H. R. 3526

To permit persons subject to the jurisdiction of the United States to enter into transactions with certain sanctioned foreign persons that are customary, necessary, and incidental to the donation or provision of goods or services to prevent or alleviate the suffering of civilian populations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 2013

Mr. Smith of New Jersey introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To permit persons subject to the jurisdiction of the United States to enter into transactions with certain sanctioned foreign persons that are customary, necessary, and incidental to the donation or provision of goods or services to prevent or alleviate the suffering of civilian populations, and for other purposes.

1  Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Humanitarian Assistance Facilitation Act of 2013”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The 2011–2012 drought in East Africa, part of a persistent weather trend in the region, was exacerbated by stagnating agricultural development and unsustainable forms of livelihood. Moreover, in Somalia, the hardest hit country in the region, the terrorist group al-Shabaab obstructed the delivery of humanitarian assistance and directly threatened aid agencies. Thus, the famine was a foreseeable and, with unimpeded delivery of aid, a preventable event.

(2) It is estimated that 4 million Somalis were affected by the drought and famine in the region and several million remain vulnerable to this day. According to the May 2013 report issued by the United Nations Food and Agriculture Organization and the Famine Early Warning System Network, the Somalia famine resulted in 258,000 deaths between October 2010 and April 2012. More than half of those deaths were children under the age of five.

(3) Because of laws prohibiting activities that may directly or indirectly support terrorist organizations, a general or specific license issued by the De-
partment of the Treasury’s Office of Foreign Assets Control (OFAC) is needed to enable United States humanitarian organizations to legally provide assistance in al-Shabaab-controlled areas of Somalia particularly with respect to activities that require interactions or dealings with al-Shabaab.

(4) The United States Agency for International Development (USAID) has an OFAC-specific license to operate in these conditions in Somalia that covers the organizations that USAID funds, but not organizations that operate with their own funding or funding solely from non-United States Government sources, and also not the non-United States Government funding of organizations that operate with both United States Government and non-United States Government funding, unless USAID authorizes both types of funding to be covered under such OFAC-specific license. Organizations that operate in al-Shabaab-controlled areas without such a license can be subject to prosecution for violating United States law, at least with respect to activities or transactions that involve al-Shabaab, even incidentally.

(5) Prior to OFAC issuing USAID its license, no licenses for humanitarian assistance to the people
of Somalia were issued before the United Nations declared a famine in al-Shabaab-controlled areas of Somalia.

(6) In pursuit of eliminating aid in any form to terrorist organizations, Executive orders have had the effect of undoing protections for humanitarian operations in areas controlled by such organizations previously contained in the International Emergency Economic Powers Act (50 U.S.C.1701 et seq.) and sections 2339A and 2339B of title 18, United States Code (commonly known as the “Material Support Statutes”). Furthermore, the prohibitions contained in such Executive orders and the Material Support Statutes discouraged and, in some instances, prohibited donors from contributing to aid efforts for all of Somalia. In some cases, the unintended consequences included preventing humanitarian organizations from establishing access to civilians and providing them with life-saving aid, while empowering terrorist organizations that became the sole conduit of aid.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that humanitarian organizations, acting in good faith and with the appropriate restrictions and controls in place, should not be prevented,
directly or indirectly by Executive orders or counterterrorism laws, from accessing and providing aid to civilian populations before or early on in humanitarian crises, such as in the famine in al-Shabaab-controlled areas of Somalia.

SEC. 4. AMENDMENTS TO SECTION 203 OF THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT.

(a) ADDITIONAL EXCEPTION.—

(1) IN GENERAL.—Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) is amended—

(A) in subsection (b)(2)—

(i) by inserting after “to relieve human suffering” the following: “including donations to foreign persons subject to sanctions under this Act in order to achieve such purposes,”; and

(ii) by striking “or” at the end;

(B) by redesignating subsection (c) as subsection (d); and

(C) by inserting after subsection (b) the following:

“(c) ADDITIONAL EXCEPTION.—
“(1) IN GENERAL.—The authority granted to the President by this section does not include the authority to further restrict, by regulation or otherwise, directly or indirectly—

“(A) transactions, by a person subject to the jurisdiction of the United States, with a foreign person that is subject to sanctions under this Act that are customary, necessary, and incidental to the donation or provision of goods or services by the person subject to the jurisdiction of the United States or its foreign representatives to civilian populations to prevent or alleviate the suffering of such civilian populations, if—

“(i) the person subject to the jurisdiction of the United States has acted in good faith without intent to further the aims or objectives of the foreign person and has used its best efforts to minimize any such transactions;

“(ii) the goods or services provided to the civilian population—

“(I) are limited to articles such as food, clothing, and medicine; and
“(II) are not capable of being used to carry out any terrorist activity (as defined in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(iii)));

“(iii) the person subject to the jurisdiction of the United States—

“(I) prior to, or not later than 10 business days after, the first instance of entering into any transaction described in this subparagraph, provides to the Secretary of State initial notice summarizing the nature and extent of its operations in connection with providing such goods or services; and

“(II) at least once each year during which the person enters into any transaction described in this subparagraph, provides to the Secretary of State subsequent notice summarizing the nature and extent of its operations in connection with donating or providing such goods or services; and
“(iv) the person, including any director, officer, or employee of the person, is not the subject of or directly named in any publicly-available debarment, suspension, or Executive order that prohibits receipt of funding from the United States Government; and

“(B) engaging in any speech or communication with a foreign person that is subject to sanctions under this Act to prevent or alleviate the suffering of a civilian population, including speech or communication to reduce or eliminate the frequency and severity of violent conflict and reducing its impact on the civilian population.

“(2) Rule of Construction.—Nothing contained in paragraph (1) shall be construed to authorize the President to prohibit the export of standard, commercially-available goods or services, including communications equipment, software and computers, that are necessary to carry out operations related to the provision of goods or services to prevent or alleviate the suffering of civilian populations that are under the control of a foreign person subject to sanctions under this Act.”.
(2) Effective date.—The amendments made by paragraph (1) take effect on the date of enactment of this Act and apply with respect to transactions described in section 203(c)(1) of the International Emergency Economic Powers Act, as added by paragraph (1), entered into on or after such date of enactment.

(b) Advisory Council to Prevent and Alleviate Human Suffering in Areas Under the Control of Certain Sanctioned Foreign Persons.—Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), as amended by subsection (a) of this section, is further amended by adding at the end the following:

“(e) Advisory Council to Prevent and Respond to Human Suffering in Areas Affected by Certain Sanctioned Foreign Persons.—

“(1) Establishment.—No later than 90 days after the date of enactment of the Humanitarian Assistance Facilitation Act of 2013, the Secretary of State shall, in consultation with the Attorney General, Secretary of Defense, Secretary of the Treasury and the Secretary of Commerce, establish an Advisory Council on United States Policy Related to Non-Governmental Activities to Prevent and Re-
spond to Human Suffering in Areas Affected By
Certain Sanctioned Foreign Persons (hereafter in
this subsection referred to as the ‘Advisory Coun-
cil’).

“(2) MEMBERSHIP.—The Advisory Council
shall be composed of not less than 15 members ap-
pointed by the Secretary of State from among indi-
viduals who are experts in the fields of peace-build-
ing, humanitarian aid in areas of armed conflict,
representatives from organizations directly involved
in the delivery of aid in areas of armed conflict, and
other experts with relevant expertise as determined
by the Secretary of State.

“(3) DUTIES.—The Advisory Council shall—

“(A) review existing laws, regulations, Ex-
cecutive orders, and administrative actions regul-
ating or prohibiting, directly or indirectly,
peacebuilding activities and the provision of hu-
manitarian aid and development assistance in
areas under the control of foreign persons that
are subject to sanctions under United States
law;

“(B) conduct additional research and
study as necessary on the subjects of counter-
terrorism and security measures in relation to
the delivery of humanitarian aid and development assistance;

“(C) report to the Secretary of State on its findings; and

“(D) make recommendations to the Secretary of State and other officials described in paragraph (1) (as appropriate) on the most efficient and effective means of limiting diversion of humanitarian aid and development assistance while also preserving the impartiality of humanitarian aid and development assistance and the ability of humanitarian organizations to prevent and relieve human suffering of civilian populations.

“(4) Termination.—Section 14(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.) (relating to termination of advisory committees) shall not apply to the Advisory Council.”.

SEC. 5. AMENDMENTS TO SECTION 2339B OF TITLE 18, UNITED STATES CODE.

(a) Definition of Material Support or Resources.—Section 2339B(g)(4) of title 18, United States Code, is amended by adding at the end before the semicolon the following: “, except that such term does not include engaging in speech or communication with a ter-
rorist organization to prevent or alleviate the suffering of
a civilian population, including speech or communication
to reduce or eliminate the frequency and severity of violent
conflict and reducing its impact on the civilian popu-
lation”.

(b) ADDITIONAL EXCEPTION.—Section 2339B(j) of
title 18, United States Code, is amended—

(1) by striking “No person” and inserting the
following:

“(1) IN GENERAL.—No person”; and

(2) by adding at the end the following:

“(2) ADDITIONAL EXCEPTION.—No person may
be prosecuted under this section in connection with
knowingly providing ‘material support or resources’
to a foreign terrorist organization, or attempting or
conspiring to do so, if—

“(A) the material support or resources
consists only of transactions that are cus-
tomary, necessary, and incidental to the dona-
tion or provision of goods or services by persons
who are not controlled by the foreign terrorist
organization to civilian populations, if—

“(i) the goods or services are limited
articles such as food, clothing, and medi-
cine intended to be used to relieve human
suffering; and

“(ii) the goods or services are not ca-

"pable of being used to carry out any ter-

rorist activity (as defined in section

212(a)(3)(B)(iii) of the Immigration and

Nationality Act (8 U.S.C.

1182(a)(3)(B)(iii)));

“(B) the person, in donating or providing
such goods or services to the civilian population,
acts in good faith without intent to further the
aims or objectives of the foreign terrorist orga-
nization and uses its best efforts to minimize
any transaction with a foreign terrorist organi-
zation;

“(C) the person—

“(i) prior to, or not later than 10
business days after, the first instance of
entering into any transaction described in
subparagraph (A), provides to the Sec-
retary of State notice summarizing the na-
ture and extent of its operations in connec-
tion with providing such goods or services; and
“(ii) at least once each year during which the person enters into any transaction described in subparagraph (A), provides to the Secretary of State notice summarizing the nature and extent of its operations in connection with providing such goods or services; and

“(D) the person donating or providing such goods or services, including any director, officer, or employee of the person is not the subject of or directly named in any publicly-available debarment, suspension, or Executive order that prohibits receipt of funding from the Federal Government.”.

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) take effect on the date of enactment of this Act and apply with respect to transactions described in section 2339B(j)(2) of title 18, United States Code, as added by paragraph (2), entered into on or after such date of enactment.