

Could The JCPOA be in Violation of a 2012 Iran Sanctions Law Signed by President Obama?



President Obama and Iranian President Rouhani

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Source: *New York Post*

James Rosen of *Fox News* published an intriguing investigative report, [“EXCLUSIVE: US Officials conclude Iran Deal violates federal law”](#). A 2012 Federal Iran sanctions law signed into law by President Obama has provisions closing sanctions loopholes for US licensed foreign subsidiaries during business in Iran that could make compliance with the JCPOA illegal.

The State and Treasury Department officials contend that a 1977 federal law gives the President broad authorities to include possible licensing of foreign subsidiaries of US firms to do business with Iranian entities. A former Obama National Security official contends that there will still be sanctions regime that would prevent American firms from engaging in commercial activities in Iran. This latest development might bolster possible Congressional and State litigation, especially in the later case, as the JCPOA doesn't cover sanction laws passed by more than two dozen states.

This is an interesting development that might still yet be another basis for litigation against the President. It concerns the conflict between 2012 Iran Threat Reduction Act and Syria Human Rights Act (ITRA) prohibition against lifting of sanctions against foreign subsidiaries of US

corporation and Section 5.1.2 of [the International Emergency Economic Powers Act](#), or IEEPA, on the books since 1977 – and states that the president “may exercise all authorities” embedded in IEEPA, which includes licensing authority for the president.”

State Department spokesperson John Kirby at today’s Daily Press invoked the authority of the Administration to license foreign subsidiaries under IEEPA saying:

Under the International Emergency Economic Powers Act, the president has broad authorities, which have been delegated to the secretary of the Treasury, to license activities under our various sanctions regimes, and the Iran sanctions program is no different.

Politico [cited](#) former Obama National Security official Chris Backemeyer who served from 2010 to 2014 saying , “there will be no real sanctions relief of our primary embargo...We are still going to have sanctions on Iran that prevent most Americans from...engaging in most commercial activities.”

Sen. Ted Cruz suggested otherwise to the Szubin and Kirby statements:

Any U.S. company that follows through on this, that allows their foreign-owned subsidiaries to do business with Iran, will very likely face substantial civil liability, litigation and potentially even criminal prosecution. The obligation to follow federal law doesn’t go away simply because we have a lawless president who refuses to acknowledge or follow federal law.

Will the Senate Banking Committee launch hearings on this development and pass a resolution sponsoring litigation that minority Democrats might block again? There are states who have adopted comparable language in state Iran sanctions authorized by a 2010 federal comprehensive sanctions law.

In our *NER [article](#)* on the question of states having the authority to bring possible federal litigation over sanctions relief, we noted this comment from an August 2015 *Steptoe International Compliance* blog post on the JCP0A and State Sanctions:

The Iran nuclear deal (JCP0A) does not say much about Iran sanctions imposed by US state governments. ... These state restrictions can be more extensive in scope than US federal sanctions. For example, some state restrictions (e.g. in Florida) attach automatically to the parent entity of the company who engages in certain Iran activities. Laws in many states provide for the lifting of Iran sanctions when the President removes Iran from the list of countries that support terrorism; but the JCP0A does not do that, and, as a result, Iran sanction laws in most states will remain intact.

The JCP0A compliance conflicts with the federal ITRA law coupled with no coverage of state sanctions laws by the Iran Nuclear deal question the legality of the President's actions. This latest development might bolster possible litigation by 14 States who's Governors signed a letter in September 2015 opposing the Iran nuclear pact. Stay tuned for developments.

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