House Foreign Affairs Committee Chairman, Rep. Ed Royce (R-CA), recently introduced H.R. 4992, the “United States Financial System Protection Act of 2016”. **This legislation would cause the United States to violate the Iran nuclear accord and should be rejected by Congress.**

The Joint Comprehensive Plan of Action (JCPOA) expressly permits non-U.S. banks to provide U.S. dollars to Iran so long as such transfer does not involve a U.S. bank and does not pass through the U.S. financial system. H.R. 4992 would prohibit the transfer of U.S. dollars to Iran, including a transfer undertaken by non-U.S. banks.  Such action would severely impede Iran’s ability to receive practical value from the nuclear accord and would violate U.S. commitments under the agreement.

H.R.4992 contains a number of problematic provisions, including:

      The bill makes it a policy of the United States to deny Iran access to U.S. dollars.  This provision is anathema to the nuclear agreement because it imposes a restriction on Iran beyond the scope of the nuclear accord and because the U.S. lifted certain sanctions on non-U.S. banks engaged in the provision of U.S. banknotes to Iran or Iranian parties (Annex II, § 4.1.3).

      The bill subjects non-U.S. banks to the same restrictions imposed on U.S. banks regarding the transfer of funds to or from Iran, insofar as such non-U.S. banks are transferring funds denominated in U.S. dollars.  Because much of Iran’s formerly restricted oil revenues were denominated in U.S. dollars upon deposit in foreign banks, this provision could render it difficult, if not impossible, for Iran to gain access to such funds. This would clearly negate the incentive for Iran’s continued compliance with the nuclear accord. Moreover, it is unclear what jurisdictional basis could be asserted to subject non-U.S. banks to criminal and civil penalties for engaging in the transfer of U.S. dollars to Iran.  It is thus unclear whether this provision is even lawful.

      The bill bars the President from issuing a license or any instructive guidance permitting U.S. or non-U.S. banks to conduct an offshore dollar clearing system for transactions involving Iran or to provide U.S. dollars for any such offshore dollar clearing system.  This would likely violate the terms of the nuclear accord as well, as non-U.S. banks are not prohibited from clearing dollars for transactions involving Iran insofar as such dollar clearing does not involve a U.S. bank and is not processed through the U.S. financial system. This bill is clearly seeking to impose a condition on Iran that would complicate its re-integration in the global financial system and its ability to engage in cross-border trade.

      The bill prohibits potential future activities that may be necessary to facilitate permissible trade with Iran, namely by barring the President from licensing a direct banking relationship between the U.S. and Iran until Iran has ceased to be identified as a U.S.-designated State Sponsor of Terror and has ceased its pursuit of certain WMD and ballistic missile launch technologies. There have been persistent concerns that, absent a direct banking channel between the U.S. and Iran, permissible trade between the two countries – e.g., in food, medicine, and medical supplies, or personal communications technologies – will prove challenging, if not altogether prohibitive.

* The bill would restrict the President’s ability to rescind Iran’s designation as a jurisdiction of primary money laundering concern until Iran addressed concerns above and beyond the issue of money laundering. This is all the more troubling in light of the fact that Iran has begun to take substantial steps to bring itself into compliance with global banking norms – a point for which the Acting Undersecretary for Terrorism and Financial Intelligence Adam Szubin credited Iran in a recent speech. By shifting the goalposts, Congress would remove Iran’s incentive to build integrity and transparency in its financial sector, thereby ultimately undermining U.S. national interests.
* The waiver authorities contained in the bill would only allow the President to temporarily suspend the new restrictions for 60 days and only if he certifies that Iran has ceased its support for acts of international terrorism and was no longer pursuing WMD technologies, including ballistic missile launch technologies. In effect, the legislation would block the full implementation of the nuclear agreement and only allow the implementation to move forward if Iran takes steps outside and well beyond the scope of the nuclear deal.

Aside from presenting a clear violation of the accord, this bill also represents a dangerous precedent.  For close to four decades, the President has enjoyed the power to license transactions that may be otherwise prohibited in order to best tailor U.S. sanctions policy to U.S. national interests.  This bill would restrict the President’s ability to license certain transactions with Iran – specifically, trade in U.S. dollars – in such a manner as to make it unlikely that the current prohibition would ever be removed.  Following the historic diplomacy between the U.S. and Iran to secure a nuclear accord that rolls-back and constrains Iran’s nuclear program, this bill would make it effectively impossible to use the diplomatic momentum to secure other U.S. interests vis-à-vis Iran through diplomacy. At the same time that Treasury Secretary Jacob J. Lew has underlined the importance of using U.S. sanctions in a smart but effective manner to facilitate diplomatic efforts, some in Congress appear more interested in using sanctions to stymie such diplomacy.  That should be a serious concern for all interested in the future of U.S. sanctions and their ability to serve well underlying U.S. foreign policy interests.

Legislators supportive of the President’s historic diplomacy – or simply wary of the fallout from overturning the multilateral accord - would do well to abstain from supporting this or other similar legislation.