

# United States Senate

WASHINGTON, DC 20510

May 3, 2011

The Honorable David S. Cohen  
Acting Under Secretary for Terrorism and Financial Intelligence  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

Dear Acting Under Secretary Cohen:

We were extremely disappointed by the draft rule to implement Section 104(e) of the Comprehensive Iran Sanctions and Divestment Act (CISADA) published by the Treasury Department last week. We urge you to address the concerns raised below to ensure the final rule will faithfully implement this section of CISADA, and look forward to working with you prior to your confirmation to ensure it does.

First, that this draft rule wasn't published in the Federal Register until April 27, 2011 – over 10 months after President Obama signed CISADA – calls into question the Treasury's seriousness about enforcing comprehensive sanctions against Iran. The Treasury Department must do better to ensure an expeditious promulgation of a final rule to enforce section 104(e).

Second, we find it inexplicable that the Treasury Department has interpreted section 104(e) to be a discretionary provision, which is the only way we can interpret the language in the draft rule that banks will only have to issue a certification under this section upon written inquiry from the Department. We cannot understand this approach by the Department, unless it intends to regularly conduct a written inquiry of all “domestic financial institution[s]” that do business in the United States and have correspondent relationships abroad. But such a policy was not indicated in the draft rule, which, in fact, states that such requests will be “infrequent”. Congress did not intend for CISADA to be enforced on an “infrequent” basis, and the final rule must correct this misinterpretation.

Moreover, the Department, according to the draft rule, seems to believe that only 18 banks will be affected by it. We are unclear about how the Treasury Department reached this conclusion. Please explain how the Department reached this conclusion and please identify the 18 banks. Additionally we do not understand why, in the draft rule, the Department limited the reporting rule only to “banks” instead of the wider category of “domestic financial institution[s]” as required by CISADA. The proposed rule states the reporting requirement may be expanded if the Department determines that information will be useful. Please explain why the Department limited the reporting to “banks” and how the Department will determine whether or not to expanding the requirement will be useful.

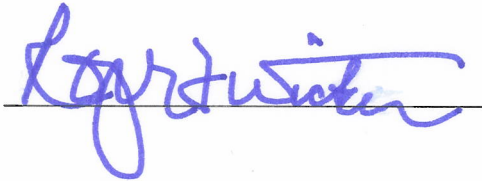
We also seek further explication of what is meant by the term "other than through a correspondent account," which is used repeatedly through the draft rule.

Lastly, the draft rule indicates that section 104(e)(1)(B) is "the most useful vehicle for effecting the intent of section 104(e) at this time." The draft rule does not, however, explain how the Department reached that conclusion nor does it establish when the Department will avail itself of 104(e)(1)(A) & (C) to implement the statute, which were also clearly intended to be used by Treasury when Congress included them in the law it passed.

In your current capacity as acting Under Secretary of the Treasury for Terrorism and Financial Intelligence, we seek your prompt and complete response to this letter. We also seek your personal assurance, prior to a confirmation vote on your nomination, that you will ensure that regulations to fully enforce section 104(e) will promptly be issued by a date certain by the Treasury Department.

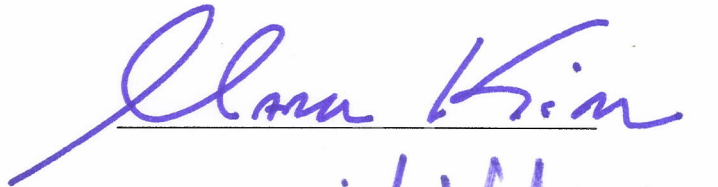
Sincerely,

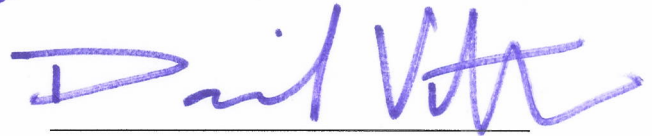
  
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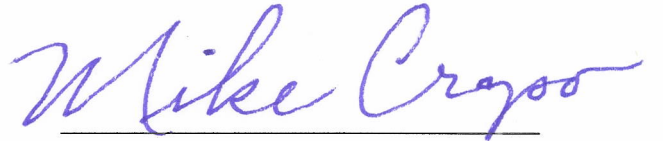
  
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Jerry Moran  
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cc: The Honorable Timothy Geithner, Secretary of the Treasury