

# IRAN SANCTIONS ENABLING ACT OF 2007

JULY 30, 2007.—Ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial Services, submitted the following

## R E P O R T

[To accompany H.R. 2347]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2347) to authorize State and local governments to direct divestiture from, and prevent investment in, companies with investments of \$20,000,000 or more in Iran’s energy sector, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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## AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

## SECTION 1. SHORT TITLE.

This Act may be cited as the “Iran Sanctions Enabling Act of 2007”.

## SEC. 2. FINDINGS.

The Congress finds as follows:

(1) The Convention on the Prevention and Punishment of the Crime of Genocide, completed at Paris, December 9, 1948 (commonly referred to as the “Genocide Convention”) defines genocide as, among other things, the act of killing members of a national, ethnic, racial, or religious group with the intent to destroy, in whole or in part, the targeted group. In addition, the Genocide Convention also prohibits conspiracy to commit genocide, as well as “direct and public incitement to commit genocide”.

(2) 133 member states of the United Nations have ratified the Genocide Convention and thereby pledged to prosecute individuals who violate the Genocide Convention’s prohibition on incitement to commit genocide, as well as those individuals who commit genocide directly.

(3) On October 27, 2005, at the World Without Zionism Conference in Tehran, Iran, the President of Iran, Mahmoud Ahmadinejad, called for Israel to be “wiped off the map,” described Israel as “a disgraceful blot [on] the face of the Islamic world,” and declared that “[a]nybody who recognizes Israel will burn in the fire of the Islamic nation’s fury.” President Ahmadinejad has subsequently made similar types of comments, and the Government of Iran has displayed inflammatory symbols that express similar intent.

(4) On December 23, 2006, the United Nations Security Council unanimously approved Resolution 1737, which bans the supply of nuclear technology and equipment to Iran and freezes the assets of certain organizations and individuals involved in Iran’s nuclear program, until Iran suspends its enrichment of uranium, as verified by the International Atomic Energy Agency.

(5) Following Iran’s failure to comply with Resolution 1737, on March 24, 2007, the United Nations Security Council unanimously approved Resolution 1747, to tighten sanctions on Iran, imposing a ban on arms sales and expanding the freeze on assets, in response to the country’s uranium-enrichment activities.

(6) There are now signs of domestic discontent within Iran, and targeted financial and economic measures could produce further political pressure within Iran. According to the Economist Intelligence Unit, the nuclear crisis “is imposing a heavy opportunity cost on Iran’s economic development, slowing down investment in the oil, gas, and petrochemical sectors, as well as in critical infrastructure projects, including electricity”.

(7) Targeted financial measures represent one of the strongest non-military tools available to convince Tehran that it can no longer afford to engage in dangerous, destabilizing activities such as its nuclear weapons program and its support for terrorism.

(8) Foreign persons that have invested in Iran’s energy sector, despite Iran’s support of international terrorism and its nuclear program, have provided additional financial means for Iran’s activities in these areas, and many United States persons have unknowingly invested in those same foreign persons.

(9) There is an increasing interest by States, local governments, educational institutions, and private institutions to seek to disassociate themselves from companies that directly or indirectly support the Government of Iran’s efforts to achieve a nuclear weapons capability.

(10) Policy makers and fund managers may find moral, prudential, or reputational reasons to divest from companies that accept the business risk of operating in countries that are 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.

## SEC. 3. TRANSPARENCY IN U.S. CAPITAL MARKETS.

(a) LIST OF PERSONS INVESTING IN IRAN ENERGY SECTOR.—

(1) PUBLICATION OF LIST.—Not later than 6 months after the date of the enactment of this Act and every 6 months thereafter, the President shall ensure publication in the Federal Register of a list of each person, whether within or outside of the United States, that, as of the date of the publication, has an investment of more than \$20,000,000 in the energy sector in Iran, and each per-

son that is an international financial institution that, as of the date of the publication, has any investment in the energy sector in Iran. The list shall include a description of the investment made by each such person, including the dollar value, intended purpose, and status of the investment, as of the date of the publication.

(2) **PRIOR NOTICE TO PERSONS.**—The President or a designee of the President shall, at least 30 days before the list is published under paragraph (1), notify each person that the President or his designee, as the case may be, intends to include on the list.

(3) **DELAY IN INCLUDING PERSONS ON THE LIST.**—After notifying a person under paragraph (2), the the President or a designee of the President may delay including that person on the list for up to 60 days if the President or designee determines and certifies to the Congress that the person has taken specific and effective actions to terminate the involvement of the person in the activities that resulted in the notification under paragraph (2).

(4) **REMOVAL OF PERSONS FROM THE LIST.**—The President or a designee of the President may remove a person from the list before the next publication of the list under paragraph (1) if the President or a designee of the President, determines that the person no longer has an investment of more than \$20,000,000 in the energy sector in Iran.

(b) **PUBLICATION ON WEBSITE.**—The President shall ensure that the list is published on an appropriate government website, updating the list as necessary to take into account any person removed from the list under subsection (a)(4).

(c) **DEFINITION.**—In this section, the term “investment” has the meaning given that term in section 14(9) of the Iran Sanctions Act (50 U.S.C. 1701 App.).

**SEC. 4. AUTHORITY OF STATE AND LOCAL GOVERNMENTS TO DIVEST FROM CERTAIN COMPANIES INVESTED IN IRAN'S ENERGY SECTOR.**

(a) **STATEMENT OF POLICY.**—It is the policy of the United States to support the decision of State governments, local governments, and educational institutions to divest from, and to prohibit the investment of assets they control in, persons that have investments of more than \$20,000,000 in Iran's energy sector.

(b) **AUTHORITY TO DIVEST.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of law, a State or local government may adopt and enforce measures to divest the assets of the State or local government from, or prohibit investment of the assets of the State or local government in—

(A) persons that are included on the most recent list published under section 3(a)(1), as modified under section 3(a)(4); and

(B) persons having an investment in, or carrying on a trade or business (within the meaning of section 162 of the Internal Revenue Code of 1986) in or with, Iran.

(2) **APPLICABILITY.**—This subsection applies to measures adopted by a State or local government before, on, or after the date of the enactment of this Act.

(3) **DEFINITIONS.**—In this subsection:

(A) **INVESTMENT.**—The “investment” of assets includes—

- (i) a commitment or contribution of assets; and
- (ii) a loan or other extension of credit of assets.

(B) **ASSETS.**—The term “assets” refers to public monies and includes any pension, retirement, annuity, or endowment fund, or similar instrument, that is controlled by a State or local government.

(C) **ASSETS OF A STATE OR LOCAL GOVERNMENT.**—The term “assets of the State or local government” refers to assets that the State or local government controls.

(4) **ADDITIONAL DEFINITION.**—For purposes of paragraph (1)(B), the term “investment” means the acquisition of property or assets for the production of revenue.

(c) **PREEMPTION.**—A measure of a State or local government that is authorized by subsection (b) is not preempted by any Federal law or regulation except to the extent that a person is unable to comply with both the measure and the Federal law or regulation.

**SEC. 5. SAFE HARBOR FOR CHANGES OF INVESTMENT POLICIES BY MUTUAL FUNDS.**

Section 13 of the Investment Company Act of 1940 (15 U.S.C. 80a-13) is amended by adding at the end the following new subsection:

“(c) **SAFE HARBOR FOR CHANGES IN INVESTMENT POLICIES.**—Notwithstanding any other provision of Federal or State law, no person may bring any civil, criminal, or administrative action against any registered investment company or person providing services to such registered investment company (including its investment adviser), or any employee, officer, or director thereof, based upon the investment com-

pany divesting from, or avoiding investing in, securities issued by companies that are included on the most recent list published under section 3(a)(1) of the Iran Sanctions Enabling Act of 2007, as modified under section 3(b) of that Act. For purposes of this subsection the term ‘person’ shall include the Federal government, and any State or political subdivision of a State.”

**SEC. 6. SAFE HARBOR FOR CHANGES OF INVESTMENT POLICIES BY EMPLOYEE BENEFIT PLANS.**

Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following new subsection:

“(n) No person shall be treated as breaching any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title, and no action may be brought under this section against any person, for divesting plan assets from, or avoiding investing plan assets in, persons that are included on the most recent list published under section 3(a)(1) of the Iran Sanctions Enabling Act, as modified under section 3(a)(4) of such Act.”

**SEC. 7. SENSE OF THE CONGRESS REGARDING THRIFT SAVINGS PLAN.**

It is the sense of the Congress that the Federal Retirement Thrift Investment Board should initiate efforts to provide a terror-free international investment option among the funds of the Thrift Savings Fund that would invest in stocks in which the International Stock Index Investment Fund may invest under section 8438(b)(4) of title 5, United States Code, other than the stock of companies that do business in any country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (as continued in effect pursuant to the International Emergency Economic Powers Act), section 40 of the Arms Export Control Act, section 620A of the Foreign Assistance Act of 1961, or other provision of law, is a government that has repeatedly provided support for acts of international terrorism.

**SEC. 8. DEFINITIONS.**

In this Act:

- (1) **IRAN.**—the term “Iran” includes any agency or instrumentality of Iran.
- (2) **ENERGY SECTOR.**—The term “energy sector” refers to activities to develop petroleum or natural gas resources.
- (3) **PERSON.**—The term “person” means—
  - (A) a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group;
  - (B) any governmental entity or instrumentality of a government, including an international financial institution; and
  - (C) any successor, subunit, or subsidiary of any entity described in subparagraph (A) or (B).
- (4) **STATE.**—The term “State” includes the District of Columbia, the Commonwealth or Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.
- (5) **STATE OR LOCAL GOVERNMENT.**—
  - (A) **IN GENERAL.**—The term “State or local government” includes—
    - (i) any State and any agency or instrumentality thereof;
    - (ii) any local government within a State, and any agency or instrumentality thereof; and
    - (iii) any public institution of higher education.
  - (B) **PUBLIC INSTITUTION OF HIGHER EDUCATION.**—The term “public institution of higher education” means a public institution of higher education within the meaning of the Higher Education Act of 1965.
- (6) **INTERNATIONAL FINANCIAL INSTITUTION.**—The term “international financial institution” means the International Bank for Reconstruction and Development, the International Monetary Fund, and the United Nations.

**SEC. 9. SUNSET.**

This Act shall terminate 30 days after the date on which the President has certified to Congress that—

- (1) the Government of Iran has ceased providing support for acts of international terrorism and no longer satisfies the requirements for designation as a state-sponsor of terrorism for purposes of section 6(j) of the Export Administration Act of 1979, section 620A of the Foreign Assistance Act of 1961, section 40 of the Arms Export Control Act, or any other provision of law; and
- (2) Iran has ceased the pursuit, acquisition, and development of nuclear, biological, and chemical weapons and ballistic missiles and ballistic missile launch technology.

## PURPOSE AND SUMMARY

H.R. 2347, the “Iran Sanctions Enabling Act of 2007” permits the divestment from companies with investments of \$20,000,000 or more in Iran’s energy sector in order to pressure the Iranian regime to cease its provocative statements regarding Israel and its ambitions to develop a nuclear weapons program. The bill directs the Federal government to produce a list of companies that have qualifying investments in Iran. State governments, local governments, and public educational institutions are then authorized by the legislation to divest their pension fund assets from companies on the list, as well as from companies having an investment in, or carrying on a trade or business in Iran. The legislation permits private investment and pension plan managers to divest from companies listed without breaching their fiduciary responsibilities to their investors. A provision expresses the Sense of the Congress that the Federal Retirement Thrift Investment Board should initiate efforts to provide a terror-free international investment option among the funds of the Thrift Savings Plan. The legislation includes a sunset provision stating that the Act shall terminate 30 days after the date on which the President has certified to Congress that Iran no longer satisfies the requirements for designation as a state-sponsor of terrorism and that Iran has ceased the pursuit, acquisition, and development of nuclear, biological, and chemical weapons and ballistic missiles and ballistic missile launch technology.

## BACKGROUND AND NEED FOR LEGISLATION

*Rising international tensions with Iran*

The need for legislation enabling U.S. citizens and public and private pension funds to divest their holdings from Iran arises from the statements of the President of Iran, Mahmoud Ahmadinejad, as well as the ongoing Iranian ambitions to develop a nuclear weapons program.

On October 27, 2005, at the World Without Zionism Conference in Tehran, Iran, President Ahmadinejad called for Israel to be “wiped off the map,” described Israel as “a disgraceful blot [on] the face of the Islamic world,” and declared that “[a]nybody who recognizes Israel will burn in the fire of the Islamic nation’s fury.” President Ahmadinejad has subsequently made similar types of comments, and the Government of Iran has displayed inflammatory symbols that express similar intent.

Such provocative statements potentially violate the Convention on the Prevention and Punishment of the Crime of Genocide, completed at Paris, December 9, 1948 (commonly referred to as the “Genocide Convention”), which does not limit genocide to killing members of a national, ethnic, racial, or religious group with the intent to destroy, the targeted group, but also prohibits conspiracy to commit genocide, as well as “direct and public incitement to commit genocide.”

The U.S., along with 132 member states of the United Nations, ratified the Genocide Convention and thereby pledged to prosecute individuals who violate its prohibition on incitement to commit genocide, as well as those individuals who commit genocide directly.

Moreover, International Atomic Energy Agency (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 sensitive activities, Iran has continued these activities. Sanction measures so far adopted by the U.N. Security Council have proved insufficient to motivate Iran to curtail its enrichment activities.

On December 23, 2006, the United Nations Security Council unanimously approved Resolution 1737, which froze the assets of certain organizations and individuals involved in Iran's nuclear program and imposed a limited ban on materials and technology that could contribute to "enrichment-related, reprocessing or heavy-water related activities, or to the development of nuclear weapons delivery systems" until Iran suspends its enrichment of uranium, as verified by the IAEA.

Following Iran's failure to comply with Resolution 1737, on March 24, 2007, the United Nations Security Council unanimously passed a second set of sanctions, Resolution 1747, to ratchet up the pressure on Iran. Resolution 1747 added some 28 individuals and entities to the list of those whose assets are to be frozen and imposed a ban on Iranian arms sales and exports of arms and military equipment. The resolution also "calls upon" all countries to "exercise vigilance and restraint" when it comes to providing heavy military arms and equipment to Iran and in allowing Iranian military officers and nuclear scientists and engineers to visit their countries.

The resolution does not contain any cautionary suggestion when it comes to providing financial or other support or assistance for commercial investments with the Iranian government, including investment in Iran's key energy sector.

Oil accounts for around 80–90 percent of Iran's total exports and 40–50 percent of the government's budget. Despite high oil prices, Iran's economy has softened considerably since President Ahmadinejad took office, and is vulnerable to further trade and investment restrictions. According to the Economist Intelligence Unit, the nuclear crisis "is imposing a heavy opportunity cost on Iran's economic development, slowing down investment in the oil, gas, and petrochemical sectors, as well as in critical infrastructure projects, including electricity."

Iran will need substantial new foreign capital investment to modernize its petroleum infrastructure and to meet growing domestic energy demands while maintaining revenue producing oil exports. There are now signs of domestic discontent within Iran, and targeted financial and economic measures could produce further political pressure within Iran.

Lawmakers have become increasingly concerned about Iran, and frustrations surrounding developments in the country have led to calls for increased economic pressure on the country.

Companies based in the U.S. are already barred from doing business with Iran, but these trade and investment sanctions do not extend to foreign companies, which operate there legally. Foreign persons that have invested in Iran's energy sector, despite Iran's support of international terrorism and its nuclear program, have provided additional financial means for Iran's activities in these areas,

and many United States persons have unknowingly invested in those same foreign persons.

*The legislation*

Without mandating that they do so, H.R. 2347 recognizes the right and maximizes the ability of Americans to speak out through their investment decisions about their opposition to many aspects of Iranian behavior.

*Public pension plans*

State and local governments that do not wish to facilitate Iran's nuclear ambitions have sought to divest their holdings in companies that have investments in Iran's oil sector.

Constitutional challenges to State measures touching on international relations typically take one or more of three forms: (1) that the State measures conflict with and thus are preempted by Federal law under the Supremacy Clause; (2) that the State measures violate the "dormant" Foreign Commerce Clause; and (3) that the State measures violate the so-called "dormant foreign affairs doctrine."

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.

Therefore, H.R. 2347 specifically states that it is the policy of the United States to support the decisions of State and local governments to divest from companies investing in the Iranian oil sector. The bill also authorizes State and local governments to divest from companies investing in the Iranian oil sector, as outlined on a list of companies that the President will initiate, as well as allows State and local governments to develop their own criteria with regard to the companies from which they will divest or not invest irrespective of the list provided by the Federal government.

With regard to preemption, the legislation supports State or local efforts to divest from certain companies that do business with Iran by clearly stating that they are not preempted by any Federal law or regulation except to the extent that a person is unable to comply with both the State or local measure and the Federal law or regulation.

**Corporate and Private Sector Shareholder Activism.** Private asset managers are faced with increasing pressure by shareholders to divest from companies that do business with Iran or invest in Iran's energy sector. The primary argument against such divestment is the possibility of breach of fiduciary responsibility by asset managers.

The Committee finds that fund managers may find moral, prudential, or reputational reasons to divest from companies that accept the business risk of operating in countries that are 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.

H.R. 2347 includes "safe harbor" provisions for private asset managers and private pension fund managers who decide, on their

own volition, to divest from or not invest in particular companies included on a list provided by the Federal government, so that they will not be vulnerable to any litigation or action brought by shareholders or regulatory agencies.

The legislation incorporates a sunset provision stating the Act shall terminate 30 days after the date on which the President has certified to Congress that Iran so satisfies the requirements for designation as a state-sponsor of terrorism and that Iran has ceased the pursuit, acquisition, and development of nuclear, biological, and chemical weapons and ballistic missiles and ballistic missile launch technology.

#### HEARINGS

The Subcommittee on Domestic and International Monetary Policy, Trade and Technology held a joint hearing with the Committee on Foreign Affairs Subcommittee on Terrorism, Nonproliferation and Trade on April 18, 2007, on "Isolating Proliferators and Sponsors of Terror: The Use of Sanctions and the International Financial System to Change Regime Behavior." The following witnesses testified:

#### PANEL ONE

- Mr. Daniel Glaser, Deputy Assistant Secretary for Terrorist Financing and Financial Crimes Office of Terrorism and Financial Intelligence, U.S. Department of the Treasury
- Mr. Adam J. Szubin, Director, Office of Foreign Assets Control, U.S. Department of the Treasury
- Paul E. Simons, Deputy Assistant Secretary, Bureau of Economic, Energy, and Business Affairs, U.S. Department of State
- Ms. Patricia McNerney, Principal Deputy Assistant Secretary, Bureau of International Security and Nonproliferation, U.S. Department of State

#### PANEL TWO

- The Honorable Sarah Steelman, Treasurer of the State of Missouri
- Mr. Jack Blum, Of Counsel, Baker & Hostetler Law Firm (Former special counsel for Senate Foreign Relations Subcommittee on Terrorism, Narcotics, and Int'l Operations)
- Mr. Roger W. Robinson, Jr., President and Chief Executive Officer, Conflict Securities Advisory Group
- David L. Asher, Ph.D., Senior Associate Fellow, The Heritage Foundation
- Mr. Victor Comras, The Eren Law Firm (Former chief U.S. architect of the international economic sanctions against Yugoslavia and served as one of five independent monitors overseeing U.N. sanctions al-Qaeda)

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 23, 2007, and ordered H.R. 2347, the Iran Sanctions Enabling Act of 2007, as amended, reported to the House with a favorable recommendation by a voice vote.



#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken with in conjunction with the consideration of this legislation. A motion by Mr. Frank to report the bill to the House, as amended, with a favorable recommendation was agreed to by a voice vote. During the consideration of the bill, the following amendments were considered:

An amendment by Mr. Bachus, No. 1, changing authority from the Secretary of the Treasury, was agreed to by a voice vote.

An amendment by Mr. Sherman, No. 2, regarding additional definition of investment, was agreed to by a voice vote.

An amendment by Mr. Price (GA), No. 3, regarding international financial institutions, was agreed to a voice vote.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

#### PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 2347, the “Iran Sanctions Enabling Act of 2007” permits the divestment from companies with investments of \$20,000,000 or more in Iran’s energy sector in order to pressure the Iranian regime to cease its provocative statements regarding Israel and its ambitions to develop a nuclear weapons program. The bill directs the Federal government to produce a list of companies that have qualifying investments in Iran. State governments, local governments, and public educational institutions are then authorized by the legislation to divest their pension fund assets from companies on the list, as well as from companies having an investment in, or carrying on a trade or business in Iran. The legislation permits private investment and pension plan managers to divest from companies listed without breaching their fiduciary responsibilities to their investors.

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

#### COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

JUNE 13, 2007.

Hon. BARNEY FRANK,  
*Chairman, Committee on Financial Services,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2347, the Iran Sanctions Enabling Act of 2007.

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

Sincerely,

PETER R. ORSZAG.

Enclosure.

*H.R. 2347—Iran Sanctions Enabling Act of 2007*

H.R. 2347 would require the President to publish in the Federal Register, with updates every six months, a list of each person or entity, inside or outside of the United States, who has an investment in Iran's energy sector worth more than \$20 million. The bill also would allow state and local governments to divest their assets from any entity included in the published list. Finally, H.R. 2347 would prohibit lawsuits against companies that divest themselves from investments in companies included on the published list.

CBO estimates that implementing H.R. 2347 would not have a significant effect on the federal budget. Enacting the bill would not affect direct spending or receipts. H.R. 2347 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

H.R. 2347 would impose a private-sector mandate, as defined in UMRA, on entities participating in certain private pension plans. It would provide liability protection for fiduciaries and other responsible parties of employee benefit plans if they were to divest assets from certain companies that invest \$20 million or more in Iran's energy sector. By providing such protection, the bill would eliminate an existing right of civil action for plan participants and beneficiaries. Due to the lack of information about both the value of awards in such cases and the number of claims that would be filed in the absence of this legislation, CBO cannot estimate the level of potential awards, if any. Therefore, CBO cannot determine whether the aggregate cost of mandates in the bill would exceed the annual threshold for private-sector mandates (\$131 million in 2007, adjusted annually for inflation).

The CBO staff contacts for this estimate are Sam Papenfuss (for federal costs), and Justin Hall (for the private-sector impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 2347 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

EXCHANGE OF COMMITTEE CORRESPONDENCE

## EXCHANGE OF COMMITTEE CORRESPONDENCE

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July 27, 2007

The Honorable Barney Frank  
 Chairman, Committee on Financial Services  
 U.S. House of Representatives  
 2129 Rayburn House Office Building  
 Washington, DC 20515

Dear Mr. Chairman:

I am writing to confirm our mutual understanding with respect to the consideration of H.R. 2347, the Darfur Accountability and Divestment Act.

As you know, Section 7 of H.R. 2347 amends the Employee Retirement Income Security Act of 1974 to provide a safe harbor for changes of investment policies. I am writing to confirm that this provision falls within the jurisdiction of the Committee on Education and Labor.

Given the importance of moving this bill forward promptly, I do not intend to object to its consideration in the House. However, I do so only with the understanding that this procedure should not be construed to prejudice my Committee's jurisdictional interest and prerogative in H.R. 2347 or any other similar legislation and will not be considered as precedent for consideration of matters of jurisdictional interest to my Committee in the future. The Committee also asks that you support our request to be conferees on the provisions over which we have jurisdiction during any House-Senate conference.

Sincerely,

  
 GEORGE MILLER  
 Chairman

cc: The Honorable Nancy Pelosi, Speaker  
 The Honorable John Sullivan, Parliamentarian

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**Committee on Financial Services**  
 2129 Rayburn House Office Building  
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July 27, 2007

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The Honorable George Miller  
 Chairman  
 Committee on Education and Labor  
 2181 Rayburn HOB  
 Washington, D.C. 20515

Dear Chairman Miller:

Thank you for your recent letter regarding the consideration of H.R. 2347, the Iran Sanctions Enabling Act of 2007. I agree that the amendment to the Employee Retirement Income Security Act of 1974 to provide a safe harbor for changes of investment policies falls within the jurisdiction of the Committee on Education and Labor.

I appreciate your willingness to allow this bill to move forward today; and I agree that this procedure in no way diminishes or alters the jurisdictional interest of the Committee on Education and Labor.

Sincerely,

  
 BARNEY FRANK  
 Chairman

CC: The Honorable Spencer Bachus

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ONE HUNDRED TENTH CONGRESS

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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FACSIMILE (202) 225-4764  
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July 27, 2007

The Honorable Barney Frank  
Chairman  
Committee on Financial Services  
2252 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Frank:

I am writing to confirm our mutual understanding with respect to the consideration of H.R. 2347, the Iran Sanctions Enabling Act of 2007.

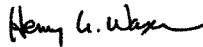
As you know, on May 23, 2007, the Committee on Financial Services ordered H.R. 2347 reported to the House. The Committee on Oversight and Government Reform (Oversight Committee) appreciates your effort to consult regarding those provisions of H.R. 2347 that fall within the Oversight Committee's jurisdiction, including matters related to the federal workforce.

In the interest of expediting consideration of H.R. 2347, the Oversight Committee will not separately consider this legislation. The Oversight Committee does so, however, with the understanding that this does not prejudice the Oversight Committee's jurisdictional interests and prerogatives regarding this bill or similar legislation.

I respectfully request your support for the appointment of outside conferees from the Oversight Committee should H.R. 2347 or a similar Senate bill be considered in conference with the Senate. I also request that you include our exchange of letters on this matter in the Financial Services Committee Report on H.R. 2347 or in the Congressional Record during consideration of this legislation on the House floor.

Thank you for your attention to these matters.

Sincerely,



Henry A. Waxman  
Chairman

cc: Tom Davis  
Ranking Minority Member

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**Committee on Financial Services**  
 2129 Rayburn House Office Building  
 Washington, DC 20515

July 27, 2007

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The Honorable Henry Waxman, Chairman  
 Committee on Oversight and Government reform  
 U.S. House of Representatives  
 Washington, DC 20515

Dear Chairman Waxman:

Thank you for your letter concerning H.R. 2347, the "Iran Sanctions Enabling Act," which the Committee on Financial Services has ordered reported. The bill was also referred to the Committee on Oversight and Government Reform. This legislation will be considered by the House shortly.

I want to confirm our mutual understanding with respect to the consideration of this bill. I am pleased that our committees have reached an agreement regarding matters within the jurisdiction of the Oversight Committee, specifically those involving the federal workforce. I appreciate your cooperation in moving the bill to the House floor expeditiously. I further agree that your decision to not to proceed on this bill will not prejudice the Committee on Oversight and Government Reform with respect to its prerogatives on this or similar legislation. I would support your request for conferees in the event of a House-Senate conference.

I will include this exchange of correspondence in the Committee report and in the Congressional Record during the consideration of the bill. Thank you again for your assistance.

  
 Barney Frank  
 Chairman

Cc: The Honorable Spencer Bachus

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July 27, 2007

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The Honorable Barney Frank  
 Chairman  
 Committee on Financial Services  
 2129 Rayburn House Office Building  
 Washington, D.C. 20515-6050

Dear Mr. Chairman:

I am writing to you concerning the bill, H.R. 2347, the Iran Sanctions Enabling Act of 2007. As ordered reported by the Committee on Financial Services, there are certain provisions of this legislation that fall within the Rule X jurisdiction of the Committee on Foreign Affairs.

In the interest of permitting your Committee to proceed expeditiously to floor consideration of this important bill, I am willing to waive this Committee's right to sequential referral. I do so with the understanding that by waiving consideration of the bill, the Committee on Foreign Affairs does not waive any future jurisdictional claim over the subject matters contained in the bill which fall within its Rule X jurisdiction.

I would ask that you place this letter into the Committee Report on H.R. 2347.

Sincerely,



TOM LANTOS  
 Chairman

TL:da/mco



## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title*

This section establishes the short title of the bill, the “Iran Sanctions Enabling Act of 2007.”

*Section 2. Findings*

Section 2 presents findings that have motivated the need for legislation concerning investments in Iran.

*Section 3. Transparency in U.S. capital markets*

Section 3 provides for the publication of a list of companies with investments of \$20,000,000 or more in Iran’s energy sector. The President is directed to ensure publication in the Federal Register of a list of companies that have qualifying investments, and that have been notified at least 30 days before the list is published. The legislation provides for a delay in inclusion on this list so that a company that has been notified will be able to shed such holdings, and provides that should a company on the list later shed the qualifying holdings, it will be removed from the list. In addition to the Federal Register, the list is to be published on the appropriate executive branch agency’s websites.

*Section 4. Authority of state and local governments to divest from certain companies invested in Iran’s energy sector*

Section 4 gives State governments, local governments, and educational institutions the authority to divest from assets of more than \$20,000,000 that they control in Iran’s energy sector according to the list produced in Section 3 or from any company having an investment in, or carrying on trade with or a business in Iran.

*Section 5. Safe harbor for changes of investment policies by mutual funds*

Section 5 amends the Investment Company Act of 1940 to create a safe harbor for changes in investment policies based on divestment from companies on the list in section 3.

*Section 6. Safe harbor for changes of investment policies by employee benefit plans*

Section 6 amends the Employee Retirement Income Security of Act of 1974 to allow investment managers to divest from companies listed without breaching their fiduciary responsibilities to their investors.

*Section 7. Sense of the Congress regarding thrift savings plan*

Section 7 expresses the Sense of the Congress that the Federal Retirement Thrift Investment Board should initiate efforts to provide a terror-free international investment option among the funds of the Thrift Savings Plan that will exclude investments in the securities of companies that do business in any country the Secretary of State has placed on the terrorist list.

*Section 8. Definitions*

Section 8 defines the terms used in the Act.

*Section 9. Sunset*

Section 9 terminates the Act 30 days after the President has certified that the government of Iran has no longer been designated as a state-sponsor of terrorism for purposes of the State Department terrorist list, and that it has ceased the pursuit, acquisition, and development of designated weapons.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

**INVESTMENT COMPANY ACT OF 1940**

**TITLE I—INVESTMENT COMPANIES**

\* \* \* \* \*

CHANGES IN INVESTMENT POLICY

SEC. 13. (a) \* \* \*

\* \* \* \* \*

(c) *SAFE HARBOR FOR CHANGES IN INVESTMENT POLICIES.*—*Notwithstanding any other provision of Federal or State law, no person may bring any civil, criminal, or administrative action against any registered investment company or person providing services to such registered investment company (including its investment adviser), or any employee, officer, or director thereof, based upon the investment company divesting from, or avoiding investing in, securities issued by companies that are included on the most recent list published under section 3(a)(1) of the Iran Sanctions Enabling Act of 2007, as modified under section 3(b) of that Act. For purposes of this subsection the term “person” shall include the Federal government, and any State or political subdivision of a State.*

\* \* \* \* \*

---

**EMPLOYEE RETIREMENT INCOME SECURITY ACT OF  
1974**

\* \* \* \* \*

**TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS**

\* \* \* \* \*

**SUBTITLE B—REGULATORY PROVISIONS**

\* \* \* \* \*

**PART 5—ADMINISTRATION AND ENFORCEMENT**

\* \* \* \* \*

CIVIL ENFORCEMENT

SEC. 502. (a) \* \* \*

\* \* \* \* \*

*(n) No person shall be treated as breaching any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title, and no action may be brought under this section against any person, for divesting plan assets from, or avoiding investing plan assets in, persons that are included on the most recent list published under section 3(a)(1) of the Iran Sanctions Enabling Act, as modified under section 3(a)(4) of such Act.*

\* \* \* \* \*

