



## In Response to Reactions over our JCPOA Exemptions Paper

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Last week we published a [study](#) on a set of exemptions to the limits of the Iran deal, or Joint Comprehensive Plan of Action (JCPOA), which were made by the JCPOA Joint Commission prior to Implementation Day. The report caused a whirlwind of media and expert attention. Not surprisingly, the way many viewed these revelations was driven in large part by whether or not they supported the deal. Given the nature of the report, the pro-deal faction was the most vocal against our findings and claimed the report exaggerated the findings and implications of the information. The anti-deal faction used the information as further support for their belief that the deal is flawed. However, though both sides in some cases disagreed with the framing, neither was able to refute our central claim that the exemptions were made and that Iran would not have been in compliance with the JCPOA on Implementation Day had the Joint Commission not reached decisions granting these exemptions.

The Obama administration's press officials, White House Press Secretary Josh Earnest and State Department Spokesman John Kirby, refused to address the central issues of our report, namely that there were exemptions to the JCPOA including involving low enriched uranium (LEU) and hot cells. Kirby [repeated](#) several times that there were no "exceptions" to the deal particularly that would impact Iran's commitments. Interestingly, in the many discussions we had about these decisions prior to publishing last week, government officials usually called them exemptions. When one of us asked some of these government officials whether to call the Joint Commission decisions "exceptions" or "exemptions," they said categorically to use exemptions and not exceptions. We have since used that terminology.

The administration provided some insight into its thinking on the LEU exemption. Kirby stated that the limits applied to "usable" low enriched uranium, which can be further enriched for nuclear weapons. His framing implied that LEU in forms not able to be reconverted for use in gas centrifuges was acceptable to exclude from the 300 kilogram LEU limit or the limits on near 20 percent LEU imposed by the JCPOA. This may or may not be a defensible argument. In our report we ask who decided the non-usability of any LEU and what the technical basis was. Given the central importance of the LEU limit to maintaining a year-long breakout time, this issue requires a great deal of transparency if such claims about non-usability are to be believed.

The fundamental issue highlighted by the report's findings is the issue of secrecy surrounding JCPOA-related decisions and events. We believe that the deal is not sustainable if exemptions or implementation problems are kept secret. Some experts disagree. But it is difficult to deny that secrecy could play to Iran's efforts to weaken the deal since areas where the Joint Commission agrees to a weakening would not be subject to public scrutiny.

A curious argument advanced by some experts is that JCPOA implementation is best done secretly, as though Iran would walk away from the deal if exemptions or other issues were publicized. Another argument was that secrecy is to be expected as routine in implementing an arms control agreement. But the Obama administration was the source of promises to the public that the JCPOA would institute unprecedented transparency. As a result, by making decisions and events secret, they appear more nefarious when uncovered particularly when the administration then fails to explain their technical basis and implications and outright denies that they even occurred. The reaction by some nuclear experts and the media to seek to uncover these issues in the face of such an excessive amount of secrecy is not surprising. Our report follows a series of revelations by The Associated Press on the secret Parchin arrangement between Iran and the International Atomic Energy Agency (IAEA) and the secret Iran declaration about its long-term enrichment plans. If the deal depends on keeping the inner workings of the JCPOA secret, one has to question whether such a strategy is workable or has in fact become counterproductive. Moreover, outside experts have a responsibility to ask whether those secret decisions and events hold up to independent analysis or whether the secrecy merely hides embarrassing information. The Joint Commission needs to create a more open process, much like the IAEA Board of Governors has done when faced with sensitive but unique situations that require more transparency than usual in implementing and enforcing comprehensive safeguards agreements. Moreover, P5+1 governments should openly explain the basis and rationale for technical decisions if they are so benign.

Another argument we heard is that the exemptions do not matter. Critics have argued that even though low enriched uranium may have been exempted, it is a small amount and cannot affect breakout calculations. Those making this claim have not provided the basis for it. We published that we did not know the exempted amount but that whatever the amount, it may set a negative precedent. Prior to publication we looked at how much LEU could be exempted using likely amounts of the material in waste forms but have not yet completed that assessment. One former IAEA safeguards official estimated that based on his direct experience with Iranian LEU waste that the amount could exceed 100 kilograms, and perhaps considerably so. He based this mainly on the amount of LEU in sludge waste and chemical traps associated with the enrichment plants. These estimates would place the amount in the range of roughly one percent of the total amount of LEU produced, which is about 16,000 kilograms (hexafluoride mass). We and the expert decided that this preliminary analysis needed further development. So, we find it shocking that non-technical experts in some cases have reacted by saying that in their judgment is that the LEU amount is too small to matter and the forms make it unusable. We would caution both technical and policy experts to wait for more information and to also not trust what might be self-serving analysis by the administration. It should be noted, moreover, that even if the LEU amounts are relatively small, the decision to exempt the

LEU waste is a precedent that will make it more difficult to deny Iran similar exemptions in the future. Iran already appears to be seeking additional exemptions of LEU from the 300 kilogram cap, as we revealed in our report. This means that the amount of exempted LEU could grow with time.

In our view, the hot cell exemption was the more surprising one and raises questions about the rigorousness of the hot cell limit. Annex 1 of the JCPOA bans hot cells over six cubic meters unless approved by the Joint Commission. The existence of hot cells at four locations, each over the limit, means that Iran has multiple locations where it could conduct plutonium separation experiments. We have so far been unable to learn whether all of these hot cells are regularly monitored by the IAEA, and if so, how effective the monitoring regime is. This matters because we also have learned that Iran wants more hot cells that would violate the deal's limits. With four locations for the IAEA to monitor, and no public information about the monitoring regime, we must question whether the IAEA is conducting adequate monitoring.

Overall, we were disappointed by the ongoing downplaying of secrecy surrounding JCPOA implementation by many in the arms control community, since that community has long strived for government openness. But we were even more disappointed by the administration's reaction to our report. On one hand, one can understand its extreme defensiveness. But this deal and any events relating to its implementation were supposed to stand up to independent scrutiny through the transparency pledged by the administration. The administration never framed it as governments sitting in secret making decisions that we are supposed to simply trust. The Iran deal is an unprecedented international agreement that is enshrined in a United Nations Security Council resolution with far reaching implications for the security of the United States, the Middle East, and the world. Iran is a country that violated its IAEA safeguards agreement and moved close to developing nuclear weapons and thus deserves added scrutiny. Just because it has agreed to the nuclear deal does not mean that it is entitled to confidentiality, particularly when decisions are taken that could risk significantly weakening or undermining the nature of the deal.

Because of the excessive secrecy surrounding the deal, the administration's on-going defensiveness about it, the questionable compromises made to date, and the potential for further compromises in the deal, we and several other experts and journalists will continue to seek to uncover information and insist upon more accountability. The administration should reassess its strategy of extreme secrecy in order to avoid public criticism and adopt a policy of candidness, including publicly releasing much more information about the status of the deal's implementation. Furthermore, the United States should insist that it will agree to no more exemptions at the Joint Commission unless its counterparts agree that all decisions and their basis will be made public. To not do so brings into question the Obama administration's role as a standard bearer for strong implementation and enforcement of the deal.