

Updated DETER Act Introduced in the U.S. Congress

April 8, 2019

On April 3, 2019, U.S. Senators Marco Rubio (R-FL) and Chris Van Hollen (D-MD) introduced an updated version of last year's "Defending Elections from Threats by Establishing Redlines Act" ("DETER"). DETER aims to impose sanctions, including new blocking and secondary sanctions, on foreign (primarily, Russian) governments and persons that interfere in any U.S. federal election. Below, we highlight the most important provisions of DETER, including several departures from the earlier version of the proposed legislation.

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Report by the Director of National Intelligence. If enacted into law, DETER would require that, within 60 days after each U.S. election, the Director of National Intelligence must determine "with a high level of certainty" and report to Congress whether a government of a foreign country or a foreign person, acting as an agent or on behalf of that government, knowingly engaged in interference in the U.S. election. If Russia engaged in such interference, the Director of National Intelligence would also submit to Congress a list of Russian senior political figures and "oligarchs" identified in the report issued under Sec. 241 of the Countering America's Adversaries Through Sanctions Act ("CAATSA") and who "directly or indirectly contributed to such interference." Within 30 days after the interference in the U.S. election is confirmed, the administration would have to impose the sanctions specified in DETER.

Sanctions on Energy Companies. The updated version of DETER would significantly expand sanctions on the Russian energy sector compared to its predecessor. Upon a finding by the Director of National Intelligence that Russia interfered in a U.S. election, DETER would prohibit any "new investment" by U.S. persons in the Russian energy sector or energy company and require blocking of the property of any foreign person who makes a prohibited "new investment."

Within 60 days from the enactment of DETER, the administration would have to prescribe regulations to define the term "new investment" in a manner that:

- includes "significant upgrades or expansions of projects and construction underway" as of the date of enactment; and

- does not include any “routine maintenance of such projects and construction.”

Sanctions on Financial Institutions. In the event of a finding that Russia interfered in a U.S. election, DETER would call for imposition of sanctions on at least two of Sberbank, VTB, Gazprombank, Vnesheconombank and Rosselkhozbank. The sanctions could consist of blocking the banks’ property or subjecting them to a prohibition or strict conditions on opening or maintaining U.S. correspondent or payable through accounts.

Sanctions on Defense and Intelligence Sectors. DETER would require the blocking of assets of entities determined under Sec. 231 of CAATSA as belonging to the Russian defense or intelligence sector and their 50% or more subsidiaries, in the event of a finding of election interference.¹ This differs from the 2018 version of DETER, which would have required blocking of those who engage in “significant transactions” with Russian defense and intelligence sector entities.

Sanctions on Politicians and “Oligarchs.” DETER would impose sanctions on Russian political figures and “oligarchs” identified in the report under Sec. 241 of CAATSA, but unlike the 2018 version, only on those “who directly or indirectly contributed to...interference” in a U.S. election. These sanctions would involve blocking and denial of entry to the United States.

Transactions Involving Russian Debt. DETER would prohibit all transactions within the United States or by U.S. persons in Russian sovereign debt and debt of any entity owned or controlled by Russia, following a finding that Russia interfered in a U.S. election. These sanctions would only affect debt issued on or after the enactment of DETER.

Updated and New Reports to Congress. Unlike the previous version of DETER, the new version requires the Secretary of the Treasury to submit an updated report on Russia’s “oligarchs and parastatal entities” under Sec. 241 of CAATSA to Congress within one year of DETER’s enactment and annually thereafter. DETER also would require an annual report identifying the five largest financial institutions owned by the Russian government determined by estimated net assets.

DETER also would require the U.S. President to provide, within 180 days from enactment, biannual updates and a report on the estimated net worth of President Vladimir Putin and senior Russian politicians identified under Sec. 241 of CAATSA. Apart from the estimated total net worth of each individual, this report also would be

¹ The CAATSA Sec. 231(d) List of Defense and Intelligence Sectors of the Government of the Russian Federation is maintained by the U.S. Department of State and is available [here](#).

required to describe “how the funds were acquired” and how they have been “used or employed.”

Waiver, Suspension and Termination of Sanctions. DETER would allow the U.S. President to waive the imposition of sanctions under DETER on grounds of “vital national security interests,” with the exception of the sanctions against senior political figures and “oligarchs” who contributed to election interference. Sanctions imposed under DETER could be suspended if the Director of National Intelligence certifies to Congress that Russia has not interfered in a U.S. election for at least one federal election cycle.² In the event of a suspension, the administration would have to report to Congress every 90 days whether Russia is taking measures to:

- “improve the oversight of and prosecutions relating to interference in the U.S. elections”; and
- “credibly demonstrate a significant change in behavior and credibly commit to not engage in such interference in future.”

If these measures are not taken, DETER would require sanctions to be reimposed.

Termination of sanctions under DETER would require certification to the Congress that Russia has not interfered in U.S. elections for at least two federal election cycles and has given credible commitments not to engage in U.S. elections in the future. Termination of sanctions under DETER would be subject to Congressional review under Sec. 216 of CAATSA.

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Please do not hesitate to contact us with any questions.

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² The term “Federal election cycle” means the two-year period beginning on the day after the date of the most recent election for members of the House of Representatives and ending on the date of the next election for members of the House of Representatives. See DETER Sec. 2(5)

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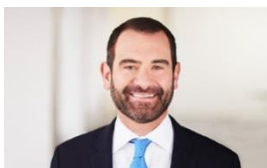
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