

HOLOCAUST INSURANCE ACCOUNTABILITY ACT OF 2008

—————
AUGUST 1, 2008.—Ordered to be printed
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Mr. FRANK of Massachusetts, from the Committee on Financial Services, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1746]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1746) to require disclosure of Holocaust-era policies by insurers and establish a federal cause of action for claims arising out of a covered policy, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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AMENDMENT

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Holocaust Insurance Accountability Act of 2008”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Holocaust was one of the most heinous crimes in history, causing the suffering of millions of people through torture and other violence, including the murder of 6,000,000 Jews and millions of others, the destruction of families and communities, and the theft of their assets.

(2) After World War II, many Holocaust survivors and heirs of Holocaust victims presenting claims to insurance companies lacked policy information and vital records needed to satisfy the burden of proof required to bring an insurance claim because such documentation was confiscated by the Nazis or lost in the devastation of World War II.

(3) Following the end of the Cold War, efforts to address open issues concerning restitution and compensation to the victims of Nazi persecution were renewed. International talks involving the United States, Germany, Austria, France, Israel, and other nations occurred and agreements were reached to enable restitution for a variety of claims, including claims based on Holocaust-era insurance policies.

(4) In response to the unique difficulties faced by those seeking to bring claims based on Holocaust-era insurance policies, Insurance Commissioners of the several States, the National Association of Insurance Commissioners (NAIC), major Jewish organizations and various European insurance companies established the International Commission on Holocaust Era Insurance Claims to provide a forum in which claimants could bring claims based on Holocaust-era insurance policies.

(5) In recognition of the preeminence of the States in protecting consumers in the insurance marketplace, Congress and the executive branch have a limited role in facilitating and assisting the Holocaust-era insurance restitution efforts of the several States as embodied principally in the ICHEIC process.

(6) After ICHEIC and its partner entities paid approximately \$300 million to more than 47,000 claimants and approximately \$200 million to Holocaust-related humanitarian organizations, ICHEIC formally concluded its operation in March 2007.

(7) Experts agree that, by the conclusion of the ICHEIC process, claims based on a substantial portion of Holocaust-era insurance policies issued to Holocaust victims in Western Europe had been addressed.

(8) Due to the political and economic conditions in Eastern Europe until the end of the Cold War, compensation efforts there have been more limited. The ICHEIC process did provide compensation for policies issued by the Eastern European branches and subsidiaries of Western European companies as well as for policies issued by nationalized or liquidated Eastern European insurers, drawing from ICHEIC’s humanitarian funds. However, the Eastern European companies and countries did not participate in ICHEIC or any of the related compensation processes. Now that the nations of Eastern Europe have joined the community of free and modern nations, it is imperative that the nations of Eastern Europe proactively seek to identify and provide restitution for Holocaust-era insurance policies issued within their borders.

(9) All insurers that participated in ICHEIC are now willing to address all inquiries made by Holocaust victims and victims’ heirs, check their archives, and settle legitimate claims based on relaxed standards of proof. To facilitate the ongoing monitoring of claims based on Holocaust-era insurance policies, the Insurance Commissioners of the several States have agreed to coordinate their Holocaust-era insurance restitution efforts through the NAIC and the Holocaust Claims Processing Office. Similarly, entities that worked in partnership with ICHEIC have agreed to maintain their claims processing facilities and cooperate with the HCPO in the resolution of Holocaust-era insurance claims.

(10) It has been the policy of the executive branch to support the resolution of Holocaust-era insurance claims through an alternative to litigation. To that end, the executive branch has filed statements of interest in court seeking the dismissal of cases involving claims for non-payment of Holocaust-era insurance policies where there have been independent legal grounds to support such dismissal.

(11) This Act does not endorse any State law cause of action and does not alter any applicable law, legal precedent or principle in effect at the time of its enactment that may be applicable to the resolution of Holocaust-era insurance claims. Nor does this Act alter the binding effect of any class action settlement involving Holocaust-era insurance claims.

SEC. 3. INSURER RESPONSE TO INQUIRIES ABOUT COVERED POLICIES.

(a) **REQUIREMENT.**—

(1) **IN GENERAL.**—Subject to paragraph (2), an insurer receiving a written inquiry from an eligible person regarding a covered policy for which the person may be a beneficiary shall—

(A) not later than 90 days after such insurer receives such written inquiry, acknowledge the inquiry in writing and indicate whether such insurer is in possession of information specifically relating to such covered policy;

(B) within a reasonable period of time, provide to such eligible person all information in the possession of such insurer regarding whether such person is a potential beneficiary of such policy; and

(C) immediately notify the Holocaust Claims Processing Office in writing of the inquiry and provide a copy of all acknowledgments and information provided to such eligible person under subparagraph (A) or (B) to the HCPO.

(2) **TERMINATION OF REQUIREMENT.**—An insurer receiving a written inquiry under paragraph (1) is not required to comply with the requirements of such paragraph for any written inquiry received on or after the date that is 10 years after the date of the enactment of this Act.

(b) **AGREEMENTS WITH EUROPEAN COUNTRIES.**—

(1) **AGREEMENTS.**—The Secretary of State shall seek to enter into an agreement with each European country with which no appropriate agreement exists to facilitate the response requirements of subsection (a).

(2) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Secretary of State shall submit to Congress a report on efforts to carry out this subsection.

SEC. 4. MONITORING BY THE HOLOCAUST CLAIMS PROCESSING OFFICE.

The Secretary of the Treasury is authorized and encouraged to enter into an agreement with the Holocaust Claims Processing Office to provide for—

(1) the HCPO to monitor compliance with the requirements of section 3(a);

(2) the HCPO to notify the Secretary of the Treasury of the identity of any insurer that the HCPO is aware of that is not in compliance with the requirements of section 3(a) not later than 30 days after the failure of such insurer to comply with such requirements;

(3) the HCPO to annually notify the Committee on Financial Services of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, the Secretary of the Treasury, and the Secretary of State of the identity of each insurer that fails to comply with the requirements of section 3(a);

(4) subject to appropriations, the transfer to the HCPO of amounts equal to the amounts received by the Government under section 5 for use in carrying out paragraphs (1) and (2); and

(5) the issuance of such guidelines and regulations as are necessary to carry out this section and sections 3 and 5(a).

SEC. 5. PENALTY.

(a) **IN GENERAL.**—The Secretary of the Treasury shall assess a civil penalty of not less than \$5,000 for each day that an insurer fails to comply with the requirements of section 3(a) for an inquiry referred to in such section, as determined by the Secretary after consideration of information provided by the Holocaust Claims Processing Office. Each failure to comply with the requirements of section 3(a) for an inquiry under such section shall be considered a separate offense.

(b) **ALTERNATIVE ASSESSMENT.**—If an insurer based outside of the United States is assessed a penalty under subsection (a) and refuses to pay such penalty and the Secretary is unable to collect such penalty from such insurer, the Secretary may seek to attach a lien on any payment (including the remittance of a dividend or management fee) to such insurer from a subsidiary of such insurer that is domiciled in the United States if—

(1)(A) such insurer owns substantially all of the voting shares of such subsidiary; or

(B) there is substantial overlap of membership of the board of directors and executive officers of such insurer and such subsidiary;

(2) the Secretary notifies such insurer, such subsidiary, and the appropriate State regulator of such subsidiary of the intent of the Secretary to attach a lien to such remittance; and

(3) the Secretary provides such insurer and such subsidiary a reasonable opportunity to contest the attachment of the lien.

(c) REGULATIONS.—The Secretary shall issue regulations to carry out subsection (b).

SEC. 6. FEDERAL CAUSES OF ACTION.

(a) FEDERAL CAUSE OF ACTION.—

(1) IN GENERAL.—There shall exist a Federal cause of action for any claim arising out of or related to a covered policy against any insurer.

(2) STANDING.—A claim under paragraph (1) may be brought by an eligible person.

(3) STATUTE OF LIMITATIONS.—Any action brought under this Act shall be filed not later than 10 years after the effective date of this Act.

(b) RIGHT TO OPT OUT OF CLASS ACTION PROCEEDINGS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that claimants have the right to opt out of new or ongoing class action proceedings relating to claims based on Holocaust-era insurance policies in accordance with Rule 23 of the Federal Rules of Civil Procedure.

(2) CLARIFICATION.—Nothing in this Act shall be construed to affect any class action settlement agreement, or releases given therein, made before the date of the enactment of this Act.

SEC. 7. LIMITATION ON FEDERAL CAUSE OF ACTION AND REQUIREMENT TO RESPOND TO INQUIRY.

(a) IN GENERAL.—No cause of action shall exist for a claim against an insurer relating to, and an insurer is not required to comply with the requirements of section 3(a) for a written inquiry regarding, a covered policy for which—

(1) payment has been made or release has been granted;

(2) payment has been received or denied under the process of the International Commission on Holocaust Era Insurance Claims, any similar process that was conducted in partnership with ICHEIC, any government sponsored Holocaust claims process, the Holocaust Claims Processing Office, or any process for the resolution of Holocaust-era insurance claims established pursuant to a class action settlement; or

(3) the claimant previously filed an action against such insurer.

(b) CLARIFICATION OF APPLICABILITY.—Subsection (a) shall not apply to a claim for which a humanitarian payment has been received from ICHEIC and that is being asserted—

(1) against an insurer that did not participate in ICHEIC; or

(2) based on information not reasonably available before the conclusion of the ICHEIC process.

SEC. 8. EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT.

(a) IN GENERAL.—The Secretary of the Treasury shall instruct the United States Executive Director at the European Bank for Reconstruction and Development to use the voice and vote of the United States to create and advocate the policies of the Bank to encourage Eastern European countries to engage in and pursue restitution programs in compliance with this Act.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, and three years thereafter, the Secretary of the Treasury shall submit to Congress a report on the progress of carrying out subsection (a).

SEC. 9. DEFINITIONS.

In this Act:

(1) COMMISSIONER OF INSURANCE.—The term “commissioner of insurance” means the highest ranking officer of a State responsible for regulating insurance.

(2) COVERED POLICY.—The term “covered policy” means any insurance policy that was—

(A) in effect at any time after January 30, 1933, and before December 31, 1945; and

(B) issued to a policyholder or named a beneficiary who was deprived of their life, suffered damage to their mental or physical health, suffered loss or deprivation of financial or other assets, or suffered any other loss or damage to their property as a result of racial, religious, political, or ideological persecution by organs of the National Socialist Government of Germany or by other Governmental authorities or entities controlled by such Governmental authorities in the territories occupied by the National Socialist Gov-

ernment of Germany or its European allies during the period described in subparagraph (A).

(3) ELIGIBLE PERSON.—The term “eligible person” means a person who purchased a covered policy, a beneficiary of such person with respect to such policy, an heir of such person or such beneficiary with respect to such policy, or an assignee of such person, such beneficiary, or such heir with respect to such policy.

(4) HOLOCAUST CLAIMS PROCESSING OFFICE; HCPO.—The terms “Holocaust Claims Processing Office” and “HCPO” mean the Holocaust Claims Processing Office of the New York State Banking Department.

(5) INTERNATIONAL COMMISSION ON HOLOCAUST ERA INSURANCE CLAIMS; ICHEIC.—The terms “International Commission on Holocaust Era Insurance Claims” and “ICHEIC” mean the International Commission on Holocaust Era Insurance Claims established through the memorandum of understanding and bilateral or multilateral agreements between the Commission, relevant foreign governments, and the following insurers and their successors in interest:

(A) The Dutch Association of Insurers and the members of the Association.

(B) AXA SA together with its subsidiaries (the AXA Group).

(C) Assicurazioni Generali S.P.A.

(D) Zurich Life Insurance Company and its affiliates.

(E) Allianz SE.

(F) Winterthur Swiss Insurance Company together with its subsidiaries (the Winterthur Group).

(G) All insurers participating in the process of the Commission through bilateral or multilateral agreements.

(6) INSURER.—The term “insurer” means any person engaged in the business of insurance in interstate or foreign commerce, if the person issued a covered policy, or a successor in interest to such person.

Amend the title so as to read:

A bill to further facilitate payment of Holocaust-era insurance claims.

PURPOSE AND SUMMARY

H.R. 1746, the Holocaust Insurance Accountability Act of 2008, is intended to build on prior Holocaust-era insurance restitution efforts and further facilitate payment of Holocaust-era insurance claims not previously addressed by the courts or by other Holocaust restitution programs. H.R. 1746 requires that insurance companies respond within 90 days to any new inquiry received from any potential beneficiary of any Holocaust-era insurance policy. Compliance with this reporting requirement will be monitored by the New York State Holocaust Claims Processing Office (HCPO) and enforced through civil penalties assessed by the Secretary of the Treasury acting on information provided by the HCPO. H.R. 1746 also creates a Federal cause of action for claimants who have not previously brought a claim in court, or filed claims through the International Commission on Holocaust Era Insurance Claims (ICHEIC), or through another Holocaust restitution program. Finally, the bill requires the U.S. representative to the European Bank for Reconstruction and Development to encourage Eastern European countries to participate in the Holocaust-era insurance restitution programs.

BACKGROUND AND NEED FOR LEGISLATION

Following the Second World War many Western European countries passed laws and created programs to provide restitution for property confiscated from victims of the Holocaust. While unpaid or confiscated insurance policies were included in these post-war restitution efforts, the difficulty of accessing records and in some instances, the destruction of these records as a result of war, made it difficult for Holocaust victims and their heirs to file claims with-

out highly specific information regarding the policy. Moreover, the country where the policy was purchased also created an often insurmountable barrier for those wishing to file claims. Countries like Poland, Hungary and Czechoslovakia, which became part of the Soviet Bloc after 1945 nationalized and liquidated private insurance companies and imposed restrictions on who could receive payments on policies. Although some of the West European companies that operated in Central and Eastern European markets still exist today, many of the companies that sold insurance in these countries have no present-day successors.

Despite these difficulties, during the 1990s, Jewish organizations, Holocaust survivors, and the U.S. and Israeli governments renewed their efforts to obtain compensation for survivors who had not participated in previous post-war restitution programs. In the mid-to-late 1990s class-action lawsuits against Swiss, German, Austrian, Italian, and French companies brought widespread international attention to the issue of looted Holocaust-era assets, including unpaid insurance policies. The Clinton Administration took the lead in facilitating broad compensation agreements with the governments of Germany, Austria, and France. Although efforts focused largely on property restitution and compensating victims of forced and slave labor, each of these agreements also had an insurance-related component.

Concurrent with these intergovernmental negotiations, and in response to increasing claims against European insurance companies operating in the United States, the National Association of Insurance Commissioners (NAIC) formed a Working Group on Holocaust Insurance Claims to reach out to Holocaust victims and their heirs to better determine the scope of the problem, and to initiate a dialogue with European insurers about how to resolve the issue of unpaid claims. In August 1998 the NAIC, several European insurers, the Conference of Jewish Material Claims against Germany (Claims Conference), the World Jewish Restitution Organization (WJRO), and the State of Israel signed a Memorandum of Understanding (MOU) establishing the International Commission on Holocaust Era Insurance Claims (ICHEIC). The MOU tasked ICHEIC with identifying relevant Holocaust-era insurance policies issued between 1920 and 1945, reaching out to potential claimants and encouraging them to participate in the ICHEIC process, and assisting Holocaust victims and their heirs in resolving claims. Members of ICHEIC—chaired by former U.S. Secretary of State Lawrence Eagleburger—agreed that ICHEIC's claims process would adhere to the following principles: (i) Claimants would not be charged to file a claim and no ICHEIC funds were used to pay attorneys' fees; (ii) ICHEIC would evaluate claims based on relaxed standards of proof—given that a significant number of potential claimants did not possess policy documentation, claimants would not be required to name a specific insurance company or provide documentation of an insurance policy; and (iii) ICHEIC and participating insurance companies would conduct archival research in order to establish a database of potential policyholders against which to match submitted claims.

Before embarking on its tasks, ICHEIC commissioned a report to estimate the volume and value of Holocaust-era policies that remained unpaid at the end of the 20th century. Prepared under the

supervision of then-North Dakota Insurance Commissioner Glenn Pomeroy and European insurance expert, Philippe Ferras, the Pomeroy-Ferras Report remains the only widely accepted source of baseline data relevant to Holocaust-era insurance restitution.¹ Based on information contained in the Pomeroy-Ferras Report and other sources, experts supportive of H.R. 1746 estimate the largest possible universe of policies relevant to Holocaust-era insurance restitution to be approximately 800,000 policies.² Acknowledging the significantly more developed insurance marketplace that existed in pre-war Western Europe, the Pomeroy-Ferras Report further determined that 80 percent of policies relevant to Holocaust-era insurance restitution had been issued to policyholders in Western Europe. Given the successful restitution programs that existed in post-war Western Europe, the Pomeroy-Ferras Report was able to conclude that approximately 70 percent of policies relevant to Holocaust-era insurance restitution issued in Western Europe had been addressed before the creation of ICHEIC. In contrast, Pomeroy-Ferras also determined that, of the 20 percent of policies relevant to Holocaust-era insurance restitution that were issued in Eastern Europe, only 10 percent of policies had been addressed before the creation of ICHEIC. Therefore, while the Pomeroy-Ferras Report represented the beginning point for the ICHEIC process, it made clear that ICHEIC and subsequent Holocaust-era insurance restitution efforts would be wrapping up Holocaust-era insurance restitution in Western Europe but only beginning Holocaust-era insurance restitution in Eastern Europe.

ICHEIC received approximately \$550 million from participating insurers. Of this, \$350 million was secured from German companies through a 2000 executive agreement between the United States and Germany. A further \$100 million came from the Italian insurer Assicurazioni Generali, S.p.A., and the remaining \$100 million was contributed by the various individual insurance companies and national insurance associations that participated in the ICHEIC process. In addition to five insurers on ICHEIC's board, ICHEIC secured the participation of more than 75 other companies through bilateral agreements with the German, Dutch, Austrian, and Belgian insurance associations.

It is important to note that participation of the German insurance association, and indeed the participation of all the insurers that participated in ICHEIC as well as the Austrian General Settlement Fund, was conditioned on explicit or tacit assurances of "legal peace" provided by the Clinton Administration and maintained by the Bush Administration. Under these assurances of "legal peace," the Clinton and Bush administrations have agreed to intervene on behalf of ICHEIC participants that are sued in U.S. courts. This cooperation, which is ongoing, was a key feature of the ICHEIC process and fundamental to its success in resolving claims, according to the testimony of former Deputy Treasury Secretary

¹The Pomeroy-Ferras Report is available online at: <http://www.icheic.org/pdf/Pomeroy-Ferras%20Report.pdf>.

²See, Sidney Zabudoff, "The International Commission of [sic.] Holocaust-Era Insurance Claims: Excellent Concept but Inept Implementation," *Jewish Political Studies Review*, Spring 2005.

Eizenstat who served as chief negotiator for Holocaust matters for the Clinton Administration.³

ICHEIC's claims process opened in early 2000 and closed in March 2007. In total, ICHEIC facilitated the payment of approximately \$300 million to approximately 48,000 claimants. While some 43,000 claims received no payment from ICHEIC, those claims were often determined to have been honored under previous compensation agreements, or were determined to fall short of the relaxed standards of proof established by ICHEIC. In addition to the funds paid to individual claimants, ICHEIC paid approximately \$200 million to a "humanitarian fund" overseen by the Claims Conference. Prior to ICHEIC's closure, its participating insurance companies, including members of the German and Dutch insurance associations, agreed that they will continue to accept and honor claims based on ICHEIC's relaxed standards of proof.

For almost a decade Congress has been actively aware of the issues surrounding Holocaust-era insurance restitution. In February 2000, the Financial Services Committee addressed the topic in a hearing entitled "Restitution of Holocaust Assets." Likewise, hearings before the House Committee on Government Reform between 2001 and 2003 highlighted the ICHEIC process. Also, legislation proposed in the 107th, 108th, and 109th Congresses mirrors some provisions of H.R. 1746, as introduced. Opposed by successive U.S. Administrations, the House declined to act on legislation relating to Holocaust-era insurance restitution while the ICHEIC process remained actively underway. Congress's authority to act in the field of Holocaust-era insurance restitution and its failure to do so previously were noted by the Supreme Court when it upheld ICHEIC as the then-exclusive national approach to Holocaust-era insurance restitution in *American Ins. Assn. v. Garamendi*, 539 U.S. 396 (2003), at 429.

When ICHEIC concluded its period of active operation in March 2007, Congress again turned its attention to the issue of Holocaust-era insurance restitution. Seeking both to endorse the successes of prior Holocaust-era insurance restitution efforts and to correct their shortcomings where deemed necessary, three areas emerged where Congress could facilitate the resolution of previously unresolved Holocaust-era insurance claims. The first of these areas of concern relates to the accessibility of information regarding Holocaust-era insurance policies. ICHEIC published more than 500,000 names of potential Holocaust-era policyholders on their website. Recognizing that this was a comprehensive, but not complete, effort, H.R. 1746 creates the first ever Federal mandate requiring insurers to respond to requests for information regarding Holocaust-era insurance policies.

Second, H.R. 1746 provides a right of access to the Federal courts to individuals with previously unaddressed Holocaust-era insurance claims. The Federal cause of action created in H.R. 1746 applies only prospectively and thereby expressly protects the finality of claims addressed by previous judicial decisions, settlements, and Holocaust restitution efforts. However, the creation of the Federal

³ See, testimony of Stuart Eizenstat before the House Committee on Financial Services, during a hearing entitled "The Holocaust Insurance Accountability Act of 2007 (H.R. 1746): Holocaust Era Insurance Restitution After ICHEIC, The International Commission on Holocaust Era Insurance Claims," February 7, 2008. Pp. 31-32.

cause of action also expressly allows access to U.S. Courts for Holocaust-era insurance claims not filed prior to the bill's enactment.

Finally, through H.R. 1746 Congress both takes note of and seeks to begin to address the broader issue of the restitution of Holocaust-era assets in Eastern Europe.

HEARINGS

On February 7, 2008, the House Committee on Financial Services held a hearing entitled, "The Holocaust Insurance Accountability Act of 2007 (H.R. 1746): Holocaust Era Insurance Restitution After ICHEIC, the International Commission on Holocaust Era Insurance Claims." The following witnesses testified:

Witness List:

Panel One

- Ambassador J. Christian Kennedy, Special Envoy for Holocaust Issues, U.S. Department of State
- Dr. Michael Kurtz, Assistant Archivist for Records Services, National Archives and Records Administration

Panel Two

- Mr. Stuart Eizenstat, Former Special Representative of the President & Secretary of State on Holocaust-Era Issues
- Mr. Sam Dubbin, Esq., Attorney, Miami, Florida
- Ms. Diane Koken, Former Vice-Chairman, ICHEIC; Former Pennsylvania Insurance Commissioner
- Mr. Sidney Zabludoff, Former Consultant, Conference on Jewish Material Claims Against Germany, Inc.
- Mr. Roman Kent, Chairman, American Gathering of Jewish Holocaust Survivors
- Mr. Israel Arbeiter, President, American Association of Jewish Holocaust Survivors of Greater Boston

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 25, 2008, and ordered reported H.R. 1746, Holocaust Insurance Accountability Act of 2007, as amended, 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 in conjunction with the consideration of this legislation. A motion by Mr. Frank to report the bill, as amended, to the House with a favorable recommendation was agreed to by a voice vote. During the consideration of the bill, the following amendments were considered:

An amendment in the nature of a substitute, by Mr. Frank, No. 1, was agreed to, as amended, by voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Sherman, No. 1a, regarding domestic subsidiaries, was agreed to, as modified, by voice vote.

An amendment en bloc to the amendment in the nature of a substitute by Mr. Sherman, No. 1b, regarding Holocaust insurance registry and civil penalties, was not agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing 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. 1746 is intended to build on prior Holocaust-era insurance restitution efforts and further facilitate payment of Holocaust-era insurance claims not previously addressed by the courts or by other Holocaust restitution programs.

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:

JULY 29, 2008.

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. 1746, the Holocaust Insurance Accountability Act of 2008.

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

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 1746—Holocaust Insurance Accountability Act of 2008

H.R. 1746 would require insurance companies to respond to inquiries about the existence of Holocaust-era insurance policies. The

legislation would require the Department of the Treasury to enter into an agreement with the New York State Holocaust Claims Processing Office (HCPO) to monitor company responses and report to the Treasury and the Congress on compliance with the proposed federal requirement. Failure to comply with individual inquiries would subject insurers to civil penalties. In addition, the legislation would require the Departments of State and the Treasury to seek agreements with European countries to facilitate responses from insurers in Europe. Based on information from the Departments of State and the Treasury, CBO estimates that implementing H.R. 1746 would cost about \$500,000 annually, assuming appropriation of the necessary amounts.

Enacting H.R. 1746 could affect federal revenues because the bill would impose new civil penalties on insurance companies if they fail to respond to inquiries. Collections of civil penalties are recorded in the budget as revenues. Subject to appropriation, those penalties could be spent by HCPO. CBO expects that any additional revenues would not be significant because of the small number of fines likely to be collected.

H.R. 1746 would impose private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on certain insurers. The bill would require an insurer, after receiving a written inquiry from a potential beneficiary of such a policy, to: Acknowledge that inquiry in writing, indicating whether the insurer has information specifically related to a covered policy as defined in the bill; provide to each person making such an inquiry any information regarding whether that person is a potential beneficiary; and immediately notify the Holocaust Claims Processing Office in writing of each inquiry and provide a copy of all acknowledgments and information to persons making such inquiries. Based on information from the insurance industry, CBO expects that the cost to U.S. firms of complying with the mandates would fall below the annual threshold for private-sector mandates (\$136 million in 2008, adjusted annually for inflation).

H.R. 1746 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

On February 6, 2008, CBO transmitted a cost estimate for H.R. 1746 as ordered reported by the House Committee on Foreign Affairs on October 23, 2007. Both bills address Holocaust-era insurance policies but have different provisions. The version of H.R. 1746 reported by the House Committee on Foreign Affairs would create a Holocaust Insurance Registry through the National Archives and Records Administration, while the version reported by the House Committee on Financial Services would require insurance companies to respond to individual inquiries about Holocaust-era insurance policies. CBO's cost estimates reflect those differences. H.R. 1746 as ordered reported by the House Committee on Foreign Affairs contains a private-sector mandate in that it would require insurers to electronically file certain information about Holocaust-era policies with the Secretary of Commerce. CBO determined that the cost of complying with that mandate would fall below the UMRA's annual threshold.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Paige Piper/Bach (for the private-sector im-

pact). This estimate was approved by Theresa Gullo, 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. 1746 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section designates the short title of the bill as the “Holocaust Insurance Accountability Act of 2008.”

Section 2. Findings

Section 2 sets out a brief history of Holocaust-era insurance restitution, provides findings for this legislation and clarifies Congress’s intent that this legislation apply prospectively while leaving intact judicial decisions, settlements and Holocaust restitution efforts.

Section 3. Insurer response to inquiries about covered policies

Section 3 requires insurers to respond to requests for information regarding Holocaust-era insurance policies within 90 days of receiving the request and to indicate whether the insurer has information regarding the request. Section 3 also requires insurers to notify the New York State Holocaust Claims Processing Office of all inquires made under this section. This requirement expires 10 years after enactment. Section 3 also requires the Secretary of State to seek to enter into agreements with certain European countries to facilitate requests under this section.

Section 4. Monitoring by the Holocaust Claims Processing Office

Recognizing the ongoing importance of the States in consumer protection in the insurance marketplace, H.R. 1746's reporting requirement is monitored by the States, acting through the New York State Holocaust Claims Processing Office. Section 4 provides that the Holocaust Claims Processing Office will monitor the provision of information required under Section 3 and periodically inform the Congress, the Secretary of State and the Secretary of the Treasury of insurers who have failed to comply with Section 3.

Section 5. Penalty

Section 5 provides that there will be a \$5,000 per day penalty for any insurer who fails to comply with Section 3. Each failure to comply with Section 3 shall be considered a separate offense. Enforcement of the Section 3 reporting requirement is the responsibility of the Secretary of the Treasury. To prevent foreign insurers who have assets in the U.S. from ignoring the reporting requirement, Section 5 permits the Secretary to collect unpaid civil penalties assessed under this section by placing liens on transfers to a non-compliant foreign insurer from its U.S. subsidiaries.

Section 6. Federal cause of action

Section 6 creates a Federal cause of action with a ten-year statute of limitations for any claim arising out of a Holocaust-era insurance policy. In addition, Section 6 expresses the sense of Congress that claimants maintain the right to opt out of relevant new class action proceedings.

Section 7. Limitations on the cause of action

Section 7 provides that the cause of action will not apply to covered insurance policies for which the claimant has previously filed a claim in court, with ICHEIC or with any of ICHEIC's partner entities, or for which a payment has been made or release has been granted. Claimants who received certain humanitarian payments under ICHEIC may bring an action against any non-ICHEIC company. In addition, claimants who have not submitted a claim to ICHEIC or a similar entity that worked with ICHEIC, may bring an action against any ICHEIC participating company or non-ICHEIC company.

Section 8. European Bank for Reconstruction and Development

Section 8 requires that the European Bank for Reconstruction and Development encourage Eastern European countries to engage in and pursue Holocaust-era insurance restitution programs in compliance with this Act.

Section 9. Definitions

Section 9 defines the following terms:

- (1) COMMISSIONER OF INSURANCE.
- (2) COVERED POLICY.—Any insurance policy that was in effect between January 30, 1933 and December 31, 1945 and was issued to a Holocaust victim or survivor.
- (3) ELIGIBLE PERSON.—A person who purchased a covered policy, a beneficiary, an heir, or an assignee of such person.
- (4) HOLOCAUST CLAIMS PROCESSING OFFICE; HCPO.

(5) INTERNATIONAL COMMISSION ON HOLOCAUST ERA INSURANCE CLAIMS; ICHEIC.—The Commission established through the memorandum of understanding and bilateral or multilateral agreements between the Commission, relevant foreign governments, and the following insurers and their successors in interest:

- (A) The Dutch Association of Insurers and its members.
- (B) The AXA Group.
- (C) Generali.
- (D) Zurich.
- (E) Allianz.
- (F) Winterthur.

(G) All insurers participating in the process of the Commission through bilateral or multilateral agreements.

(6) INSURER.—Any person engaged in the business of insurance in interstate or foreign commerce, if the person issued a covered policy, or a successor in interest to such person.

ADDITIONAL VIEWS

H.R. 1746 reflects another difficult chapter in the tragic and disturbing history of the Holocaust, which lingers on in our collective conscience to this day.

There is broad agreement among all parties involved that we must encourage the fair and just resolution of all insurance claims that remain unsettled from the Holocaust era to the maximum extent possible, even with the long-standing problem of having such little evidence and documentation so many years after the fact.

While we were able to work toward a greater consensus on many features of H.R. 1746, we remain concerned by the provisions in Section 6 and Section 7 that create a new Federal cause of action with a ten-year statute of limitations. These unwarranted provisions open the door for new lawsuits against companies that cooperated in the International Commission on Holocaust Era Insurance Claims (ICHEIC) process, or a similar claims resolution process, and are now cooperating through the New York State Holocaust Claims Processing Office (HCPO) process.

We are concerned that these provisions could turn a cooperative process into a confrontational one in which false hopes might be raised and lengthy litigation efforts could delay resolution and waste precious resources.

The companies that participated in the ICHEIC process—which was sanctioned by state insurance regulators, the World Jewish Congress, and the governments of Israel and the United States—and that are continuing to cooperate through the HCPO process, should not be subject to lawsuits by new claimants unless they fail to cooperate.

We commend the chief proponent of this legislation, Representative Ros-Lehtinen of Florida, on her determination to highlight the issue of outstanding insurance claims and to encourage the full and fair restitution of Holocaust survivors and their families.

We also thank the Chairman of the Committee on Financial Services for his diligence in working with all interested parties to forge a greater consensus on an important and sensitive issue.

SPENCER BACHUS.
RON PAUL.
SHELLEY MOORE CAPITO.
CHRISTOPHER SHAYS.

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