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COMPREHENSIVE IRAN SANCTIONS, ACCOUNTABILITY, AND DIVESTMENT ACT OF 2009

NOVEMBER 19, 2009.—Ordered to be printed

Mr. DODD, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

[To accompany S. 2799]

The Committee on Banking, Housing, and Urban Affairs, having had under consideration an original bill (S. 2799) to expand the Iran Sanctions Act of 1996, to provide for the divestment of assets in Iran by State and local governments and other entities, to identify locations of concern with respect to transshipment, reexportation, or diversion of certain sensitive items to Iran, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

I. INTRODUCTION

On October 29, 2009, the Senate Committee on Banking, Housing and Urban Affairs considered a Committee Print, entitled the "Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2009," a bill to impose sanctions with respect to Iran; to provide for the divestment of assets in Iran by State and local governments and others; and to identify countries engaged in transshipment or diversion of certain sensitive items to Iran, and for other purposes. The Committee voted 23 to 0 to report the bill to the Senate. The Committee's consideration of the bill comes at a time of heightened international tensions surrounding the government of Iran's uranium enrichment program, and ongoing negotiations with Iran's leaders designed to bring about an end to that government's illicit nuclear activities and bring Iran into compliance with international non-proliferation rules.

89–010

II. PURPOSE

The Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2009 (hereafter 'the Act') imposes a number of new sanctions on Iran; provides a legal framework by which States, local governments and certain other investors can divest Iran-related energy assets from their portfolios, and establishes a mechanism to address concerns about sensitive technologies being diverted to Iran through other countries.

Specifically, the Act extends current sanctions and imposes new sanctions on multinational firms engaged in exportation of refined petroleum products to Iran, or in bolstering Iran's domestic refinery capacity; tightens the current export and import ban on Iran, while providing for certain exceptions; requires the freezing of assets of certain Iranian persons involved in providing support for terrorism or weapons proliferation, including Iran's Revolutionary Guard Corps, and associated persons; imposes a ban on U.S. Government contracts for entities found to be subject to sanctions under the Iran Sanctions Act; expands the definition of persons subject to the Act; and imposes certain additional reporting requirements to increase monitoring of investments and transactions in Iran's energy sector. It also allows State and local governments and private asset fund managers, if they so choose, to adopt measures to divest from companies who have invested $20 million or more in the energy sector in Iran. Such measures may be adopted to reduce the financial or reputational risk associated with investments in a country subject to international sanctions. Finally, the Act establishes a system to strengthen and improve U.S. efforts to combat the diversion of sensitive dual use technologies to Iran.

III. BACKGROUND AND NEED FOR LEGISLATION

It is in the national interest of the U.S. for Iran to suspend its non-compliant uranium enrichment program, end its sponsorship of international terrorism, and halt weapons proliferation. The need to complement multilateral initiatives with legislation designed to address these concerns is also clear. It arises primarily from Iran's persistent failure to address the concerns of the International Atomic Energy Agency (IAEA) with regard to its nuclear program. Such legislation would enhance current economic sanctions, enable divestment from Iran, and combat the diversion of sensitive technologies to Iran. By these means, this legislation is designed to maximize the economic leverage on Iran's government—from the US, our allies, and US and international investors—to bring that government to the negotiating table, to change its behavior, and to constrain its freedom to act in ways inimical to the interests of the international community.

The Committee recognizes that economic and financial sanctions are only one tool of statecraft and, to be effective, must be undertaken as part of a broader diplomatic effort. Sanctions are a means of providing leverage within a more comprehensive, coherent, coordinated diplomatic and political strategy to prompt Iran to cease and forswear all nuclear-related activities that are in contravention of its international agreements and responsibilities, and other behaviors that undermine regional peace and stability. The president's current diplomatic initiative to engage Iran's government,

along with US allies, in negotiations regarding its nuclear programs is part of that effort.

Multilateral initiatives

The government of Iran has been designated by the United States as a state sponsor of terrorism since 1984 and is a long-time financial supporter of designated terrorist organizations such as Hezbollah, Hamas, and Palestinian Islamic Jihad. The government of Iran has consistently misled the United Nations and the IAEA about the objectives and scope of its nuclear activities. For example, IAEA inspections since 2003 have revealed two decades' worth of undeclared nuclear activities in Iran, including uranium enrichment and plutonium separation efforts. Despite a series of agreements to suspend its activities in this area, Iran has persisted in these activities, and the several measures adopted thus far by the UN Security Council (UNSC) have proved insufficient to curtail Iran's enrichment activities.

The UNSC has acted on various resolutions in recent years, condemning Iran's nuclear activities and urging compliance with its international obligations. For example, on December 23, 2006, UNSC Resolution 1737 was unanimously approved, banning supply of nuclear technology and equipment to Iran and freezing the assets of organizations and individuals involved in Iran's nuclear program, until Iran suspends enrichment of uranium. UNSC Resolution 1747 was unanimously approved on March 24, 2007, imposing a ban on arms sales, expanding the freeze on assets, and setting a deadline for Iranian compliance two months later.

Absent compliance, further sanctions were adopted in UNSC Resolution 1803 on March 3, 2008, including a sales ban on dual use items; authorization of inspections of cargo suspected of containing WMD-related goods; an expanded Iranian travel ban list; and a call to ban transactions with Iran's Bank Melli and Bank Saderat. On August 7, 2008, the EU implemented the sanctions specified in Resolution 1803, including asserting the authority to inspect suspect shipments, and called on its members to refrain from providing new credit guarantees on exports to Iran. On September 27, 2008, the Security Council also adopted Resolution 1835, calling on Iran to comply with previous resolutions.

In addition to UNSC efforts, since 2006 the "Permanent Five Plus 1" (P5+1), comprised of the United States, Russia, China, France, Britain, and Germany, have proposed a blueprint for negotiating with Iran including the following proposed incentives: (1) negotiations on EU-Iran trade agreements and acceptance of Iran into the World Trade Organization; (2) easing of U.S. sanctions to permit sales to Iran of commercial aircraft and aircraft parts; (3) sale to Iran of a light-water nuclear reactor and guarantees of nuclear fuel (including a five-year buffer stock of fuel), and possible sales of light-water research reactors for medicine and agricultural applications; (4) an "energy partnership" between Iran and the European Union, including help for Iran to modernize its oil and gas sector and to build export pipelines; (5) support for a regional security forum for the Persian Gulf, and support for the objective of a Middle East WMD free zone; (6) the possibility of eventually allowing Iran to resume uranium enrichment if it complies with all outstanding IAEA requirements and proves that its nuclear program

is purely for peaceful purposes. The P5+1's proposed sanctions for noncompliance include: (1) denial of visas for persons involved in Iran's nuclear program and other high-ranking Iranian officials; (2) asset freezes of additional Iranian officials and institutions; a freeze of Iran's governmental assets abroad; and a ban on some financial transactions; (3) a ban on sales of advanced technology, arms, and refined oil products to Iran; and (4) an end to support for Iran's application to the WTO.[1]

On June 14, 2008, a "refreshed" package of P5+1-proposed incentives was formally presented to Iran by EU envoy Javier Solana. At the same time, the European Union has taken steps to impose its own set of targeted financial sanctions, announcing a new round of sanctions against critical Iranian financial institutions found to be supporting the financing of weapons proliferation and terrorist activities. This package of incentives and sanctions, including a P5+1 "freeze for freeze" proposal (in which the P5+1 countries would freeze further sanctions efforts if Iran agreed to freeze its enrichment activity) remains on the table. These initiatives are important steps to increase economic pressure against the Iranian regime to change its proliferation-related behavior.

Revelations of a secret new uranium enrichment facility being built by Iran near the holy city of Qum—in violation of international rules, and previously undisclosed to the IAEA—helped to prompt a breakthrough in diplomatic talks. In September 2009 the Iranian government agreed to discuss a range of issues with P5+1 negotiators. Talks took place in October, including the first bilateral meeting between the United States and Iran since the 1979 revolution. The administration joined other P5+1 governments and IAEA officials in insisting on prompt access for IAEA inspectors to this facility.

In general, Iran reportedly agreed to: (1) allow access to the Qum facility for IAEA inspectors; (2) allow, in principle, reprocessing for medical use of a substantial amount of its uranium stockpile by Russia and France under IAEA supervision, details of which were to be worked out soon after initial discussions; and (3) join another meeting with P5+1 negotiators later in October. As administration officials describe it, such an agreement would serve as a confidence-building measure among all parties involved in the talks, and a basis upon which to build broader-based non-proliferation negotiations. Should talks fail, intensified multilateral sanctions on Iran would follow.

At the time of the Committee's reporting, Iran has allowed IAEA inspectors access to the Qum facility, but failed to adequately follow-up on the preliminary agreement reached within the P5+1 forum on low-enriched uranium for the Tehran Research Reactor. Iran's resistance to finalizing an agreement has contributed to a greater willingness among some countries to isolate Iran further. Thus, if the "diplomatic track" should fail, within a short period, the administration has indicated its commitment to pursuing a "pressure track," which contemplates stronger multilateral and unilateral sanctions on Iran.

[1] Congressional Research Service. RL32048—Iran: U.S. Concerns and Policy Responses, October 5, 2009.

Iran's deteriorating record on human rights

The government of Iran continues to engage in systematic, ongoing, and egregious violations of human rights and religious freedom, including prolonged detention, torture, and executions. The government holds political prisoners and has intensified a crackdown against women's rights groups, religious minorities, ethnic minority rights activists, and student activists. Iran's poor record on human rights and religious freedom was again evident in the government's crackdown on protestors and dissidents following the contested June 2009 Presidential elections, when Iranian security forces brutally quelled any expression of dissent and attacked demonstrators for exercising freedom of expression. The regime also has implemented measures to effectively shut down or slow electronic communications. Websites have been blocked, access to the Internet limited and Internet use slowed, and cell phones work only intermittently. Both the human rights and religious freedom reports from the State Department, along with the 2009 Annual Report from the U.S. Commission on International Religious Freedom, conclude that the human rights situation worsened in 2008. Recognizing this deterioration, the Committee urges the President to take certain actions under current law, including prohibiting entry into the United States, and freezing immediately the funds and other assets belonging to, Iranian government officials responsible for particularly severe human rights abuses.

Nuclear intentions, technology diversion or transshipment

In November 2007, a National Intelligence Estimate entitled "Iran: Nuclear Intentions and Capabilities" was released. This report offered a thorough analysis of Iran's capability and intentions regarding nuclear weapons, taking full account of its dual use uranium fuel cycle and those of its nuclear activities that are at least partly civil in nature. The report concluded with high confidence that Iran had been pursuing a nuclear weapons program, and halted that program in 2003, but noted with moderate-high confidence that Iran is keeping open the option of developing nuclear weapons, and that Iran's uranium enrichment program may ultimately provide Iran with the capability to develop a nuclear weapon. The NIE also noted that the program probably was halted primarily in response to international pressure, suggesting that Iran may be more vulnerable to influence on the issue than the intelligence community had judged previously.

In December 2007, the U.S. Government Accountability Office submitted a report to Congress assessing the effectiveness of sanctions on Iran and concluding, among other things, that the current sanctions regime should be reviewed, and that the current ban on most trade with Iran may be circumvented by the transshipment of United States exports through third countries. Formal surveys conducted by the Commerce Department to assess the verification of U.S. exports' end use also concluded that technology may be easily diverted to Iran through third parties. Such concerns were further affirmed in recent reports by a reputable American non-governmental organization. Black-market enterprises established through transshipment networks continue to supply dual use prod-

ucts to rogue regimes such as Iran and North Korea, facilitating development of their nuclear technology.[2]

State and local divestment efforts

In the U.S. in recent years, there has been an increasing interest by States, local governments, educational institutions, and private institutions to disassociate themselves from companies that directly or indirectly support the Government of Iran's efforts to achieve a nuclear weapons capability or support international terrorism. Financial advisors, policy makers and fund managers may find prudential or reputational reasons to divest from companies that accept the business risk of operating in countries subject to international economic sanctions or that have business relationships with countries, governments, or entities with which any United States company would be prohibited from dealing because of economic sanctions imposed by the United States.

Notwithstanding the wide range of diplomatic and economic sanctions that have been pursued by the U.S., many States and localities have begun to enact measures restricting their agencies' economic transactions with firms that do business with, or in, Iran. Nineteen States and the District of Columbia have already enacted some form of divestment legislation or otherwise adopted divestment measures, and legislation is pending in additional State legislatures. Other States and localities have taken administrative action to facilitate divestment. Also joining this movement are colleges and universities, large cities, non-profit organizations, and pension and mutual funds.

Legal and constitutional challenges regarding divestment

Constitutional challenges to State measures which touch upon international relations typically take one or more of three forms: (1) that the State measures conflict with and thus are pre-empted by Federal law under the Supremacy Clause; (2) that they violate the "dormant foreign commerce clause;" and (3) that they violate the so-called "dormant foreign affairs doctrine."[3]

With the reporting of this legislation, the Committee has concluded that, with respect to each of these challenges, Congress and the President have the constitutional power to authorize States to enact divestment measures, and Federal consent removes any doubt as to the constitutionality of those measures. Thus, the Act explicitly states the sense of Congress that the United States should support the decisions of State and local governments to divest from firms conducting business operations in Iran's energy sector, and clearly authorizes divestment decisions made consistent with the standards the legislation articulates. It also provides a "safe harbor" for changes of investment policies by private asset managers, and it expresses the sense of Congress that certain divestments, or avoidance of investment, do not constitute a breach of fiduciary duties under the Employee Retirement Income Security Act (ERISA). With regard to pre-emption, the legislation supports State and local efforts to divest from companies conducting busi-

[2] Government Accountability Office, Institute for Science and International Security, media reports.

[3] Congressional Research Service. RL33948—State and Local Economic Sanctions: Constitutional Issues. July 2, 2008.

ness operations in certain sectors in Iran by clearly stating that they are not pre-empted by any Federal law or regulation.

The Committee recognizes that this legislation attempts to balance two important interests. The first is the singular authority of the Federal Government to conduct foreign policy. The second is the ability of State and local governments and other entities to invest or divest their funds as they see fit. The Committee believes it has struck an appropriate balance by targeting State action in such a way that permits State divestment measures based on risks to profitability, economic well-being, and reputations arising from association with investments in a country subject to international sanctions.

IV. DESCRIPTION OF THE BILL

The Act is meant to strengthen all three major categories of U.S. sanctions on Iran: the U.S. trade ban against Iran; restrictions on foreign entities investing over $20 million in Iran's energy sector; and targeted financial measures against entities providing financial support for Iran's proliferation and terrorist activities. The Act would:

- Expand the scope of foreign companies subject to the Iran Sanctions Act (ISA) to include certain financial institutions, subsidiaries, export credit agencies and other entities;
- Extend ISA sanctions to firms engaged in activities involving exportation of refined petroleum products to Iran, or involving the development of oil refineries in Iran;
- Require a semi-annual report on qualifying investments in and activities engaged in by companies sanctionable under ISA, including a determination by the President of whether such investment or activity is sanctionable;
- Mandate a U.S. government procurement ban against ISA-sanctionable companies, while providing a national interest waiver;
- Codify U.S. export and import bans on Iran, with allowances for food/medicine export licenses, export and import of certain informational materials, goods and services necessary to ensure safe commercial aviation; and assistance to the IAEA, and for democracy promotion;
- Require the freezing of assets of Iranian officials (including Iran's Revolutionary Guard Corps, its "front organizations" and affiliates) supporting terrorism and proliferation;
- Extend sanctions liability of U.S. companies to foreign subsidiaries established to circumvent U.S. sanctions law and which invest substantially in Iran's energy sector;
- Authorize appropriations for the Terrorism and Financial Intelligence Office at the Department of the Treasury;
- Authorize States, local governments and private asset managers to divest from Iran-related energy businesses; and
- Combat transshipment of sensitive technology to Iran, by aiding countries to improve export controls and by further restricting U.S. exports to uncooperative countries.

V. SECTION-BY-SECTION ANALYSIS OF BILL

Section 1.—Short title: This section establishes the short title of the bill as the "Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2009".

Section 2.—Findings: This section outlines Congressional findings regarding Iran's illicit nuclear activities and continuing human rights abuses by Iranian security forces.

Section 3.—Sense of Congress: This section expresses the Sense of Congress regarding Iran's continuing illicit nuclear activities and ongoing violations of human rights in Iran.

Title I.—Sanctions

Section 101.—Definitions: This section defines terms used in this title, including: agricultural commodity, executive agency, appropriate Congressional Committees, information and informational materials, investment, Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran, medical device, and medicine.

Section 102.—Energy sanctions: ISA recognizes the dominant role of Iran's oil and gas industry in generating revenue for the regime's proliferation and international terrorism activities, and requires the President to impose at least two out of a menu of sanctions on foreign "persons" that make an "investment" of more than $20 million annually in Iran's energy sector. The sanctions (Section 6) include (1) denial of Export-Import Bank loans, credits, or credit guarantees for U.S. exports to the sanctioned entity; (2) denial of licenses for the U.S. export of military or militarily-useful technology to the entity; (3) denial of U.S. bank loans exceeding $10 million in one year to the entity; (4) if the entity is a financial institution, a prohibition on its service as a primary dealer in U.S. government bonds; and/or a prohibition on its serving as a repository for U.S. government funds (each counts as one sanction); (5) prohibition on U.S. government procurement from the entity; and (6) restriction on imports from the entity, in accordance with the International Emergency Economic Powers Act (IEEPA, 50 U.S.C. 1701). The President may temporarily waive the sanctions on a national of a country if he determines that it is vital to the national security interest of the U.S. to do so (Section 4(c)), or if he certifies that a broader waiver is otherwise important to the U.S. national interest (Section 9(c)).

This section restates the thresholds in ISA, expands key definitions within that law, and extends ISA sanctions to firms that provide goods, services, technology, information or support related to the production of refined petroleum products in Iran, or that engage in the exportation of refined petroleum products to Iran, subject to a de minimus threshold of $200,000, or an aggregate of $1 million in any 12-month period. Activities with respect to exportation are defined to include providing insurance underwriting, financing, brokering, ships or shipping services for these purposes. In addition to the two or more sanctions (from the existing "menu" of ISA sanction options) to be imposed under current law, this section also provides for mandatory imposition of three additional sanctions on sanctioned firms: on foreign exchange transactions, banking transactions, and property transactions. Like existing ISA

sanctions, these new mandatory sanctions are subject to a national interest waiver by the President. More detailed waiver reporting requirements are also provided for in this section, along with a definition of petroleum products that includes gasoline, diesel fuel, jet fuel and aviation gasoline. Finally, this section would clarify that foreign companies subject to ISA include financial institutions, subsidiaries, and other entities, and that the relevant investments in Iran's energy industry involve not only petroleum and oil or liquefied gas, but also certain means of shipping such products, such as tankers and pipelines.

Section 103.—Other economic sanctions: This section codifies critical restrictions on imports from and exports to Iran, currently authorized by the President in accordance with IEEPA. Consistent with IEEPA, exceptions to the import ban are made for informational materials that may be used, for example, in the conduct of news reporting, or in mapping for air travel over land. Similarly, exceptions to the export ban include food, medicine, humanitarian assistance, informational materials, goods used to ensure safety of flight for U.S.-made aircraft, aid necessary to support IAEA efforts in Iran, and democracy promotion initiatives. Consistent with his authority under Executive Order 13059, the President is authorized to, and shall, as necessary, issue such regulations, orders, and licenses to implement these provisions. In addition, this section requires asset freezes for persons, including officials of Iranian agencies specified in ISA and certain of their affiliates that have engaged in activities such as terrorism or weapons proliferation under IEEPA sanction. To limit sanctioned persons' ability to evade U.S. scrutiny and penalty, this section further stipulates that the assets freeze should extend to those assets which sanctioned persons transfer to family members or associates. The Committee recognizes that agencies involved in implementing these measures will require time to prepare appropriate evidentiary materials before executing corresponding sanctions, which this section requires to be imposed as soon as possible. This section would also prohibit U.S. or foreign firms from entering into procurement contracts with the federal government if the entity meets the criteria for sanctions under ISA. Finally, the provisions of this section may be waived if such a waiver is deemed by the President to be in the national interest.

Section 104.—Liability of parent companies for sanctions violations by foreign subsidiaries: This section strengthens U.S. law by holding parent companies liable for activities conducted by foreign subsidiaries that were established for the purpose of circumventing U.S. sanctions statutes and who engage in activities which, if committed in the U.S. or by a U.S. person, would violate U.S. sanctions law. The President may waive the provisions of this section on national interest grounds.

Section 105.—Prohibition of procurement contracts with persons that export sensitive technology to Iran: This section would prohibit the head of any U.S. executive agency from entering into procurement contracts with an entity that the President determines has exported to Iran sensitive communications technology to be used for monitoring, jamming, or other disruption of communications by the people of Iran.

Section 106.—Increased capacity for efforts to combat unlawful or terrorist financing: This section authorizes funding of $64.6 million for the Office of Terrorism and Financial Intelligence of the Department of the Treasury, and of $104.2 million for the Financial Crimes Enforcement Network.

Section 107.—Reporting requirement to increase monitoring of investment in Iran: ISA requires the President to impose sanctions on a U.S. or foreign natural person if the President determines that the person invested $20,000,000 or more in Iran's petroleum or natural gas sectors, but the President has for years failed to do so even though foreign companies have invested more than the specified amount.[4] The measure requires the President, within 180 days of enactment of the bill and every 180 days thereafter, to report to the appropriate Congressional Committees on eligible foreign investments made in Iran's energy sector since January 1, 2009, or eligible transactions related to bolstering Iran's refinery capacity or to exportation of refined petroleum products to Iran, the dates of such investments or activity, the name of the person engaged in such activity, any federal contracts to which they are parties, and the determination of the President on whether such investments or activities qualify as sanctionable offenses. To address any national security concerns about the impact of publicizing certain parts of this report, this section allows for a classified annex.

Section 108.—Sense of Congress on Iran's Central Bank: This section urges the President to consider immediately using his authority to impose sanctions on Iran's Central Bank and any other Iranian bank engaged in proliferation activities or support for terrorist groups.

Section 109.—Sense of Congress on Iran's Revolutionary Guard Corps (IRGC): Expresses the Sense of Congress that the U.S. should continue to target with sanctions Iran's Revolutionary Guard Corps, its supporters and affiliates, and any foreign governments determined to be providing material support for the IRGC.

Section 110.—Sense of Congress on Iran and Hezbollah: Expresses the Sense of Congress that the U.S. should continue to: (1) work to counter support for Hezbollah from Iran and other foreign governments; (2) target with sanctions Hezbollah, its affiliates and supporters; (3) urge other nations to do the same; and (4) take steps to renew international efforts to disarm Hezbollah.

Section 111.—Sense of Congress on multilateral sanctions: Expresses the Sense of Congress that, in general, multilateral sanctions are more effective than unilateral sanctions against countries like Iran, and that the President should continue to work with our allies to impose multilateral sanctions if diplomatic efforts to end Iran's illicit nuclear activities fail.

Title II.—Divestment

Section 201.—Definitions: This section defines terms used in this title including: energy sector, financial institution, Iran, person, State, and State or local government.

Section 202.—Authority of state and local governments to divest from certain companies that invest in Iran: This section authorizes States and localities to divest from companies involved in invest-

[4] Congressional Research Service. RS20871—The Iran Sanctions Act (ISA). November 6, 2009.

ments of $20 million or more in Iran's energy sector and sets standards for them to do so. While not mandating divestment, this section authorizes State and local governments, if they so choose, to divest public assets from certain companies doing business in Iran. In its formulation of this section, the Committee recognized that divestment actions are being taken by investors for prudential and economic reasons, as expressed in subsection (a), including to address investor concerns about reputational and financial risks associated with investment in Iran and to sever indirect business ties to a government that is subject to international sanctions.

The Committee requires that a State or local government provide notice to the Department of Justice when it enacts an Iran-related divestment law. Companies are to be informed in writing by the State or local government before divestment. Companies then have at least 90 days to comment on that decision.

Section 203.—Safe harbor for changes in investment policies by asset managers: This section adds to measures authored by the Committee and enacted last year authorizing divestment from certain Sudan-related assets (Public Law 110–174), allowing private asset managers, if they so choose, to divest from the securities of companies investing $20 million or more in Iran's energy sector, and provides a "safe harbor" for divestment decisions made in accordance with the Act. A major concern inhibiting divestment has been the possibility of a breach of fiduciary responsibility by asset managers who decide to divest. The Committee thus finds that fund managers may have financial or reputational reasons to divest from companies that accept the business risk of operating in countries subject to international economic sanctions. Fund managers will still be required to observe all other normal fiduciary responsibilities. The Securities and Exchange Commission is required to promulgate rules as necessary that require fund managers to disclose their divestment decisions made pursuant to Section 203 of this legislation in regular periodic reports filed with the Commission.

Section 204.—Sense of Congress regarding certain ERISA Plan investments: This section expresses the sense of Congress affirming pension managers' rights to divest from companies investing $20 million or more in Iran's energy sector in accordance with an interpretative bulletin issued by the Department of Labor in 1994, and printed in the Code of Federal Regulations in section 2509.94–1 of title 29. Under the regulations, making such "economically targeted investment" (ETI) decisions is allowed under sections 403 and 404 of the Employee Retirement Income Security Act of 1974 (ERISA), as long as the fiduciary making such a decision has diversified his portfolio adequately and has made the decisions in the interest of the plan's participants and beneficiaries.

Title III.—Prevention of transshipment, reexportation or diversion of sensitive technologies

Section 301.—Definitions: This section defines terms used in this title including: end user, entity owned or controlled by the Government of Iran, Export Administration Regulations, government, Iran, state sponsor of terrorism, as well as transshipment, reexportation, or diversion.

Section 302.—Transshipment, reexportation or diversion to Iran: This section responds to concerns that companies and black market proliferation networks are circumventing the U.S. trade ban on Iran by shipping major weapons components through one or more foreign countries or by deceiving foreign customs agencies with false information regarding the items' country of origin. This section requires the Director of National Intelligence to identify countries where sensitive U.S. technology is being illegally transshipped to Iran via other countries, and to report annually to the Secretaries of Commerce, State and the Treasury, as well as to Congress.

Section 303.—Destinations of possible diversion concern and of diversion concern: This section establishes incentives for countries to improve their export control regimes. First, it requires the Administration to initiate government-to-government contact with countries of "possible diversion concern." Such contact would include technical assistance to develop or strengthen export control systems, facilitate export control enforcement, improve information sharing, support legitimate trade in high-technology goods, and prevent terrorists and state sponsors of terrorism from obtaining nuclear, biological, and chemical weapons, defense technology, and components of improvised explosive devices.

If countries fail to cooperate with such initiatives, then, under subsection (b), the Administration would be required to designate a country as a "Destination of Diversion Concern," consistent with the Department of Commerce's proposed rule, which was published as 15 CFR Part 740 [Docket No. 0612242560–7024–01], but never implemented. Such a measure would stop transshipment flows that, according to the Department of Commerce, are augmenting the capabilities of terrorists and state sponsors of terrorism, and significantly undermining international counterproliferation efforts. The Department of Commerce stated in its proposed rule that in recent years, diversions have contributed to a number of major cases involving the violation of U.S. export control laws for dual use goods. Under this section, exports to a country designated as a "Destination of Diversion Concern" would be subject to additional licensing requirements; more stringent license review, which could result in fewer approvals or more conditions on licenses; delayed authorizations due to increased end user checks; and finally, a decrease in authorizations due to diversion risks for such countries. This section provides 45 days for the Secretary of Commerce to assemble a list of controlled items, which should include items already on an existing Commerce Control List linked to Iranian terrorist activities as well as products from the Control List developed for restricting North Korea's proliferation activities. Licensing requirements under this section are required within 180 days after the date of the Act's enactment. The President may waive the imposition of the licensing requirement on national interest grounds.

Section 304.—Report on expanding diversion concern system to countries other than Iran: This section requires the Director of National Intelligence to report to Congress on whether or not to extend the measures in this title to countries that allow diversion to other countries seeking weapons of mass destruction or supporting international terrorism.

Title IV.—Effective date and sunset

Section 401.—This section sets an effective date for the Act 120 days after the date of the enactment of this Act. It also describes the circumstances under which the provisions of the Act will terminate, including certification by the President that Iran has ceased to provide support for acts of international terrorism, and stopped the pursuit, acquisition, and development of weapons of mass destruction.

VI. HEARINGS

On July 30, 2009, the Committee on Banking, Housing, and Urban Affairs held a public hearing entitled "Minimizing Potential Threats from Iran: Assessing Economic Sanctions and Other Policy Options." Witnesses included: Honorable Joseph Lieberman, United States Senator, Connecticut; Ambassador R. Nicholas Burns, Professor of the Practice of Diplomacy and International Politics, John F. Kennedy School of Government, Harvard University; Dr. Matthew Levitt, Director, Stein Center on Counterterrorism and Intelligence, Washington Institute for Near East Policy; Dr. Suzanne Maloney, Senior Fellow, Saban Center for Middle East Policy, The Brookings Institution; and Ms. Danielle Pletka, Vice President, Foreign and Defense Policy Studies, American Enterprise Institute.

On October 6, 2009, the Committee held another public hearing entitled, "Minimizing Potential Threats from Iran: Administration Perspectives on Economic Sanctions and Other U.S. Policy Options." Witnesses included: Honorable Sam Brownback, United States Senator, Kansas; and Honorable Robert P. Casey, United States Senator, Pennsylvania; Honorable James B. Steinberg, Deputy Secretary of State, U.S. Department of State; Honorable Stuart A. Levey, Under Secretary for Terrorism and Financial Intelligence, U.S. Department of the Treasury, and Mr. Daniel O. Hill, Acting Undersecretary for Industry and Security, U.S. Department of Commerce.

VII. COMMITTEE CONSIDERATION

The Committee on Banking, Housing, and Urban Affairs met in open session on October 29, 2009, and by a vote of 23–0 ordered the bill reported, as amended.

VIII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE AND REGULATORY IMPACT STATEMENT

Section 11(b) of the Standing Rules of the Senate, and Section 403 of the Congressional Budget Impoundment and Control Act, require that each committee report on a bill contain a statement estimating the cost and regulatory impact of the proposed legislation. The Congressional Budget Office has provided the following cost estimate and regulatory impact statement.

NOVEMBER 17, 2009.

Hon. CHRISTOPHER J. DODD,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John Chin.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2009

Summary: The bill would authorize appropriations for two programs in the Department of the Treasury that combat financial crimes, and for the Bureau of Industry Security (BIS) in the Department of Commerce, which helps certain countries improve controls over their exports. The bill also would require the Department of State to impose new sanctions on persons that supply refined petroleum products to Iran or support the production of such products in Iran. In addition, the bill would expand an existing ban on imports from Iran to cover all products of Iranian origin and would extend the application of existing sanctions to foreign subsidiaries of U.S. parent corporations.

CBO estimates that implementing the bill would cost $550 million over the 2010–2014 period, assuming appropriation of the necessary amounts. CBO estimates that the bill would have no significant effects on direct spending and revenues.

The bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

The bill would impose private-sector mandates, as defined in UMRA, by prohibiting imports from and exports to Iran and by expanding sanctions under the Iran Sanctions Act. The cost of complying with those mandates would depend on the value of lost profits to importers and exporters under the trade ban, and whether and how some measures would be applied under the bill. Therefore, CBO cannot determine whether the aggregate cost to comply with the mandates in the bill would exceed the annual threshold for private-sector mandates established in UMRA ($139 million in 2009, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of the bill is shown in the following table. Most of the costs of this legislation falls within budget functions 150 (international affairs), 370 (commerce and housing credit), and 800 (general government).

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Department of Treasury Programs:						
Estimated Authorization Level	169	177	180	0	0	526
Estimated Outlays	128	175	179	44	0	526
Department of Commerce Programs:						
Estimated Authorization Level	3	3	3	3	3	15
Estimated Outlays	2	3	3	3	3	14
Department of State Programs:						
Estimated Authorization Level	2	2	1	0	0	5
Estimated Outlays	2	2	1	0	0	5
Reports:						
Estimated Authorization Level	1	1	1	1	1	5
Estimated Outlays	1	1	1	1	1	5
Total Changes:						
Estimated Authorization Level	175	183	185	4	4	551
Estimated Outlays	133	181	184	48	4	550

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted early in calendar year 2010 and that spending will follow historical patterns for existing and similar programs.

Spending subject to appropriation

The bill would authorize appropriations for programs in the Department of Treasury and the Department of Commerce and would authorize new sanctions administered by the Department of State. In total, CBO estimates that implementing those programs and sanctions would cost $550 million over the 2010–2014 period, assuming appropriation of the necessary amounts.

Department of the Treasury programs. Section 106 would authorize the appropriation of $169 million for 2010 and such sums as may be necessary for 2011 and 2012 for the Office of Financial Terrorism and Financial Intelligence and the Financial Crimes Enforcement Network. Those offices received a total of about $165 million in 2009. Based on information from the Department of the Treasury, CBO expects that $169 million, adjusted for anticipated inflation, would be sufficient for fiscal years 2011 and 2012 to continue the efforts of those offices. On that basis, CBO estimates that implementing section 106 would cost $526 million over the 2010–2014 period.

Department of Commerce programs. Title III would establish new programs within BIS to improve controls over certain domestic exports. The bill would require the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Treasury, to identify a list of countries that have inadequate export and reexport controls and fail to control exports that divert U.S. goods to unknown parties.

BIS would be authorized to help those countries strengthen their systems to control exports. If, after one year, a country on the list fails to cooperate with efforts to improve its export control system or is found to be involved in the illegal diversion of U.S. exports, it would be subject to more stringent export licensing requirements for certain technologies.

Based on information from BIS, CBO estimates that about 20 staff members would be needed to track export enforcement trends, to monitor activities within the countries of concern, to help such countries improve their export control systems, and to implement the new licensing requirements. CBO estimates that implementing those provisions would cost $14 million over the 2010–2014 period.

Department of State programs. Section 102 would amend the Iran Sanctions Act of 1996 (which will expire on December 31, 2011) to prohibit any foreign exchange, banking, and property transaction with a person that the President determines has supplied refined petroleum products to Iran or supported the production of such products in Iran. Based on information from the Department of State, CBO estimates that about 10 additional staff members would be needed to gather and analyze information, provide advisory opinions, and administer blocked property. CBO estimates that implementing this provision would cost $5 million over the 2010–2012 period.

Reports. Several sections of the bill would require the Director of National Intelligence and the President to provide the Congress with a variety of reports about Iran, including details of investments in and trade with Iran by the United States and other countries. Based on the costs to prepare similar reports, CBO estimates that, in total, preparing those reports would cost about $1 million annually.

Revenues and direct spending

The bill would have an insignificant effect on revenues and direct spending.

Prohibition on imports. Under current law, nearly all goods of Iranian origin are prohibited from being imported into the United States. Exceptions now exist for certain foodstuffs and carpets. Section 103 would impose a complete ban on all Iranian goods.

Based on data from the United States International Trade Commission on recent imports from Iran and CBO's most recent forecast of total U.S. imports, CBO estimates that the bill would reduce revenues by less than $500,000 over the 2010–2019 period, net of income and payroll tax offsets.

In recent years, most of the taxable value of imports from Iran consisted of fruit juice, caviar, and certain nuts and dried fruits. The remaining imports, which are not subject to tariffs, consisted largely of other foodstuffs and carpets. In 2008, the value of imports subject to tariffs was about $26 million, yielding roughly $500,000 in customs duties. If the bill were to be enacted, CBO assumes that most of the newly banned imports would be replaced with taxable imports from other countries, reducing the loss of customs duties.

Under the bill, the ban on imports would terminate if the President certifies that Iran no longer satisfies the requirements for designation as a state sponsor of terrorism and has ceased efforts to acquire and develop certain weapons technologies. For this estimate, CBO assumes that the President will not make such a certification during the 2010–2019 period.

Civil and criminal penalties. Section 104 would impose civil and criminal penalties for violations of existing sanctions on the part of foreign subsidiaries of U.S. parent companies. Collections of civil

penalties are recorded in the budget as revenues. Collections of criminal penalties also are recorded in the budget as revenues, deposited in the Crime Victims Fund, and later spent without further appropriation. CBO estimates that any additional revenues and direct spending that would result from those penalties would not be significant because of the relatively small number of cases likely to be involved.

Estimated impact on state, local, and tribal governments: The bill contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: The bill contains private-sector mandates, as defined in UMRA. Because the cost of complying with most of the mandates would depend on the value of lost profits to importers and exporters and whether and how some measures would be applied under the bill, CBO cannot determine whether the aggregate cost the mandates in the bill would exceed the annual threshold for private-sector mandates established in UMRA ($139 million in 2009, adjusted annually for inflation).

The bill would impose mandates on some businesses by banning all imports from and some exports to Iran. The cost to comply with the mandates would be the forgone net income attributed to the sale of those items prohibited under the sanctions. According to the United States International Trade Commission, in 2008 entities in the United States imported from Iran $102 million in goods, mostly food items and collectible works of art, and exported about $40 million in goods, which would be prohibited. The cost of the ban, measured as the forgone net income, is uncertain because the value assigned to those goods as marked for sales or distribution cannot be determined.

By expanding sanctions under the Iran Sanctions Act, the bill could impose mandates on entities in the United States that engage in transactions with businesses or countries sanctioned under that act. The bill would require the President to sanction any entity that provides Iran with refined petroleum resources, or engages in an activity that could contribute to Iran's ability to import such resources. Entities sanctioned for those actions would effectively be prohibited from engaging in business with persons in the United States. In addition, the bill would require the President to impose certain sanctions on entities that invest more than a specified amount of money in businesses involved in Iran's petroleum industry. Should the President impose sanctions, persons in the United States involved in transactions with entities sanctioned under the bill would be required to cease those transactions. The bill would allow the President the discretion to make exceptions in applying such sanctions in cases deemed to be important for the national interests of the United States. The cost of the mandates, if imposed, would be the forgone net income from the prohibited transactions and would depend on the sanctions applied by the President.

The bill also could impose private-sector mandates by directing the President to freeze the funds and other assets of certain Iranian persons, and the assets of their family members and associates to whom they have transferred assets on or after January 1, 2009. Some of those individuals may reside in the United States. Because those subject to sanctions have not been identified, the cost of that mandate is uncertain.

Finally, by imposing new license requirements on exporters of certain products, conditioned upon whether the country where exports are sent has been designated as a Destination of Possible Diversion Concern, the bill could impose a mandate. Because of uncertainty about what countries would be designated, if any, and what products would be subject to additional licensing requirements for export to those countries, the cost of complying with this mandate cannot be determined.

Previous CBO estimate: On May 13, 2009, CBO transmitted a cost estimate for H.R. 1327, the Iran Sanctions Enabling Act of 2009 as ordered reported by the House Committee on Financial Services on April 28, 2009. H.R. 1327 would authorize state and local governments to adopt or enforce measures to sell certain of their investments in Iran's energy sector—or prohibit buying such investments—without concern they are interfering with the federal government's conduct of foreign affairs. Title II of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2009 contains similar language concerning divestment from certain companies that invest in Iran. CBO estimates that neither H.R. 1327 nor Title II of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2009 would have a significant effect on the federal budget.

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