to State and other working group officials, the interagency review process relies on criteria as defined in Section 5(b) when assessing a transaction for the potential application of those sanctions. Officials from the interagency working groups said that State directs them to apply these criteria when assessing transactions for the possible imposition of sanctions under Section 5(b). State is in the process of drafting a document to officially outline its Section 5(b) review procedures and the guidance it provides to the participating working group agencies. State officials also said the groups may stop reviewing transactions if they determine available information does not provide a basis for applying sanctions or is not legally sufficient.

Once a working group determines that a transaction appears to demonstrate sanctionable activity under Section 5(b) of the Iran Sanctions Act, the working group chair reports the group's findings and recommendations to State's Office of Counterproliferation Initiatives.⁹ The office further examines the narrowed list of transactions forwarded by the working groups, informally consulting with working group chairs and legal advisors to clarify technical points and answer questions on transactions identified as potentially sanctionable. For those transactions that appear to demonstrate sanctionable activity, the Office of Counterproliferation Initiatives solicits interagency advice, and drafts and circulates a decision memorandum to relevant stakeholders for clearance. Once the stakeholders have fully cleared the memorandum, the Office of Counterproliferation Initiatives forwards it to the Secretary of State or his/her designee for a final sanctions determination. At any stage of this process, State officials may determine that there is no current basis for applying sanctions. The Office of Counterproliferation Initiatives prepares a report on imposed sanctions for publication in the Federal Register.

According to State officials, the interagency working groups have not identified any cases that meet the legal requirements necessary to impose sanctions under Section 5(b) as of May 19,

⁹According to State officials, a working group can recommend several, sometimes concurrent, courses of action on a transaction, including demarches or sanctions. A demarche is a formal diplomatic representation of one government's official position, views, or wishes on a given subject to an appropriate official in another government or international organization. Governments may use a demarche to protest or object to actions by a foreign government. Demarches generally seek to persuade, inform, or gather information from a foreign government.

2014. Our review of the Federal Register confirmed that State has not imposed any such sanctions as of May 20, 2014.

State officials provided us additional information, controlled at the Sensitive but Unclassified (SBU) level, about the sanctions determination process. We are providing this information by separate SBU letter to your office and the Secretary of State. On request, a copy of this SBU letter will be made available to others with the appropriate need-to-know.

Agency Comments

We are not making recommendations in this report. We provided a draft of this report to the Department of State for comment. State provided technical comments on our draft report, which we incorporated as appropriate.

- - - - -

We are sending copies of this report to appropriate congressional committees and the Secretary of State. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-9601 or MelitoT@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Pierre Toureille (Assistant Director), Jeffrey Baldwin-Bott, Brian Tremblay, Mason Thorpe Calhoun, Virginia Chanley, Lynn Cothorn, and Grace Lui.

Sincerely yours,

A handwritten signature in black ink that reads "Thomas M" followed by a long horizontal line.

Thomas Melito
Director, International Affairs and Trade

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (www.gao.gov). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to www.gao.gov and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, <http://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

Connect with GAO

Connect with GAO on [Facebook](#), [Flickr](#), [Twitter](#), and [YouTube](#).
Subscribe to our [RSS Feeds](#) or [E-mail Updates](#). Listen to our [Podcasts](#).
Visit GAO on the web at www.gao.gov.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Website: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Katherine Siggerud, Managing Director, siggerudk@gao.gov, (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548

