

The Honorable William J. Burns
Deputy Secretary of State
2201 C Street, N.W.
Washington, D.C. 20520

Re: State Department Sanctions Information and Guidance

Dear Mr. Burns:

The Clearing House Association L.L.C. (“The Clearing House”)¹ is pleased to comment on the information and guidance addressing the State Department’s sanctions authority under the Iran Sanctions Act (“ISA”)² and other authorities (“Guidance”).³ While the Guidance is illuminating in many respects, there is one area that requires additional clarification.

The Guidance notes that “[p]otential ISA sanctions that were already in place before the enactment of [the Iran Threat Reduction and Syria Human Rights Act of 2012] include: . . . (3) prohibiting U.S. financial institutions from making certain loans or providing certain credits to the sanctioned person”⁴ This is a reference to section 6(a)(3) of the ISA, which provides that “[t]he United States Government may prohibit any United States financial institution from making loans or providing credits to any sanctioned person totaling more than \$10,000,000 in any 12-month period unless such person is engaged in activities to relieve human suffering and the loans or credits are provided for such activities.”

The Guidance leaves many questions regarding how this limit on loans and credits unanswered, including the following:

¹ Established in 1853, The Clearing House is the nation’s oldest banking association and payments company. It is owned by the world’s largest commercial banks, which collectively employ 1.4 million people in the United States and hold more than half of all U.S. deposits. The Clearing House Association is a nonpartisan advocacy organization representing—through regulatory comment letters, amicus briefs, and white papers—the interests of its owner banks on a variety of systemically important banking issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost \$2 trillion daily and representing nearly half of the automated-clearing-house, funds-transfer, and check-image payments made in the United States. See The Clearing House’s web page at www.theclearinghouse.org for additional information.

² 50 U.S.C. § 1701 note.

³ 77 Fed. Reg. 67,726 (Nov. 13, 2012).

⁴ *Id.* at 67,727.

1. How are “loans” or “credits” defined? Do those terms include:
 - (a) A margin against securities?
 - (b) A 30-day float on a credit card?
 - (c) Unfunded automated-clearing-house transactions?
 - (d) Equity investments in the sanctioned party?

2. Is the sanction applied retroactively or prospectively?
 - (a) Does the \$10-million limit count just against loans and credits made after the designation date?
 - (b) What about a workout of a pre-existing credit? Would that be treated as a new loan made after the designation?
 - (c) How would this apply to a \$50-million, 5-year line of credit that was made to a sanctioned entity before it was designated? Is the entire line of credit excluded because it was contractually committed to before the designation, or will amounts that are drawn on or funded after the designation count towards the \$10-million limit?

3. How is the \$10-million limit calculated if the U.S. institution is part of a syndication facility?
 - (a) Does the entire amount of a facility get counted, or just the U.S. institution’s specific commitment?
 - (b) Should the total commitment (funded and unfunded) be counted, or just the funded amount at any point in time?
 - (c) In the case of a facility in which the borrower calls for periodic draws, would a draw made to purchase assets from one of the targeted entities count against the U.S. bank if the U.S. bank did not fund that particular draw? What if the new asset now becomes part of the collateral base of the facility?

4. Is the 12-month period to be calculated on a rolling or a fixed basis?

5. Are transactions on the books on zero date grandfathered in full so the dollar threshold does not apply to any subsequent disbursements or draws? If not fully grandfathered, what factors should U.S. financial institutions take into consideration when deciding which payments apply to the threshold?

6. There is a real threat of foreign litigation for breach of contract for overseas branches given the potential for conflict of laws. If a U.S. bank loses such a case, would the U.S. government grant the bank a license to pay?

We believe that the Guidance should address these issues.

We hope these comments are useful. If you have any questions about this letter, please contact me at 212-612-9234 or joe.alexander@theclearinghouse.org.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joseph R. Alexander", followed by a horizontal flourish line.

Joseph R. Alexander
Senior Vice President, Deputy General
Counsel, and Secretary

cc: The Honorable David S. Cohen
Under Secretary of the Treasury for Terrorism and Financial Intelligence

The Honorable S. Leslie Ireland
Assistant Secretary of the Treasury for Intelligence and Analysis

Adam J. Szubin, Esq.
Director, Office of Foreign Assets Control