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S. 2167

To require the Secretary of the Treasury to make certifications with respect to United States and foreign financial institutions' aircraft-related transactions involving Iran, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 28, 2017

Mr. CRUZ (for himself and Mr. PERDUE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To require the Secretary of the Treasury to make certifications with respect to United States and foreign financial institutions' aircraft-related transactions involving Iran, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Strengthening Over-
5 sight of Iran’s Access to Finance Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) Under the Joint Comprehensive Plan of Ac-
2 tion (in this section referred to as the “JCPOA”),
3 informally known as the Iran nuclear deal, the
4 Obama administration agreed to license the sale of
5 commercial passenger aircraft to Iran, the world’s
6 foremost state sponsor of terrorism and a jurisdic-
7 tion of primary money laundering concern.

8 (2) In April 2015, prior to the adoption of the
9 JCPOA, Secretary of the Treasury Jacob Lew, in
10 publicly advocating for its provisions, stated, “Make
11 no mistake: deal or no deal, we will continue to use
12 all our available tools, including sanctions, to
13 counter Iran’s menacing behavior. Iran knows that
14 our host of sanctions focused on its support for ter-
15 rorism and its violations of human rights are not,
16 and have never been, up for discussion.”.

17 (3) In March 2016 remarks to the Carnegie
18 Endowment for International Peace, Secretary Lew,
19 in reference to United States commitments under
20 the JCPOA, stated, “While we have lifted the nu-
21 clear sanctions, we continue to enforce sanctions di-
22 rected at support for terrorism and regional desta-
23 bilization, and missile and human rights violations.”.

24 (4) In an April 2016 forum at the Council on
25 Foreign Relations, Secretary Lew stated that, under

1 the JCPOA, the United States committed to lifting
2 its nuclear sanctions, “but the U.S. financial system
3 is not open to Iran, and that is not something that
4 is going to change”.

5 (5) In September 2016, the Department of the
6 Treasury’s Office of Foreign Assets Control (in this
7 section referred to as “OFAC”) issued licenses per-
8 mitting the export of up to 97 aircraft for use by
9 Iran Air, the Islamic Republic of Iran’s flagship
10 state-owned air carrier. These licenses included au-
11 thorization for United States financial institutions
12 “to engage in all transactions necessary to provide
13 financing or other financial services” in order to ef-
14 fectuate the sales. In November 2016, OFAC li-
15 censed an additional 106 aircraft for purchase by
16 Iran Air, which are also eligible for financing au-
17 thorized by OFAC.

18 (6) The Department of the Treasury had sanc-
19 tioned Iran Air in 2011 for its use of commercial
20 passenger aircraft to transport rockets, missiles, and
21 other military cargo on behalf of the Islamic Revolu-
22 tionary Guard Corps (in this section referred to as
23 the “IRGC”) and Iran’s Ministry of Defense and
24 Armed Forces Logistics, both of which had been des-
25 ignated under Executive Order 13382 for weapons

1 proliferation-related activities. In October 2017, the
2 IRGC went on to be designated under Executive
3 Order 13224 for its support of the IRGC-Qods
4 Force, which has provided support to terrorist
5 groups such as Hizballah, Hamas, and the Taliban.

6 (7) Among Iran Air's sanctionable activities,
7 the air carrier delivered missile or rocket compo-
8 nents to the regime of Bashar al-Assad in Syria,
9 which like Iran is classified as a state sponsor of ter-
10 rorism.

11 (8) The Assad regime is responsible for a civil
12 conflict that has claimed an estimated 400,000 lives,
13 including through the regime's deployment of chem-
14 ical weapons and barrel bombs against unarmed ci-
15 vilians and children.

16 (9) Despite being delisted in 2016, Iran Air has
17 continued to fly known weapons resupply routes to
18 government-controlled areas of Syria. According to
19 research by the Foundation for Defense of Democ-
20 racies, between Implementation Day of the JCPOA
21 on January 16, 2016, and May 4, 2017, Iran Air
22 operated at least 134 flights to Syria, which in-
23 cluded stops in Abadan, Iran, a suspected IRGC
24 logistical hub for airlifts to the Assad regime.

1 (10) In November 2016 correspondence to the
2 Chairman of the Committee on Financial Services of
3 the House of Representatives, the Department of the
4 Treasury noted that the commitment to delist Iran
5 Air under the JCPOA “does not affect our ability to
6 designate, or re-designate, any Iranian airline that
7 engages in sanctionable activity. The United States
8 retains the ability to designate any individual or en-
9 tity that engages in sanctionable activities under our
10 authorities targeting conduct outside the scope of
11 the JCPOA, including Iran’s support for terrorism,
12 human rights abuses, ballistic missile program, and
13 other destabilizing activities in the region.”.

14 (11) In April 2017, Iran announced a deal for
15 Aseman Airlines to purchase up to 60 commercial
16 aircraft, a transaction that would require authoriza-
17 tion by OFAC. Aseman Airlines’ chief executive offi-
18 cer, Hossein Alaei, has for decades served as a sen-
19 ior member of the IRGC.

20 **SEC. 3. CERTIFICATIONS FOR AIRCRAFT-RELATED TRANS-**
21 **ACTIONS BY UNITED STATES AND FOREIGN**
22 **FINANCIAL INSTITUTIONS.**

23 (a) IN GENERAL.—Not later than 30 days after au-
24 thorizing a transaction by a United States financial insti-
25 tution or a foreign financial institution in connection with

1 the export or re-export of a commercial passenger aircraft
2 to Iran (or, for an authorization made after January 16,
3 2016, but before the date of the enactment of this Act,
4 not later than 60 days after such date of enactment), and
5 every 180 days thereafter for the duration of the author-
6 ization, the Secretary shall submit a report described in
7 subsection (b) to the appropriate congressional commit-
8 tees.

9 (b) REPORT WITH RESPECT TO FINANCIAL INSTITU-
10 TIONS' IRAN-RELATED TRANSACTIONS AND DUE DILI-
11 GENCE.—A report described in this subsection is a report
12 that contains—

13 (1) a list of financial institutions that, after
14 January 16, 2016, have conducted transactions au-
15 thorized by the Secretary in connection with the ex-
16 port or re-export of commercial passenger aircraft to
17 Iran; and

18 (2) with respect to the transaction by a finan-
19 cial institution described in subsection (a), either—

20 (A) a certification that—

21 (i) the transaction does not pose a
22 significant money laundering or terrorism
23 financing risk to the United States finan-
24 cial system;

1 (ii) the transaction will not benefit an
2 Iranian person that, since the date that is
3 one year preceding the date of the certifi-
4 cation—

5 (I) has knowingly transported
6 items used for the proliferation of
7 weapons of mass destruction, includ-
8 ing systems designed in whole or in
9 part for the delivery of such weapons;
10 or

11 (II) has knowingly provided
12 transportation services or material
13 support for, or on behalf of, any per-
14 son designated under—

15 (aa) Executive Order 13224
16 (50 U.S.C. 1701 note; relating to
17 blocking property and prohibiting
18 transactions with persons who
19 commit, threaten to commit, or
20 support terrorism);

21 (bb) Executive Order 13382
22 (50 U.S.C. 1701 note; relating to
23 blocking property of weapons of
24 mass destruction delivery system

1 proliferators and their sup-
2 porters); or

3 (cc) Executive Order 13572
4 (50 U.S.C. 1701 note; relating to
5 blocking property of certain per-
6 sons with respect to human
7 rights abuses in Syria); and

8 (iii) any financial institution described
9 in paragraph (1) has had since the date
10 such authorization was made, or, if the au-
11 thorization is no longer in effect, had for
12 the duration of such authorization, appro-
13 priate policies, procedures, and processes
14 in place to avoid engaging in sanctionable
15 activities that may result from the finan-
16 cial institution's exposure to Iran; or

17 (B) a statement that the Secretary is un-
18 able to make the certification described in sub-
19 paragraph (A) and a notice that the Secretary
20 will, not later than 60 days after the date the
21 determination is submitted to the appropriate
22 congressional committees, submit a report on
23 non-certification described in subsection (c) to
24 the appropriate congressional committees.

1 (c) REPORT ON NON-CERTIFICATION.—A report on
2 non-certification described in this subsection is a report
3 with respect to a transaction by a financial institution de-
4 scribed in subsection (a) that contains—

5 (1) a detailed explanation for why the Secretary
6 is unable to make the certification described under
7 subsection (b)(2)(A) with respect to the transaction;

8 (2) a notification of whether the Secretary
9 will—

10 (A) not amend the authorization of the
11 transaction with respect to the financial institu-
12 tion, notwithstanding such non-certification;

13 (B) suspend the authorization until the
14 Secretary is able to make such certification;

15 (C) revoke the authorization; or

16 (D) otherwise amend the authorization;

17 and

18 (3) an explanation of the reasons for any action
19 to be taken described in paragraph (2).

20 (d) WAIVER.—The President may waive, on a case-
21 by-case basis, the provisions of this section for up to one
22 year at a time upon certifying to the appropriate congress-
23 sional committees that—

24 (1) the Government of Iran has—

1 (A) made substantial progress towards
2 combating money laundering and terrorism fi-
3 nancing risk emanating from Iran; or

4 (B) significantly reduced Iran's—

5 (i) destabilizing activities in the re-
6 gion; or

7 (ii) material support for terrorist
8 groups; or

9 (2) such waiver is important to the national se-
10 curity interests of the United States, with an expla-
11 nation of the reasons therefor.

12 (e) TERMINATION.—This section shall cease to be ef-
13 fective on the date that is 30 days after the date on which
14 the President certifies to the appropriate congressional
15 committees that—

16 (1)(A) the Secretary does not find, under sec-
17 tion 5318A of title 31, United States Code, that rea-
18 sonable grounds exist for concluding that Iran is a
19 jurisdiction of primary money laundering concern;
20 and

21 (B) Iran has ceased providing support for acts
22 of international terrorism; or

23 (2) terminating the provisions of this section is
24 vital to the national security interests of the United
25 States, with an explanation of the reasons therefor.

1 (f) DEFINITIONS.—In this section:

2 (1) APPROPRIATE CONGRESSIONAL COMMIT-
3 TEES.—The term “appropriate congressional com-
4 mittees” means—

5 (A) the Committee on Financial Services
6 and the Committee on Foreign Affairs of the
7 House of Representatives; and

8 (B) the Committee on Banking, Housing,
9 and Urban Affairs and the Committee on For-
10 eign Relations of the Senate.

11 (2) FINANCIAL INSTITUTION.—The term “fi-
12 nancial institution” means a United States financial
13 institution or a foreign financial institution.

14 (3) FOREIGN FINANCIAL INSTITUTION.—The
15 term “foreign financial institution” has the meaning
16 given that term in section 561.308 of title 31, Code
17 of Federal Regulations.

18 (4) KNOWINGLY.—The term “knowingly” with
19 respect to conduct, a circumstance, or a result,
20 means that a person has actual knowledge, or should
21 have known, of the conduct, the circumstance, or the
22 result.

23 (5) SECRETARY.—The term “Secretary” means
24 the Secretary of the Treasury.

1 (6) UNITED STATES FINANCIAL INSTITUTION.—
2 The term “United States financial institution” has
3 the meaning given the term “U.S. financial institu-
4 tion” in section 561.309 of title 31, Code of Federal
5 Regulations.

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