

113TH CONGRESS
1ST SESSION

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 Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Humanitarian Assist-
3 ance Facilitation Act of 2013”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

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

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

24 (3) Because of laws prohibiting activities that
25 may directly or indirectly support terrorist organiza-
26 tions, a general or specific license issued by the De-

1 partment of the Treasury’s Office of Foreign Assets
2 Control (OFAC) is needed to enable United States
3 humanitarian organizations to legally provide assist-
4 ance in al-Shabaab-controlled areas of Somalia par-
5 ticularly with respect to activities that require inter-
6 actions or dealings with al-Shabaab.

7 (4) The United States Agency for International
8 Development (USAID) has an OFAC-specific license
9 to operate in these conditions in Somalia that covers
10 the organizations that USAID funds, but not orga-
11 nizations that operate with their own funding or
12 funding solely from non-United States Government
13 sources, and also not the non-United States Govern-
14 ment funding of organizations that operate with
15 both United States Government and non-United
16 States Government funding, unless USAID author-
17 izes both types of funding to be covered under such
18 OFAC-specific license. Organizations that operate in
19 al-Shabaab-controlled areas without such a license
20 can be subject to prosecution for violating United
21 States law, at least with respect to activities or
22 transactions that involve al-Shabaab, even inciden-
23 tally.

24 (5) Prior to OFAC issuing USAID its license,
25 no licenses for humanitarian assistance to the people

1 of Somalia were issued before the United Nations
2 declared a famine in al-Shabaab-controlled areas of
3 Somalia.

4 (6) In pursuit of eliminating aid in any form to
5 terrorist organizations, Executive orders have had
6 the effect of undoing protections for humanitarian
7 operations in areas controlled by such organizations
8 previously contained in the International Emergency
9 Economic Powers Act (50 U.S.C.1701 et seq.) and
10 sections 2339A and 2339B of title 18, United States
11 Code (commonly known as the “Material Support
12 Statutes”). Furthermore, the prohibitions contained
13 in such Executive orders and the Material Support
14 Statutes discouraged and, in some instances, prohib-
15 ited donors from contributing to aid efforts for all
16 of Somalia. In some cases, the unintended con-
17 sequences included preventing humanitarian organi-
18 zations from establishing access to civilians and pro-
19 viding them with life-saving aid, while empowering
20 terrorist organizations that became the sole conduit
21 of aid.

22 **SEC. 3. SENSE OF CONGRESS.**

23 It is the sense of Congress that humanitarian organi-
24 zations, acting in good faith and with the appropriate re-
25 strictions and controls in place, should not be prevented,

1 directly or indirectly by Executive orders or counterter-
 2 rorism laws, from accessing and providing aid to civilian
 3 populations before or early on in humanitarian crises, such
 4 as in the famine in al-Shabaab-controlled areas of Soma-
 5 lia.

6 **SEC. 4. AMENDMENTS TO SECTION 203 OF THE INTER-**
 7 **NATIONAL EMERGENCY ECONOMIC POWERS**
 8 **ACT.**

9 (a) ADDITIONAL EXCEPTION.—

10 (1) IN GENERAL.—Section 203 of the Inter-
 11 national Emergency Economic Powers Act (50
 12 U.S.C. 1702) is amended—

13 (A) in subsection (b)(2)—

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

19 (ii) by striking “or” at the end;

20 (B) by redesignating subsection (c) as sub-
 21 section (d); and

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

24 “(c) ADDITIONAL EXCEPTION.—

1 “(1) IN GENERAL.—The authority granted to
2 the President by this section does not include the
3 authority to further restrict, by regulation or other-
4 wise, directly or indirectly—

5 “(A) transactions, by a person subject to
6 the jurisdiction of the United States, with a for-
7 eign person that is subject to sanctions under
8 this Act that are customary, necessary, and in-
9 cidental to the donation or provision of goods or
10 services by the person subject to the jurisdiction
11 of the United States or its foreign representa-
12 tives to civilian populations to prevent or allevi-
13 ate the suffering of such civilian populations,
14 if—

15 “(i) the person subject to the jurisdic-
16 tion of the United States has acted in good
17 faith without intent to further the aims or
18 objectives of the foreign person and has
19 used its best efforts to minimize any such
20 transactions;

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

23 “(I) are limited to articles such
24 as food, clothing, and medicine; and

1 “(II) are not capable of being
2 used to carry out any terrorist activity
3 (as defined in section
4 212(a)(3)(B)(iii) of the Immigration
5 and Nationality Act (8 U.S.C.
6 1182(a)(3)(B)(iii)));

7 “(iii) the person subject to the juris-
8 diction of the United States—

9 “(I) prior to, or not later than 10
10 business days after, the first instance
11 of entering into any transaction de-
12 scribed in this subparagraph, provides
13 to the Secretary of State initial notice
14 summarizing the nature and extent of
15 its operations in connection with pro-
16 viding such goods or services; and

17 “(II) at least once each year dur-
18 ing which the person enters into any
19 transaction described in this subpara-
20 graph, provides to the Secretary of
21 State subsequent notice summarizing
22 the nature and extent of its operations
23 in connection with donating or pro-
24 viding such goods or services; and

1 “(iv) the person, including any direc-
2 tor, officer, or employee of the person, is
3 not the subject of or directly named in any
4 publicly-available debarment, suspension,
5 or Executive order that prohibits receipt of
6 funding from the United States Govern-
7 ment; and

8 “(B) engaging in any speech or commu-
9 nication with a foreign person that is subject to
10 sanctions under this Act to prevent or alleviate
11 the suffering of a civilian population, including
12 speech or communication to reduce or eliminate
13 the frequency and severity of violent conflict
14 and reducing its impact on the civilian popu-
15 lation.

16 “(2) RULE OF CONSTRUCTION.—Nothing con-
17 tained in paragraph (1) shall be construed to au-
18 thorize the President to prohibit the export of stand-
19 ard, commercially-available goods or services, includ-
20 ing communications equipment, software and com-
21 puters, that are necessary to carry out operations re-
22 lated to the provision of goods or services to prevent
23 or alleviate the suffering of civilian populations that
24 are under the control of a foreign person subject to
25 sanctions under this Act.”.

1 (2) EFFECTIVE DATE.—The amendments made
2 by paragraph (1) take effect on the date of enact-
3 ment of this Act and apply with respect to trans-
4 actions described in section 203(c)(1) of the Inter-
5 national Emergency Economic Powers Act, as added
6 by paragraph (1), entered into on or after such date
7 of enactment.

8 (b) ADVISORY COUNCIL TO PREVENT AND ALLEVI-
9 ATE HUMAN SUFFERING IN AREAS UNDER THE CONTROL
10 OF CERTAIN SANCTIONED FOREIGN PERSONS.—Section
11 203 of the International Emergency Economic Powers Act
12 (50 U.S.C.1702), as amended by subsection (a) of this
13 section, is further amended by adding at the end the fol-
14 lowing:

15 “(e) ADVISORY COUNCIL TO PREVENT AND RE-
16 SPOND TO HUMAN SUFFERING IN AREAS AFFECTED BY
17 CERTAIN SANCTIONED FOREIGN PERSONS.—

18 “(1) ESTABLISHMENT.—No later than 90 days
19 after the date of enactment of the Humanitarian As-
20 sistance Facilitation Act of 2013, the Secretary of
21 State shall, in consultation with the Attorney Gen-
22 eral, Secretary of Defense, Secretary of the Treasury
23 and the Secretary of Commerce, establish an Advi-
24 sory Council on United States Policy Related to
25 Non-Governmental Activities to Prevent and Re-

1 spond to Human Suffering in Areas Affected By
2 Certain Sanctioned Foreign Persons (hereafter in
3 this subsection referred to as the ‘Advisory Coun-
4 cil’).

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

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

15 “(A) review existing laws, regulations, Ex-
16 ecutive orders, and administrative actions regu-
17 lating or prohibiting, directly or indirectly,
18 peacebuilding activities and the provision of hu-
19 manitarian aid and development assistance in
20 areas under the control of foreign persons that
21 are subject to sanctions under United States
22 law;

23 “(B) conduct additional research and
24 study as necessary on the subjects of counter-
25 terrorism and security measures in relation to

1 the delivery of humanitarian aid and develop-
2 ment assistance;

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

5 “(D) make recommendations to the Sec-
6 retary of State and other officials described in
7 paragraph (1) (as appropriate) on the most effi-
8 cient and effective means of limiting diversion
9 of humanitarian aid and development assistance
10 while also preserving the impartiality of human-
11 itarian aid and development assistance and the
12 ability of humanitarian organizations to prevent
13 and relieve human suffering of civilian popu-
14 lations.

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

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

21 (a) DEFINITION OF MATERIAL SUPPORT OR RE-
22 SOURCES.—Section 2339B(g)(4) of title 18, United States
23 Code, is amended by adding at the end before the semi-
24 colon the following: “, except that such term does not in-
25 clude engaging in speech or communication with a ter-

1 rorist organization to prevent or alleviate the suffering of
 2 a civilian population, including speech or communication
 3 to reduce or eliminate the frequency and severity of violent
 4 conflict and reducing its impact on the civilian popu-
 5 lation”.

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

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

10 “(1) IN GENERAL.—No person”; and

11 (2) by adding at the end the following:

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

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

23 “(i) the goods or services are limited
 24 articles such as food, clothing, and medi-

1 cine intended to be used to relieve human
2 suffering; and

3 “(ii) the goods or services are not ca-
4 pable of being used to carry out any ter-
5 rorist activity (as defined in section
6 212(a)(3)(B)(iii) of the Immigration and
7 Nationality Act (8 U.S.C.
8 1182(a)(3)(B)(iii)));

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

16 “(C) the person—

17 “(i) prior to, or not later than 10
18 business days after, the first instance of
19 entering into any transaction described in
20 subparagraph (A), provides to the Sec-
21 retary of State notice summarizing the na-
22 ture and extent of its operations in connec-
23 tion with providing such goods or services;
24 and

1 “(ii) at least once each year during
2 which the person enters into any trans-
3 action described in subparagraph (A), pro-
4 vides to the Secretary of State notice sum-
5 marizing the nature and extent of its oper-
6 ations in connection with providing such
7 goods or services; and

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

15 (3) EFFECTIVE DATE.—The amendments made
16 by paragraphs (1) and (2) take effect on the date
17 of enactment of this Act and apply with respect to
18 transactions described in section 2339B(j)(2) of title
19 18, United States Code, as added by paragraph (2),
20 entered into on or after such date of enactment.

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