

# There Is a Path to a Better Deal with Iran

by [Robert Satloff \(/experts/robert-satloff\)](/experts/robert-satloff)

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## ABOUT THE AUTHORS



[Robert Satloff \(/experts/robert-satloff\)](/experts/robert-satloff)

Robert Satloff is executive director of The Washington Institute, a post he assumed in January 1993.



Articles & Testimony

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**Because a 'no' vote on the Iran deal would have little practical impact until next year, lawmakers have time to work with the president on making reasonable fixes to the agreement even if they disapprove it in the short term.**

Imagine you're a conflicted lawmaker in the U.S. Congress. You've heard all the arguments about the Iran nuclear agreement, pro and con. A vote on the deal is coming up in September and you have to make a decision. But you are torn.

Most of your colleagues don't share your angst. They have concluded that the risks of the nuclear accord far exceed its benefits. They will vote to disapprove.

Some take the opposing view. They accept President Barack Obama's argument that the agreement will effectively block Iran from developing a nuclear weapon for a very long time at little risk to U.S. interests.

You are in a third group. You recognize the substantial achievements (<http://www.washingtoninstitute.org/policy-analysis/view/assessing-the-iran-nuclear-agreement-and-the-institutes-iran-study-group-ju>) in the deal, such as Iran's commitment to cut its stockpile of enriched uranium by 98 percent, gut the core of its plutonium reactor, and mothball thousands of centrifuges. But you have also heard experts identify a long list of gaps, risks, and complications. These range from the three and a half weeks that Iran can delay inspections of suspect sites, to the billions of dollars that Iran will reap from sanctions relief -- some of which will surely end up in the hands of terrorists.

For his part, the president seems to believe that he negotiated a near-perfect deal. In his recent speech at American University, he described the pact as a "permanent" solution to the Iranian nuclear problem. It was a shift from when he told an NPR interviewer in April that once limitations on Iran's centrifuges and enrichment activities expire in 15 years, Iran's breakout time to a nuclear weapon would be "shrunk almost down to zero." Both statements -- achieving a "permanent" solution and Iran having near-zero breakout time -- cannot be true.

The president has said a "better deal" is a fantasy. But you never took seriously the unknowable assertion that the Iran accord is "the best deal possible," as though any negotiator emerging from talks would suggest that what he or she has received is anything but "the best deal possible." And you cringe whenever advocates of the agreement hype its achievements as "unprecedented," knowing this is not a synonym for "guaranteed effective."

You may not believe in unicorns, as Secretary of State John Kerry said you must to accept the idea of a "better deal," but you have been impressed by suggestions on how to strengthen the agreement. The United States could even implement many of these proposals without reopening negotiations with the Iranians and the P5+1 group of world powers. Here are several such options:

- **Consequences:** Repair a glaring gap in the agreement, which offers no clear, agreed-upon penalties for Iranian violations of the deal's terms short of the last-resort punishment of a "snapback" of UN sanctions against Iran. This is akin to having a legal code with only one punishment -- the death penalty -- for every crime, from misdemeanors to felonies; the result is that virtually all crimes will go unpunished. The solution is to reach understandings now with America's European partners, the core elements of which should be made public, on the appropriate penalties to be imposed for a broad spectrum of Iranian violations. These violations could range from delaying access for international inspectors to suspect sites, to attempting to smuggle prohibited items outside the special "procurement channel" that will be created for all nuclear-related goods, to undertaking illicit weapons-design programs. The Iran deal gives the UN Security Council wide berth to define such penalties at a later date, but the penalties have no value in deterring Iran from violating the accord unless they are clarified now.
- **Deterrence:** Reach understandings now with European and other international partners about penalties to be imposed on Iran should it transfer any windfall funds from sanctions relief to its regional allies and terrorist proxies rather than spend it on domestic economic needs. U.S. and Western intelligence agencies closely track the financial and military support that Iran provides its allies, and will be carefully following changes in Iran's disbursement of such assistance. To be effective, these new multilateral sanctions should impose disproportionate penalties on Iran for every marginal dollar sent to Hezbollah in Lebanon, Bashar al-Assad in Syria, etc. Since these sanctions are unrelated to the nuclear issue, they are not precluded by the terms of the Iran agreement.
- **Pushback:** Ramp up U.S. and allied efforts to counter Iran's negative actions in the Middle East, including interdicting weapons supplies to Hezbollah, Assad, and the Houthis in Yemen; designating as terrorists more leaders of Iranian-backed Shiite militias in Iraq that are committing atrocities; expanding the training and arming of not only the Iraqi security forces but also the Kurdish peshmerga in the north and vetted Sunni forces in western Iraq; and working with Turkey to create a real safe haven in northern Syria where refugees can obtain humanitarian aid and vetted, non-extremist opposition fighters can be trained and equipped to fight against both ISIS and the Iran-backed Assad regime.
- **Declaratory policy:** Affirm as a matter of U.S. policy that the United States will use all means necessary to prevent Iran's accumulation of the fissile material (highly enriched uranium) whose sole useful purpose is for a nuclear weapon. Such a statement, to be endorsed by a congressional resolution, would go beyond the "all options are on the table" formulation that, regrettably, has lost all credibility in the Middle East as a result of the president's public rejection of the military option. Just as Iran will claim that all restrictions on enrichment disappear after the fifteenth year of the agreement, the United States should go on record now as saying that it will respond with military force should Iran exercise that alleged right in a way that could only lead to a nuclear weapon. It is not for the president 15 years from now to make this declaration; to be effective and enshrined as U.S. doctrine, it should come from the president who negotiated the original deal with Iran.
- **Israeli deterrence:** Ensure that Israel retains its own independent deterrent capability against Iran's potential nuclear weapon by committing to providing technology to the Israelis that would secure this objective over time. A good place

to start would be proposing to transfer to Israel the 30,000-pound, bunker-busting Massive Ordnance Penetrator -- the only non-nuclear bomb in the U.S. arsenal that could do serious damage to Iran's underground nuclear installations -- and the requisite aircraft to carry this weapon. This alone would not substitute for U.S. efforts to build deterrence against Iran. But making sure Israel has its own assets would be a powerful complement.

You wish the president would embrace these sound, sensible suggestions. Inexplicably, he hasn't. And nothing in the administration's public posture suggests that he will change course before Congress votes. So, what will you do?

Some of your colleagues have floated the idea of a "conditional yes" as an alternative to "approve" and "disapprove." They, like you, recognize that the agreement has some significant advantages but are deeply troubled by its risks and costs. They want to attach strings to their "yes" vote, in the belief that this will bind the president and improve the deal.

But the legislation enabling Congress to review the Iran deal does not accommodate a "conditional yes." Votes are to "approve" or "disapprove." Legislators may negotiate with the White House over every comma and colon in a resolution of conditionality, and they may even secure one or two grudging concessions from the White House. But neither a resolution of Congress calling for these improvements nor ad-hoc understandings between the White House and individual legislators has the force of law or policy. According to the Iran-review legislation, the only thing that matters is a yea or nay on the agreement.

Is there really no "third way"? The answer is yes, there is. Pursuing it requires understanding what the relevant congressional legislation is really about.

Advocates of the agreement have characterized a congressional vote of disapproval as the opening salvo of the next Middle East war. In reality, a "no" vote may have powerful symbolic value, but it has limited practical impact according to the law. It does not, for example, negate the administration's vote at the UN Security Council in support of the deal, which sanctified the agreement in international law. Nor does it require the president to enforce U.S. sanctions against Iran with vigor. Its only real meaning is to restrict the president's authority under the law to suspend nuclear-related sanctions on Iran.

Here's the catch: By the terms of the nuclear agreement, the president only decides to suspend those sanctions after international inspectors certify that Iran has fulfilled its core requirements. In other words, congressional disapproval has no direct impact on the actions Iran must take under the agreement to shrink its enriched-uranium stockpile, mothball thousands of centrifuges, and deconstruct the core of its Arak plutonium reactor. Most experts believe that process will take six to nine months, or until the spring of 2016.

Why would Iran do all of these things if it can't count on the United States to suspend sanctions in response? While it's impossible to predict with certainty how Iranian leaders would react to congressional disapproval of the agreement, I'd argue chances are high that they would follow through on their commitments anyway, because the deal is simply that good for Iran. After Iran fulfills its early obligations, all United Nations and European Union nuclear-related sanctions come to an end. They aren't just suspended like U.S. sanctions -- they are terminated, presenting Iran with the potential for huge financial and political gain.

The "deal or war" thesis propounded by supporters of the agreement suggests that Iran, in the event of U.S. rejection of the deal, would prefer to bypass that financial and political windfall and instead put its nuclear program into high gear, risking an Israeli and American military response. But that volte-face makes little sense, now that Iran has painstakingly built a nuclear program that is on the verge of achieving the once-unthinkable legitimacy that comes with an international accord implicitly affirming Iran's right to unrestricted enrichment in the future. In such a scenario, Iran would reap an additional benefit in continuing to implement the agreement: The United States, not Iran, would be isolated diplomatically.

The key point is that a "no" vote on the Iran deal has little practical impact until next year. Between now and then, such a vote buys time, adding up to nine months to the strategic clock. If, before the vote, Obama refuses to adopt a comprehensive set of remedial measures that improves the deal, then a resounding vote of disapproval gives the president additional time to take such action and then ask Congress to endorse his new-and-improved proposal.

Chastened by a stinging congressional defeat in September -- one that would include a powerful rebuke by substantial members of his own party -- the president might be more willing to correct the flaws in the deal than he is today. That would surely be a more responsible and statesmanlike approach than purposefully circumventing the will of Congress through executive action that effectively lifts sanctions -- an alternative the president might consider if he is hell-bent on implementing the agreement.

Those who claim that a "no" vote would destroy the agreement argue that Europe would simply stop enforcing sanctions against Iran should Congress reject the deal. But this too doesn't stand up to close scrutiny. In my view, the Europeans are more likely to wait six to nine months to see whether Iran fulfills its core requirements under the deal so that they can claim validation for their decision to terminate sanctions. If Congress were to approve Obama's new-and-improved proposal before Iran complies with its requirements, the United States would still be on schedule to waive its sanctions at the same time that the European Union and United Nations terminate theirs.

So, if you are among the legislators who view the Iran agreement as flawed and are frustrated by the administration's unwillingness to implement reasonable fixes, there is a way to urge the president to pursue the "better deal" that he keeps urging his detractors to formulate, but that he can't seem to accept as a possibility. "No" doesn't necessarily mean "no, never." It can also mean "not now, not this way." It may be the best way to get to "yes."

*Robert Satloff is executive director of The Washington Institute. This article was originally published [on the Atlantic website \(http://www.theatlantic.com/international/archive/2015/08/iran-deal-congress-better-alternative/401222/\)](http://www.theatlantic.com/international/archive/2015/08/iran-deal-congress-better-alternative/401222/).* ❖

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