United States Department of State

Washington, D.C. 20520

The Honorable
Robert Menendez, Ranking Member
Committee on Foreign Relations
Washington, DC 20510

DEC 17 2019

Dear Senator Menendez:

Please find enclosed the views of the Administration regarding the amendment in the nature of substitute (ANS) to S.482, Defending American Security from Kremlin Aggression Act of 2019 (DASKA), filed on December 12, 2019 for the Committee's business meeting on December 18.

Sincerely,

Mary Elizabeth Taylor
Assistant Secretary
Bureau of Legislative Affairs

Enclosures:
Administration Views on ANS S. 482

S. 482, the Defending American Security from Kremlin Aggression Act of 2019 (DASKA)
August 16, 2019 (updated 12/17/19)

The Administration provides the following preliminary, informal views on S. 482, as would be revised by a substitute amendment filed on Dec. 12, 2019, by Senators Graham and Menendez. The Administration shares the goal of deterring and countering Russian subversion and aggression. However, the Administration strongly opposes this bill in its current for the reasons detailed below. If the sponsors are willing to address the concerns described below and other technical concerns, the Administration is open to working on an improved version.

- **Top-Line Concerns**

  - DASKA is unnecessary. The Administration has considerable existing robust authorities to address malign Russian behavior and to target Russian malign activity. The Administration has aggressively imposed sanctions that are targeted, tailored, and impactful to address Russian malign activities while mitigating negative effects on allies and close partners utilizing these authorities.

  - DASKA has a number of constitutional problems discussed in more detail below.

  - Harsh mandatory sanctions provide limited flexibility in implementation. Specifically, among the new bill's most objectionable provisions are the mandatory energy, secondary oligarch, cyber, and navigation-related sanctions that are scoped very broadly. With respect to energy sanctions specifically, the bill requires mandatory sanctions on crude development in Russia and on new investments in energy projects outside of Russia involving Russian owned entities or parastatals and adds sanctions on investments on liquefied natural gas export facilities outside of Russia. These will negatively impact other U.S. priorities, such as the Southern Gas Corridor, energy projects in the Eastern Mediterranean, and regional energy security for Egypt – as well as U.S. businesses and jobs, and global energy markets.

  - Significant changes are needed. As with other sanctions legislation, among key revisions needed include: making these new sanctions permissive instead of framed as mandates; providing for an additional unconditioned waiver authority for these new sanctions--possibly vested in the Secretary of State, in consultation with the Secretary of Treasury; narrowing the scope of sanctionable misconduct because of impacts to several benign sectors with modest Russian interests and because it will roil European and U.S. commercial markets; ensuring that the provisions target significant misconduct knowingly engaged in (after the date of enactment); providing a much broader menu of penalties from which to select sanctions to otherwise mitigate the harshness of the sanctions, to name a few.

  - Revisions to the waiver authority are recommended. The Administration would welcome a discussion of improved waiver authority in CAATSA, as would be amended by DASKA, so it is unconditioned without a protracted review and disapproval process as is typically included in major sanctions legislation, and edits to narrow the scope of

sanctionable activity to only misconduct that is significant and knowingly engaged in prospectively, among other edits, to mitigate negative effects on allies and partners.

    - In this regard too, sec. 605 amending the Magnitsky Act waiver to make it subject to the CAATSA sec. 216 lengthy review and disapproval process is of great concern and should be stricken as it widens the range of sanctions made subject to this disruptive procedure.

- DASKA's provisions would undermine existing U.S. and EU efforts to maintain solidarity on sanctions targets. The 2019 bill's addition of sweeping, new energy (liquefied natural gas "LNG" export facilities outside of Russia) to the 2018 bill's creation of another set of sweeping mandatory sanctions authorities would likely cause significant economic damage to benign civilian American, European and global business interests.

- The bill, like its predecessor, makes any waiver of the Magnitsky Act mandatory sanctions subject to the CAATSA lengthy congressional review and disapproval process. At the same time the bill, like its predecessor, lacks an unconditioned waiver authority for all sanctions provisions in the bill, relying instead on the heavily conditioned waiver in CAATSA.

- ODNI and the IC have serious concerns with the aspects of DASKA that directly impact the IC. The DNI should not be in the position of, and should not be seen as being in the position of, automatically imposing sanctions. The IC provides assessments to Executive Branch policymakers, and then they decide what to do vis-à-vis sanctions. Any legislation in this area should separate adequately the IC and IC assessments from the policy decision to impose sanctions. In particular, the DNI should not have a joint role with the Secretary of State in any sanction-related determination/certification mechanism. In addition, any legislation not should not conflate IC assessments using confidence levels based on available information with evidentiary determinations or certifications regarding whether a foreign government is or is not engaged in or knowingly supporting certain activities. Further, in order to evaluate possible foreign interference and prepare an assessment, the IC would require sufficient time for analytic research, drafting, coordination, and review. This type of coordinated assessment would require at least 45 days, and, depending on the circumstances, 90 to 120 days following a federal election. From the standpoint of resources and impact on the IC's mission, the continuous 90-day certification of the absence of broad, vague conditions contemplated by the revised sections 602(a) and 603(a) would be wholly unworkable for the IC.

- DOJ opposes many of the INTERPOL provisions because they have been largely overtaken by reforms already instituted by INTERPOL since 2017. It would imprudently discount all notices and diffusions from a given country when making critical decisions on benefits in the United States. The vast majority of notices and diffusions represent legitimate foreign charges or investigations, even for those countries alleged to abuse the INTERPOL system. [DOJ has prepared a separate document with needed edits to section 707.]

- Implementation of DASKA would divert resources from the ongoing aggressive targeting of Russian malign actors under existing authorities, such as CAATSA, as well as from efforts with respect to Iran, North Korea, ISIS, Venezuela, Hezbollah, counterterrorism, human rights and corruption and other USG priorities. Treasury, for instance, advises that the sanctioning of the individuals and entities detailed in this bill will require the implementation of extensive mitigation measures by Treasury's OFAC.

- The Graham-Menendez substitute amendment filed Dec. 12, 2019, makes a few key revisions, most notably and problematically by adding new sections 602(a) and 603(a), that provide a trigger mechanism(as in ANS S. 2641) that essentially creates a two-step damning process requiring joint findings and certifications by both the Secretary of State and the DNI to negative circumstances—always opposed as too challenging to make—that the Russian Federation (RF) is not engaged in or knowingly supporting interference in the U.S. democratic process or in offensive military operations in Ukraine. Failure to certify operates like a finding of guilt of the RF requiring the sanctions provisions to apply—although individual determinations for each person sanctioned still must be made—and in any event these persons bear no responsibility for the RF facts that led to failure to certify. The purpose of this seems not to helpfully delay the operative sanctions provisions from applying but to provide a basis for conceding an initial broad RF culpability that taints the sanctions determinations processes.

  - Specifically new sec. 602(a) provides that pursuant to this trigger mechanism, sanctions provisions in that section will only apply if the Secretary of State and the DNI fail to jointly submit a finding and certification (required every 90 days) that the RF is not engaged in or knowingly supporting operations to interfere in the democratic process, including the administration of elections, in the United States.
  - This trigger mechanism is unmanageable, as stated in the Administration views on the ANS, S. 2641, in many respects, and would have to be vested in just the Secretary of State since the DNI assesses the reliability of information typically provided to the President or a Secretary to make the final determination. From a technical perspective, if retained the provision should be revised to vest such an authority in the Secretary of State as legislation calling for determinations is routinely formulated in a single decision-maker, and making such certifications is not within the responsibilities or mission of the DNI.
  - The trigger concept could also wreak havoc in that once the sanctions provisions become effective they could in effect be "turned on and off" by subsequent certifications finding no Russian interference. More substantively, this trigger which purports to be a delay mechanism requires findings and a certification as to a very vague, exceedingly broad, and not necessarily even very significant misconduct, e.g., that the RF is not engaged in or knowingly supporting operations to interfere in the democratic process, including the administration of elections, in the United States. If intended to draw out the process of applying sanctions or make it more rigorous, it does not state useful, clear or even significant, high thresholds of misconduct that need to be surpassed to justify sanctions. It creates a new very low threshold indeed that may be impossible to certify to that Russia is not doing anything malign- a

negative certification that seems impossible to make and which failure seems designed to stigmatize the RF immediately for facts establishing a negative that cannot be attested to.

The section 602 trigger mechanism is designed for failure. It requires certifying to a negative, that the RF is not engaged in or knowingly supporting operations to interfere in the US democratic process (which is always opposed due to the challenges of attesting to the absence of facts). This essentially sets up a 2 step process, so the sanctions provisions become effective as of the date of enactment but do not apply or become operative until the Secretary of State and DNI fail to make a certification that Russia is not interfering in the democratic process.

Given that even insubstantial interference in any democratic related activities , which is potentially a vast scope, would easily lead to failure to make the certification to delay applying the sanctions sections, such failure automatically leads to application of these sanctions provisions.

Although individual Presidential determinations still will be required to impose the actual sanctions penalties to particular persons once there has been no certification that that Russia is not engaged in any interference, this approach in effect means that now Russia under this first step is considered culpable. While many of the sanctions in the amendments to CAATSA require a Presidential determination with respect to responsible individuals, there will likely be a presumption and expectation that individuals can be readily identified who would be sanctionable. Note however that the particular individual does not have to be responsible for the specific interference that prompted failure to make the certification.

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- To avoid such a chaotic circumstance, it would be imperative also to include for this provision, and for all the bill's provisions and amendments imposing sanctions and restrictions, an unconditioned flexible waiver authority, as has been repeatedly requested in the Administration views opposing DASKA. Currently all this bill's new sanctions are subject to the only available waiver, i.e., the highly conditioned CAATSA waiver authority and its protracted sec. 216 review and expedited procedures to pass joint resolutions of disapproval process. However, even that waiver would not apply to this new sec. 602(a) trigger provision.

- Sec. 603, Sanctions relating to RF actions with respect to Ukraine, now similarly includes a new trigger in subsec. (a) that provides that the amendments to CAATSA in that section only apply if the Secretary of State and DNI fail to submit jointly the finding and certification required every 90 days that the RF is not engaged in or knowingly supporting offensive military operations in Ukraine.

- The substitute amendment also revises the sanction in sec. 603 related to investments in energy projects supported by the Russian owned entities outside of the RF "to apply to a project to explore for or produce crude oil or natural gas outside of the RF, initiated after the date of enactment and in which the RF has a 33 percent or more ownership interest in the entity or a majority of the voting interest". The prior version

applied to "an energy project outside of the RF that is supported by a Russian entity owned or controlled by the" Government of the Russian Federation; the latter clearly applied only to extant projects versus the exploration for such resources.

- The adverse implications of this revised energy sanction requiring sanctions for any new exploration or development of crude is even more far reaching than the initial sanction. In fact, the energy sanctions are so extremely broad, it appears the purpose of this is to halt foreign investment in Russia's crude oil development. The way it is written it would also apply to Russian entities making the investments. So, if Rosneft or any other Russian oil company started a new development project in Russia, the company itself would be sanctioned.

- **Unnecessary**

  - The Administration already has considerable robust authorities to address malign Russian behavior and to target Russian malign activity. These authorities include statutes passed by Congress, including the International Emergency Economic Powers Act (IEEPA), the Countering America's Adversaries Through Sanctions Act (CAATSA), the Ukraine Freedom Support Act (UFSA), the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (SSIDES), and the Chemical and Biological Weapons Act (CBW Act), as well as Executive Orders (E.O.s) 13660, 13661, 13662, 13685, 13694, and 13848.

  - The Administration has aggressively imposed sanctions that are targeted, tailored, and impactful to address Russian malign activities while mitigating negative effects on allies and close partners utilizing these authorities. In addition, Treasury and State have leveraged the deterrent effect of secondary sanctions to make clear that sanctioned Russian individuals and entities are radioactive, and those who choose to continue doing business with them do so at their own peril.

  - The United States can apply much more economic pain using this powerful range of authorities – and the Administration will not hesitate to do so if Russia's conduct does not demonstrably and significantly change.

  - DASKA would likely roil U.S. and global markets, causing significant damage to civilian American, European, and other global business interests. DASKA risks undermining existing US/EU sanctions solidarity because of its creation of a new set of sweeping mandatory sanctions that would directly and indirectly target allies and partners. DASKA also would directly and indirectly target almost the entire range of foreign commercial activities with Russia, which risks crippling the global energy, commodities, financial, and other markets.

  - The Fusion Center, as proposed in section 704, appears to overlap with several ongoing interagency initiatives that currently address the primary missions of the Center. In addition to creating potential coordination issues with existing processes, the creation of

superfluous working groups could compound existing resource constraint challenges. In addition, there are already six cyber centers in addition to the Global Engagement Center, which coordinates USG efforts to counter propaganda and misinformation. This section also appears redundant with section 1043 of the FY 2019 NDAA, which requires the NSC to designate a person "for the coordination of the interagency process for combating malign foreign influence operations and campaigns." Because Congress has already addressed coordination of influence operations through this recently enacted requirement, section 704 is unnecessary.

- **Insufficient Waivers, and other legislative devices providing flexibility**

  - The 2019 version of DASKA adds to and worsens the scope of DASKA's new mandatory sanctions, making it imperative that an unconditioned national interest waiver be included to permit waiver effectively notwithstanding section 216 of CAATSA, for all sanctions provisions in the bill, as well as for amendments to other laws made by DASKA, for the following reasons, among others:
    - to mitigate the significant and real risks to the American, European, and global economies from broad, mandatory sanctions targeting globally-interconnected trade in key energy resources and commodities, as well as on a globally-integrated financial market,
    - to permit the Commander-in-Chief the flexibility to tailor and calibrate the various instruments of U.S. power, as needed, to address and deter Russian aggression, consistent with overall U.S. foreign policy and national security objectives and other non-Russia-related legislation, and
    - to permit flexibility to the Commander-in-Chief to proceed with other, non-economic means to respond to Russian aggression without also having to impose the broad, mandatory sanctions proposed in the bill.

    It is not appropriate if the only waiver authority available is that under CAATSA (section 236(b)) for the amendments to CAATSA in bill section 601, as that is severely conditioned and not reliably available on short notice (as often needed).

  - If not made permissive, mandatory sanctions should state that they shall be imposed "unless the President determines that to do so is not in the United States national interest".

- **Constitutionally Problematic**

  - The Administration is committed to the North Atlantic Treaty, including Article 5, as the President said in his landmark speech in Poland in July 2017. The Administration's record of modernizing and strengthening NATO is clear. The Administration has also been steadfast in its refusal to recognize Russia's attempted illegal annexation of Crimea.

  - Sections 3 and 102 are therefore unnecessary. In addition, those provisions violate the constitutional separation of powers. Sections 103 and 104 even invite a constitutional

dispute between two branches of government. Several other provisions of the current legislative text also raise constitutional concerns.

- The infirmity in section 102 is not cured by the fact that the provision is styled as a restriction on the use of appropriated funds.

- With respect to section 3, it remains the policy of the Administration, as recently articulated in the July 2018 Crimea Declaration, that the United States does not and will not recognize Russia's claims of sovereignty over Crimea. Nevertheless, the President's constitutional authority to conduct foreign relations affords him the exclusive responsibility to recognize the legitimacy and territorial bounds of foreign sovereign nations, as the Supreme Court has made clear. In this context, section 3 would be more aptly structured as a sense of Congress endorsing the Crimea Declaration and other recent steps to combat malign activity and exercise existing sanctions authorities in concert with European partners.

- Section 502 adds a new ground for inadmissibility in the country without recognizing a Presidential waiver authority, as the Immigration and Nationality Act does for other inadmissibility grounds. This could conflict with the President's powers under the Reception Clause of the Constitution.

- Several reporting requirements in the bill could potentially intrude on the President's constitutional prerogative to control the dissemination of information that is subject to Executive privilege. These provisions - sections 111, 305, 623, 704, and 709 - should be revised to recognize or it should otherwise be acknowledged that the President has standing authority and responsibility to withhold from public reports national security information and diplomatic communications, where appropriate.

- **Overly broad scope of activities that are sanctionable**

  - DASKA should be revised to more precisely target Russian malign activity and to limit negative effects on U.S., European, and other key economies, businesses, and individuals. For example, textual revisions are needed to narrowly target significant misconduct that is malign and knowingly engaged in prospectively (after enactment) and deserving of penalization.

  - In many instances, the bill would inflict damage on global markets and U.S., EU, and other key economies without sufficient benefit to justify the collateral damage.

  - Energy sanctions now targeting crude development in Russia (Section 603 adding Section 239B), investment in energy projects outside of Russia supported by Russian entities or parastatals (Section 603 adding Section 239A), and LNG export facilities outside of Russia (Section 602 adding Section 237)) must be scoped and calibrated to allow the Executive flexibility in implementation. Absent this flexibility and clarification, there is potential for spillover into Europe that threatens our ability to coordinate with the EU and overall transatlantic unity on Russia sanctions.

- The Administration is committed to curtailing Russian malign influence, including the activities of certain oligarchs and other persons outside the Russian government, and will continue to leverage the array of tools the United States has to do this. The mandatory and secondary sanctions against persons and institutions (the proposed, amended CAATSA Section 235) would not allow the flexibility to calibrate U.S. actions against these persons and the like would also capture significant economic interests in the United States Europe, Asia, and elsewhere, with significant unintended consequences undermining U.S. national security and foreign policy interests.

- Section 602 (adding Section 235) should be removed or made permissive or its scope should be narrowed to address only "significant deceptive or structured transactions". This also is the case with the reference in Section 228 of CAATSA which had added a mandatory sanction (Section 10(a)(2)) on anyone who "facilitates a significant transaction or transactions, including deceptive or structured transactions" for the Russians; it should instead refer to facilitating only "significant deceptive or structured transactions".

- For measures in Section 602, there is a proven model of permitting the Administration to select several sanctions from a broader menu of sanctions, which would allow the Administration to calibrate sanctions to match the foreign malign behavior. As written, several measures in Section 602 provide no flexibility to calibrate U.S. actions as appropriate. Using the existing menu in CAATSA section 235, a revised, less harsh provision could state that two or more of the sanctions described in the bill or in the existing CAATSA section 235 (which numbering this bill changes) shall be applied. Such an approach would still permit the full imposition of more sanctions, if the offender's behavior warranted such an approach.

  Critical edits needed to the new sections of CAATSA are outlined here:

  - New Section 235 of CAATSA (sanctions with respect to transactions with certain Russian political figures and oligarchs):
    - Section 235 should be modified to provide that the President shall impose the specified sanctions on "persons determined by the President to be" the types of persons described.
    - In subparagraphs (1) and (2), the phrase "illicit and corrupt activities" should be replaced with "illicit *or* corrupt activities," so as to avoid the need to demonstrate both types of activity.
    - Subparagraph (3) regarding "family members" should be removed, as sanctions are more appropriately imposed on family members to the extent that they are "other persons" engaged in the activities described in subparagraph (1). If not removed, subparagraph (3) should pertain only to adult family members."
    - Subparagraph (4) should be modified to impose sanctions on financial institutions "knowingly" engaging in significant transactions.

- Also, if Section 235(4) is not removed, it (and its corresponding provisions in Section 228 of CAATSA) should be narrowed to apply only to "deceptive or structured transactions". These provisions are the main inhibitor to further sanctions cooperation with Europe, as they remove the possibility for diplomatic outreach to close backfill, and instead threaten EU economies with sanctions for minimal benefit (and actual damage) to US interest. If amended, they will allow for State to bolster transatlantic unity and conduct thorough diplomatic outreach (with revised sections still there as leverage) in the proper manner befitting the Russia sanctions program. Many of these new sanctions provisions will be viewed in a negative light by the EU, so extending an olive branch by addressing their concerns over 228 would be a significant step in the right direction, and perhaps bring some countries on board in adopting similar measures.

- New Section 235 should, prior to mandating the imposition of sanctions, require an Intelligence Community report to Congress assessing the impacts of the envisioned sanctions, given the recent history of wide-ranging negative effects on U.S. and partner country businesses with respect to the April 6, 2018 sanctions on certain oligarchs and their businesses.

- New Section 236 of CAATSA (sanctions with respect to transactions with Russia's cyber sector) should be removed given its duplication of existing authorities — including Section 224 of CAATSA and E.O. 13694, as amended, which is codified by Section 222 of CAATSA — which already authorize sanctions on various malicious Russian cyber actors, and which already carry secondary sanctions implications under Section 228 of CAATSA. New Section 236 therefore does not add value to ongoing efforts to impose primary and secondary sanctions pressure on Russian cyber actors, but it will divert limited resources to implement the provision and explain it to the private sector compliance community.

- If Section 236 remains, it should be made permissive, provide an implementation timeline of 180 days, and apply the secondary sanction in Section 236(2) only to a person who "is knowingly owned or controlled by" a sanctioned person. Also the phrase "on or after the date of enactment" should be added after "the President determines".

- While Section 237 may be viewed as allaying some allied concerns that USG sanctions would target LNG platforms in Russia, there could be considerable unintended consequences that even by targeting with mandatory sanctions LNG export facilities outside of the RF, which would adversely impact U.S. and global interests. If the provision were made permissive, it could be implemented in a way that would have a limited impact, constraining only Russia's ability to expand its gas investments over the long run. However, not only are revisions needed to make the sanction permissive, but also to apply it only to more "significant" new investments than now. As currently written, the mandatory sanction would likely disproportionately target European individuals and entities who are more heavily involved in these endeavors, complicating sanctions collaboration with European

partners and contradicting the emphasis in sections 601, 611, and 613 of DASKA on maintaining sanctions coordination with the European Union.

- Prohibitions on dealings in Russian sovereign debt in Section 238 that are not narrowly tailored could have widespread consequences, including: disadvantaging U.S. banks and asset managers over their foreign peers, who would not be limited in participating in this significant debt market; and facilitating widespread repricing of sovereign debt issued by other emerging markets, as market participants may begin pricing in the risk of potential U.S. sovereign debt sanctions. To mitigate some of these concerns and afford sufficient time for implementation, the prohibitions in Section 238 should: (i) be limited to the primary debt market, so as to avoid potentially unmanageable spillover effects of sanctioning debt traded on the secondary market; (ii) exclude paragraph (b)(3), as a prohibition on "any other financial instrument, the duration or maturity of which is more than 14 days" would present significant compliance difficulties for the private sector; and (iii) provide 180 days for the issuance of implementing regulations, as 60 days is not feasible.

- New section 239 indicates that these sanctions are in response to Russian interference in democratic processes and elections, most of these new sanctions are not specifically tied to future Russian interference in elections. Each sanction mandated in this section should be modified to take effect only if interference by Russia is observed in future elections after the date of enactment, to clarify the relation of the sanctions to election interference such that the institution should be determined to be providing "significant" support and to deter such interference through the specter of sanctions.

- Section 603 (sanctions relating to Russia's actions in Ukraine) inserts new sections into CAATSA, as noted below, imposing sanctions with respect to Russian actions in Ukraine. The Executive Branch already has the authorities necessary — including Executive orders codified by CAATSA — to impose sanctions in response to Russia's activities in Ukraine. This Administration has used these authorities to sanction more than 280 Russia-related targets, including persons sanctioned on March 15, 2019 in response to the Kerch Strait incident. Implementation of the new sanctions mandated by Section 603 will divert resources from implementation of the already robust range of Ukraine-related authorities. If these provisions move forward, they must be scoped and calibrated to all the Executive flexibility in implementation. Absent this flexibility and clarification, there is potential for spillover into Europe that threatens our ability to coordinate with the EU and overall transatlantic unity on Russia sanctions. Comments on Section 603's specific amendments to CAATSA are included below.

  - Section 239 of CAATSA (sanctions with respect to Russian financial institutions that support interference in democratic processes or elections) should be modified to specify the imposition of sanctions on financial institutions that "knowingly" engage in the activities described. The imposition of blocking sanctions on Russian financial institutions can have wide-ranging negative effects, including on financial institutions and credit card companies in the United States and allied and partner countries, so

this section should be discretionary rather than mandatory and should provide for the imposition of sanctions from the menu in New Section 239E (currently Section 235 of CAATSA). This section should provide a timeline of 180 days for the imposition of sanctions, allowing for flexibility in appropriately preparing and timing the rollout of designations.

- Section 239A of CAATSA (mandatory sanctions with respect to transactions related to investments in energy projects, including those to explore for or produce crude oil or natural gas supported by Russian state-owned or parastatal entities outside of Russia) targets "persons," which would include U.S. energy companies involved in Russian energy projects outside of Russia. The sanctions, however, would likely disproportionately target European individuals and entities who may be more heavily involved in these endeavors, complicating sanctions collaboration with European partners and contradicting the emphasis in sections 601, 611, and 613 of DASKA on maintaining sanctions coordination with the European Union. This section should be revised to apply only to "foreign" persons who knowingly make a "significant" investment in an energy project outside the RF that is "owned or controlled by" vs "supported") by a Russian parastatal or by a Russian government owned or controlled entity, as otherwise described. Such revisions could help avoid, for example, sanctioning persons who hold a small number of shares in a publicly traded company involved in a relevant energy project. Because of the potential breadth and unintended consequences, this provision should be revised to be permissive, especially as it could have potentially extensive impact on businesses in the United States and allied and partner countries. As newly revised by the ANS to capture exploration, the sanction in sec. 603 related to investments in energy projects supported by the Russian owned entities outside of the RF "appl[ies] to a project to explore for or produce crude oil or natural gas outside of the RF, initiated after the date of enactment and in which the RF has a 33 percent or more ownership interest in the entity or a majority of the voting interest". The prior version applied to "an energy project outside of the RF that is supported by a Russian entity owned or controlled by the" GRF; the latter clearly applied only to extant projects versus the exploration for such resources.

- There are serious adverse implications, perhaps unintended, of this revised energy sanction requiring sanctions for any new exploration or development of crude is even more far reaching than the initial sanction. In fact, the energy sanctions are so extremely broad, it appears the purpose of this is to halt foreign investment in Russia's crude oil development. The way it is written it would also apply to Russian entities making the investments. So, if Rosneft or any other Russian oil company started a new development project in Russia, the company itself would be sanctioned.

- Section 239B of CAATSA (mandatory sanctions with respect to support for the development of crude oil resources in Russia) also target "persons," including U.S. and European energy companies, complicating sanctions collaboration with European partners. The requirement for guidance suggests an expectation of exemptions to