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HIFPA II: New Sanctions Authorities Meet Familiar Constraints

On October 25, 2018, the President signed a new package of sanctions targeting Hizballah, the second time in three years that the United States has expanded and intensified U.S. sanctions authorities targeting the terrorist group.¹

The sanctions authorized by the Hizballah International Financing Prevention Amendments Act of 2018 (HIFPA II) could affect correspondent banking worldwide if implemented.

- ▶ HIFPA II authorizes the President to require that U.S. financial institutions conduct enhanced due diligence on any foreign correspondent that provides “significant financial services” to persons operating in a jurisdiction other than Lebanon that allows Hizballah to use its territory for activities such as training, recruitment, or fundraising.² The law does not require any showing that the foreign financial institution facilitated any transactions for Hizballah, simply that it operates in a country where Hizballah also operates.³
- ▶ Hizballah maintains a global presence, with networks in Africa, Southeast Asia, North and South America, and Europe,” according to a U.S. think tank.⁴ Any financial activity by Hizballah – including with businesses that appear to be legitimate but are in fact operated for the benefit of Hizballah – could be classified as terrorist financing, meaning that the President could require enhanced due diligence for any country determined to have a Hizballah presence.
- ▶ HIFPA II also requires the President to impose sanctions on any person who the President determines provides significant support to Hizballah or related organizations, foreign government agencies that provide financial support or arms to Hizballah, and Hizballah-affiliated networks.⁵ The President retains discretion in making determinations and in defining “significant,” and can waive sanctions for up to 180 days if he determines that doing so is in the interest of national security.⁶

The United States has not imposed sanctions under the Hizballah International Financing Prevention Act of 2015 (HIFPA I), probably because of concerns about destabilizing the financial system, both in Lebanon and other countries where the United States has strategic interests. The Treasury Department’s history of designations under HIFPA I and other existing authorities suggest that it is unlikely to use the new authorities granted by HIFPA II, which overlap with the Treasury Department’s current sanctions targeting Hizballah.



- ▶ Obama and Trump administration policymakers have balanced the goal of disrupting Hizballah financing networks with preserving the stability of the Lebanese financial system.⁷ Lebanon is unusually dependent on its financial sector for economic growth; in 2016, the sector had assets worth four times the country's GDP.⁸ One Lebanese economist called the Lebanese banking system “the cornerstone of monetary, fiscal, economic and—most importantly—social stability in Lebanon.”⁹
- ▶ U.S. policymakers have urged Lebanon to push Hizballah out of its financial sector, but no Lebanese bank has been listed under HIFPA I.¹⁰ Lebanese banks face physical security threats, because pro-Hizballah activists have incited supporters against Lebanese banks, and one bank targeted by pro-Hizballah activists was bombed in 2016, according to news reports.¹¹ Hassan Nasrallah, Hizballah's sanctioned secretary general, said the group was infuriated that some Lebanese banks were applying the law too harshly and closing the accounts of some charities.¹²
- ▶ The group of countries other than Lebanon where Hizballah has a presence includes states such as Iraq and Nigeria where the government has not effectively countered Hizballah and where the United States has other security interests. Imposing an enhanced due diligence requirement with respect to these states could lead to widespread de-risking, which could increase economic and political instability, making the counterterrorism mission more difficult.

The United States has made targeting Hizballah a core pillar of its efforts to counter Iran and is likely to continue targeting Hizballah operations around the world as part of its effort to combat malign Iranian activities around the world.

The U.S. Treasury Department has announced four tranches of designations targeting Hizballah in 2018.

- ▶ So far this year, the Treasury Department has designated 24 individuals and 19 entities under Executive Order 13224.¹³ The designations have targeted Hizballah senior leadership¹⁴ in Lebanon as well as Hizballah-affiliated individuals and entities in Europe, West Africa, and the Middle East.
- ▶ Treasury Under Secretary for Terrorism and Financial Intelligence Sigal Mandelker in October 2018 said the administration is “exerting extraordinary pressure on Hizballah financiers,” and is “fully committed to shutting down this terrorist network” as part of its Iran sanctions campaign.¹⁵
- ▶ The Treasury Department has worked in partnership with Saudi Arabia, Bahrain,



Kuwait, Oman, Qatar, and the United Arab Emirates on some of these actions, including the designation of Nasrallah in May.

Comparing HIFPA I and II

HIFPA I became law in December 2015. It:

- ▶ Required the President to “prescribe regulations to prohibit, or impose strict conditions on the opening or maintaining in the United States of a correspondent account or payable-through account by a foreign financial institution” that the President determines knowingly facilitates a significant transaction for Hizballah, or for any person who has been sanctioned because of their involvement with Hizballah.¹⁶
- ▶ Required the President to produce periodic reports on imposition of sanctions on certain satellite providers that carry Hizballah’s television stations, on Hizballah narcotics trafficking and other transnational criminal activities, and on foreign nations’ efforts to combat Hizballah.

HIFPA II builds on the authorities of HIFPA I, including by expanding the reporting requirements. It also:

- ▶ Authorizes the President to prescribe regulations requiring U.S. financial institutions to conduct enhanced due diligence on foreign correspondents that have operations in jurisdictions that have been determined to allow Hizballah operations such as training, recruiting, or fundraising.
- ▶ Requires the President to impose sanctions on persons who the President determines provides significant support to Hizballah or related organizations, foreign government agencies that provide financial support or arms to Hizballah, and Hizballah-affiliated networks.

The Treasury Department has not defined “significant transaction” in the context of HIFPA I or HIFPA II.

- ▶ In the Iran¹⁷ and Russia/Ukraine¹⁸ program, the Treasury Department has said it would consider a number of factors, including the size and frequency of the transactions and the impact of the transactions on U.S. sanctions objectives.
- ▶ However, the Treasury Department has warned against relying on previously issued guidance, and interpretations may differ among sanctions programs.¹⁹



Endnotes

- 1 Hizballah International Financing Prevention Amendments Act of 2018, S. 1595, 115th Congress, at <https://www.congress.gov/115/bills/s1595/BILLS-115s1595enr.pdf>.
- 2 Hizballah International Financing Prevention Amendments Act of 2018, S. 1595, 115th Congress, at <https://www.congress.gov/115/bills/s1595/BILLS-115s1595enr.pdf>.
- 3 Hizballah International Financing Prevention Amendments Act of 2018, S. 1595, 115th Congress, at <https://www.congress.gov/115/bills/s1595/BILLS-115s1595enr.pdf>.
- 4 Matthew Levitt, "Hezbollah's International Presence and Operations," August 31, 2018, at <https://www.washingtoninstitute.org/uploads/Documents/opeds/Levitt-20180831-AJC.pdf>.
- 5 Hizballah International Financing Prevention Amendments Act of 2018, S. 1595, 115th Congress, at <https://www.congress.gov/115/bills/s1595/BILLS-115s1595enr.pdf>.
- 6 Hizballah International Financing Prevention Amendments Act of 2018, S. 1595, 115th Congress, at <https://www.congress.gov/115/bills/s1595/BILLS-115s1595enr.pdf>.
- 7 U.S. Department of the Treasury, "Testimony of AIS for Terrorist Financing Daniel L. Glaser Before The House Committee on Foreign Affairs Subcommittee on Terrorism, Nonproliferation, and Trade, and House Committee on Armed Services Subcommittee on Emerging Threats and Capabilities," June 9, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0486.aspx>. Assistant Secretary Glaser is now a Principal with the Financial Integrity Network. Similarly, during his recent trip Assistant Secretary Billingslea "reiterated the U.S. commitment to work with Lebanon to protect and promote Lebanon's financial system."
- 8 World Bank, "Financial Sector Assessment: Lebanon," December 2016, at <http://documents.worldbank.org/curated/en/260481485486059075/Lebanon-FSAP-Update-FSA-12222016.docx>.
- 9 Nassib Ghobril, "Durable Lebanese banks have earned trust," Financial Times, November 20, 2017, at <https://www.ft.com/content/b48d65fe-c893-11e7-ab18-7a9fb7d6163e/>.
- 10 U.S. Embassy in Lebanon, "Assistant Secretary of the Treasury for Terrorist Financing Marshall Billingslea Visits Lebanon," January 23, 2018, at <https://lb.usembassy.gov/assistant-secretary-treasury-terrorist-financing-marshall-billingslea-visits-lebanon/>.
- 11 Reuters, "Bomb Blast in Central Beirut Aimed at Bank: Minister," June 12, 2016, at <https://www.reuters.com/article/us-mideast-crisis-lebanon/bomb-blast-in-central-beirut-aimed-at-bank-minister-idUSKCN0Y0UK>
- 12 Al-Monitor, "Hezbollah brushes off US sanctions, says money comes via Iran," June 24, 2016, at <https://www.al-monitor.com/pulse/afp/2016/06/lebanon-hezbollah-banks.html#ixzz5VZQPfVPK>.
- 13 U.S. Department of the Treasury, "Treasury Targets Hizballah Financial Network in Africa and the Middle East," February 2, 2018, at <https://home.treasury.gov/news/press-releases/sm0278>
- 14 U.S. Department of the Treasury, "Treasury and the Terrorist Financing Targeting Center Partner Together to Sanction Hizballah's Senior Leadership," at <https://home.treasury.gov/news/press-releases/sm0387>.
- 15 U. S. Department of the Treasury, "Treasury Continues to Expose and Disrupt Hizballah's Financial Support Networks," October 4, 2018, at <https://home.treasury.gov/news/press-releases/sm501>.
- 16 Hizballah International Financing Prevention Act of 2015, Public Law 114-02, at <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/hifpa.pdf>.
- 17 OFAC FAQs: Iran Sanctions, at https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx.
- 18 OFAC FAQs: Other Sanctions Programs, at https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_other.aspx#542.
- 19 U.S. Department of the Treasury, "OFAC FAQs No. 14," Sept. 10, 2002, at https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx#basic.