



Statement of

**Baird Webel**

Specialist in Financial Economics

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Mr. Chairman, Ranking Member, and Members of the Committee, thank you for the opportunity to testify before you today. My name is Baird Webel. I am a specialist in Financial Economics at the Congressional Research Service (CRS) focusing on non-health insurance, including such topics as terrorism insurance, the Dodd-Frank Wall Street Reform and Consumer Protection Act, and the role of the insurer AIG in the 2008 financial crisis. I have been in this role at CRS since 2003 and have written about Holocaust-era insurance during past Congresses. CRS's role is to provide objective, nonpartisan research and analysis to Congress. CRS takes no position on the desirability of any specific policy. Any arguments presented in my written and oral testimony are for the purposes of informing Congress, not to advocate for a particular policy outcome.

My testimony today will begin with a brief background on insurance and the post-World War II efforts to provide compensation and restitution. I will then provide details on the International Commission on Holocaust Era Insurance Claims (ICHEIC), including one of the central issues faced by ICHEIC or by any attempt to provide compensation—the current-day valuation of policies issued many decades ago. My testimony will conclude with a discussion of past congressional concerns and legislative attempts to address these issues. It is substantially based on previous work at CRS that was coauthored by my colleague Paul Belkin.

## Pre-World War II Insurance

Insurance markets in pre-World War II Europe were well developed, with many life insurance policies going further than providing benefits to a family in the case of the policyholders' death. In addition to providing such benefits, these policies often acted as savings vehicles, similar in some ways to what are known as whole life insurance policies in the United States today. For example, life insurance policies were often purchased intending to provide for a son's education or a daughter's dowry. Such a policy might have run for 20 years, with the policyholder committing to make periodic payments and the insurance company committing to pay a certain sum, known generally as the "face value" of the policy, at the end of the 20 years, or upon the policyholder's death. Such a policy generally would have cancellation provisions that would allow a policyholder to obtain a "surrender value" prior to the policy's intended end, or, if a policyholder wished to keep the contract but not pay further premiums, it could be converted to "paid up" status, which would result in a smaller face value at the end of the policy.

In the run-up to World War II, the Nazi government made a concerted effort to confiscate assets belonging to Jews in Germany and in various occupied countries.<sup>1</sup> At first, these efforts were largely indirect, such as placing high taxes or fees on those emigrating, which necessitated the liquidation of many insurance policies. Later, the confiscation was more direct, with, for example, insurance companies being required to pay insurance proceeds from claims or a policy's cash value directly to the government.<sup>2</sup>

## General Postwar Compensation Efforts

The 1952 Luxembourg Reparations Agreement between the Federal Republic of Germany (West Germany), Israel, and the Conference on Jewish Material Claims against Germany (Claims Conference) marked the first and most significant of a series of postwar West German initiatives that have resulted in total German government payments of an estimated \$84 billion (about €76 billion) to Jewish and non-

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<sup>1</sup> Professor Gerald D. Feldman, a historian at the University of California, Berkeley, conducted extensive research into the Nazi seizure of insurance assets. See, for one account, Chapter 6 of his work *Allianz and the German Insurance Business, 1933-1945*, (Cambridge, UK: Cambridge University Press, 2001).

<sup>2</sup> This was the case, for example, with regard to property damage claims from the anti-Jewish riots on Krystallnacht, November 9, 1938, as well as with life insurance policies.

Jewish victims of Nazi crimes and their heirs.<sup>3</sup> Although most agree that Germany will never be able to adequately compensate for Nazi atrocities, many scholars and advocates for Holocaust victims have commended the compensation and restitution efforts of successive German governments.<sup>4</sup>

The governments of other Western European countries known to have collaborated with the Nazis also undertook compensation efforts in the years after the Second World War. However, with the possible exception of those in the Netherlands, these efforts are generally thought to have been less comprehensive than West Germany's. In the years following the war, these countries, whose economies had been devastated, tended to argue that Germany should assume responsibility to compensate for Nazi crimes. The communist governments of East Germany and Central and Eastern Europe offered minimal restitution or compensation, if any.<sup>5</sup>

The fall of the Berlin Wall (1989) and collapse of the Soviet Union (1991) led to renewed efforts by Jewish organizations, Holocaust survivors, and the U.S. and Israeli governments to obtain compensation for survivors who had lived or continued to live in Central and Eastern Europe.<sup>6</sup> Initial efforts focused largely on property restitution and victims' compensation for forced and slave labor. Simultaneously, a series of class-action lawsuits against European companies were filed in U.S. courts on behalf of Jewish Holocaust survivors; these lawsuits shed light on the fact that up to billions of dollars worth of assets seized by the Nazis from individual citizens and deposited in private and national banks throughout Western Europe had never been returned. In March 1997, the first class-action lawsuits focused exclusively on the issue of unpaid Holocaust-era life insurance policies were filed in New York (the so-called "Cornell Class Action" against 16 European insurers).

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, unpaid insurance policies, and dormant bank accounts. Given the immense significance and sensitivity of the issues, and the unprecedented nature of the legal cases before U.S. judges, the U.S. government sought to facilitate settlement of the lawsuits through a series of complex agreements involving national and state governments, class-action lawyers, private industry, and a variety of Jewish and other victims' groups.

Most agree that U.S. Administration efforts to facilitate resolution of these claims by involving a range of interested parties, including national governments, victims, and private industry, played an important role in both securing support for and impeding subsequent legal challenges to the government-negotiated settlements. The Clinton Administration took the lead in facilitating broad compensation agreements—each with insurance-related components—with German, Austrian, and French companies and their governments. The Clinton Administration also was involved in negotiating a settlement with Swiss banks, although some U.S. officials contended that a lack of Swiss government involvement weakened that agreement, which led to heightened international criticism of Switzerland. According to Stuart Eizenstat,

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<sup>3</sup> This figure represents the present-day value of all payments through the year 2018, as reported in German Ministry of Finance, *Compensation for National Socialist Injustice*, January 27, 2018, at [https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Press\\_Room/Publications/Brochures/2018-08-15-entschaedigung-ns-unrecht-engl.html](https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Press_Room/Publications/Brochures/2018-08-15-entschaedigung-ns-unrecht-engl.html).

<sup>4</sup> For more information, see CRS Report RL33808, *Germany's Relations with Israel: Background and Implications for German Middle East Policy*, by Paul Belkin.

<sup>5</sup> See, for example, Stuart Eizenstat (former U.S. Under Secretary of State and Deputy Treasury Secretary and lead Clinton Administration negotiator on Holocaust compensation matters), *Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished Business of World War II*, (New York: Public Affairs, 2003).

<sup>6</sup> For additional background information on these efforts see *ibid*; John Authers and Richard Wolffe, *The Victim's Fortune: Inside the Epic Battle over the Debts of the Holocaust*, (New York: Harper Collins, 2002); and Michael Bazzyler, *Holocaust Justice: The Battle for Restitution in America's Court*, (New York: NYU Press, 2003). For U.S. government documents and a report on the 1998 Washington Conference on Holocaust-era Assets, see the electronic archive at [https://1997-2001.state.gov/regions/eur/wash\\_conf\\_material.html](https://1997-2001.state.gov/regions/eur/wash_conf_material.html).

the Clinton Administration's lead official in the negotiations, the damaging effects of a wave of international criticism of Switzerland arising from its perceived poor handling of the "Swiss bank affair" led the German, Austrian, and French governments to proactively seek to resolve pending lawsuits against companies in their countries and stem the possibility of future lawsuits.<sup>7</sup> Each of these governments established broad settlement funds to compensate victims of forced and slave labor, looted assets, and insurance policy theft, among other crimes; each also reportedly viewed U.S. government approval of their compensation programs as a top priority. Official U.S. endorsement, it was believed, could ensure that future lawsuits or settlement challenges would have difficulty succeeding in U.S. courts.<sup>8</sup>

## Pre-ICHEIC Insurance Compensation Efforts

Historians agree that of all Holocaust victims, Jews were most likely to have owned substantial life and other insurance policies. Efforts to honor unpaid insurance policies have focused almost exclusively on Jewish victims. Initial postwar efforts in Western Europe to honor unpaid insurance policies belonging to victims are widely considered to have been far less comprehensive than other compensation and restitution programs. Several countries home to companies known to have sold such policies, including Germany, Austria, Switzerland, and the Netherlands, passed laws in the 1950s and 1960s attempting at least partially to honor these policies. However, a variety of factors led these efforts to fall short. These factors included uncertainty regarding the present value of the policies, difficulties with verification of policy ownership, disagreement over how to compensate the many Jews who were forced to either cash in their policies or surrender them to the Nazis, and an insurance industry in dire economic straits.

As has generally been the case with postwar settlement issues, German and Dutch companies are thought to have made greater efforts than other companies in addressing unpaid insurance policies after the war. In the late 1990s, German insurance giant Allianz went so far as to claim it had honored approximately 70% of its wartime policies sold in Germany—either before the war ended or through its participation in other postwar compensation programs.<sup>9</sup> Critics disputed Allianz's claim, arguing that policyholders were often grossly undercompensated, both during the war and with a greatly devalued currency in the war's aftermath. Other countries home to companies known to have sold insurance policies throughout the Nazi Reich, such as France and Belgium, did not administer any insurance-related compensation programs until the 1990s; to this day, the Italian government appears to have involved itself in the matter minimally, if at all.

The fact that many such Jews lived and purchased policies in Central and Eastern European countries that later became part of the Soviet Bloc—primarily Poland, Hungary, and Czechoslovakia—proved to be a significant complicating factor in postwar efforts to have these policies honored. Many of the companies that sold insurance in these countries no longer exist; however, several Western European companies that accounted for a significant portion of the Central and Eastern European markets continue to operate today. Specifically, the Italian company Assicurazioni Generali S.p.A (hereinafter "Generali") is known to have been active in Central and Eastern Europe. Generali and others have argued that responsibility to honor

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<sup>7</sup> With regard to the importance of national government involvement, Eizenstat says, "My bitter experience with the Swiss negotiations, in which the Swiss government refused to be a negotiating partner, taught me a lesson that I never forgot in joining the German, Austrian, and French talks. I would never again risk the prestige of the U.S. government in trying to settle class-action lawsuits against foreign companies, unless their governments were willing to become directly engaged ... Fortunately, Germany, Austria, and France ... recognized that the reputation of their private companies reflected on their nations' reputations." Eizenstat, *op. cit.*, p. 341.

<sup>8</sup> *Ibid.*

<sup>9</sup> Statement of Mr. Herbert Hansmeyer, member of the Board of Management of Allianz AG. Washington Conference on Holocaust-era Assets (1998), *op. cit.*, p. 594.

these policies was transferred to state-run insurance entities by way of the state takeover and nationalization of the industry under communist rule.<sup>10</sup>

## The International Commission on Holocaust Era Insurance Claims

In 1997, 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. A series of often emotional and contentious meetings between Holocaust survivors and their heirs, insurance regulators, and insurance companies over the course of the next year resulted in a joint decision to form an independent international commission to resolve unpaid claims.

In August 1998, the NAIC, six European insurers (Allianz, AXA, Basler,<sup>11</sup> Generali, Winterthur, and Zurich), the Claims Conference, the World Jewish Restitution Organization (WJRO), and the State of Israel signed a Memorandum of Understanding (MOU) establishing an international commission tasked with both identifying Holocaust victims who had purchased insurance policies from 1920 to 1945 and administering the repayment of these policies. Although the U.S. federal government did not have a voting representative on the International Commission on Holocaust Era Insurance Claims' (ICHEIC) board, state insurance regulators were officially represented through the NAIC and a State Department representative was granted observer status.<sup>12</sup> The board was chaired by former U.S. Secretary of State Lawrence Eagleburger and included 12 other members: three NAIC representatives; two representatives of Jewish organizations (the Claims Conference and WJRO); a representative of the state of Israel; and six representatives of European insurers and insurance regulators.

ICHEIC members agreed that ICHEIC's claims process would adhere to the following principles:

- The claims process would be free of charge to the claimant;
- 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
- ICHEIC and participating insurance companies would conduct archival research to establish a database of potential policyholders against which to match submitted claims.<sup>13</sup>

ICHEIC's claims process opened in 2000 and closed in March 2007. It offered payments totaling approximately \$306 million to 48,263 of about 91,500 claimants. Of the roughly 48,000 claimants who

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<sup>10</sup> For example: "Generali branches in these regions were nationalized by the Communist governments that came into power immediately after WWII, and consequently Generali lost ownership of the assets held in these countries as reserves for payment of the policies (the insureds' policies themselves also were nationalized). Generali decided for humanitarian reasons to make payments on these policies to insureds and heirs..." Generali, "Holocaust-Era Insurance Programs," at <https://www.generali.com/info/holocaust>.

<sup>11</sup> Basler subsequently withdrew from the International Commission on Holocaust Era Insurance Claims (ICHEIC). According to German Insurance Association (GDV) representatives, claims against Basler were covered through the Association's participation in ICHEIC.

<sup>12</sup> There is no federal regulator for insurance companies that are instead overseen by the individual states. The National Association of Insurance Commissioners (NAIC) is a "standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories." See NAIC, "About the NAIC," at [https://www.naic.org/index\\_about.htm](https://www.naic.org/index_about.htm).

<sup>13</sup> For additional background information on ICHEIC, see the ICHEIC Final Report, *Finding Claimants and Paying Them*, June 2007, at <http://www.icheic.org/>.

received ICHEIC payment offers, about 31,300 were offered one-time “humanitarian” payments of \$1,000. Observers and others involved in the process report that rejected claims were often determined to have been honored under previous compensation agreements or were determined to fall short of the relaxed standards established by the commission. Some critics contend that ICHEIC applied these standards inconsistently, rejecting what were often valid claims.<sup>14</sup>

In addition to the funds paid to individual claimants, ICHEIC allocated \$169 million to a “humanitarian fund” overseen by the Claims Conference. According to Claims Conference guidelines, 80% was designated to Holocaust survivors, and 20% to Holocaust education and remembrance.

Ultimately, ICHEIC received a total of about \$550 million from participating insurers. Of this, \$350 million was secured from German companies through a watershed 2000 executive agreement between the United States and Germany, in which the German government and industry committed \$5 billion to compensate former forced and slave laborers and other victims of Nazi crimes.<sup>15</sup> Of the remainder, \$100 million came from Generali; \$25 million came from a U.S.-Austrian executive agreement; \$25 million came from bilateral agreements between ICHEIC and Swiss insurers; and \$50 million came from agreements with the Dutch and Belgian insurance associations. In addition to the five insurers on ICHEIC’s board, ICHEIC secured the participation of 75 other companies through bilateral agreements with the German, Dutch, and Belgian insurance associations.

Despite ICHEIC’s closure, some European insurers, including members of the German Insurance Association (*Gesamtverband der Deutschen Versicherungswirtschaft*, or GDV) and Generali, report they are continuing to accept and honor legitimate claims based on ICHEIC’s relaxed standards of proof. According to the GDV, between March 2007 and July 2019, the association received 520 inquiries that resulted in the identification of 317 insurance policies. Of these policies, 130 were eligible for compensation and 187 were determined to have been previously paid or compensated for. In total, GDV companies report they have paid \$3.2 million for claims brought since March 20, 2007.<sup>16</sup>

## Administration Policy on ICHEIC

U.S. Administrations consistently endorsed ICHEIC as an important and unprecedented mechanism to provide support and compensation to individuals whose insurance claims were believed unlikely to have been satisfactorily resolved through existing legal channels. The Clinton Administration sought to secure funding for ICHEIC and its claims process as part of the broader compensation agreements it negotiated with the German, Austrian, and French governments in the late 1990s. In exchange for financial commitments made to ICHEIC by German and Austrian companies by way of these agreements, the Clinton Administration agreed to endorse ICHEIC as the exclusive mechanism for resolving unpaid Holocaust-era insurance claims.

The Administration also sought to grant participating German companies so-called legal peace from further action against them in U.S. courts by committing to file statements of interest encouraging dismissal of any future legal action against German companies in the United States.<sup>17</sup> This commitment

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<sup>14</sup> Such criticism was, for example, expressed by former New York Superintendent of Insurance and ICHEIC appeals arbitrator Albert Lewis. See Stewart Ain, “Probe ‘Phantom Rule,’ Says Congressman,” *The New York Jewish Week*, July 6, 2007.

<sup>15</sup> See U.S. Department of State, “German Foundation,” at <https://www.state.gov/german-foundation/>.

<sup>16</sup> GDV, “Post-ICHEIC Statistics (AVHO),” July 1, 2019, at <https://www.en.gdv.de/resource/blob/29874/adcb184cc070366c005d2e5630272e04/inquiries-received-by-german-companies-since-the-conclusion-of-the-icheic-compensation-data.pdf>.

<sup>17</sup> President Clinton’s National Security Adviser Samuel Berger summarized the U.S. commitment to give German companies “enduring and all-embracing legal peace” in a June 2000 letter to his German counterpart. See June 16, 2000, letter from U.S. National Security Adviser Samuel Berger to German Foreign Policy and Security Adviser Michael Steiner.

appears to have effectively impeded subsequent legal challenges or the development of alternatives to ICHEIC. Most significantly, in 2003, the U.S. Supreme Court struck down legislation in California that would have imposed additional reporting requirements on European insurers. In *American Insurance Association v. Garamendi*,<sup>18</sup> the Court ruled that the California law ran counter to the U.S. commitment to ICHEIC as enshrined in the executive agreements with European governments.

## Key Points of Contention

Despite receiving the support of U.S. Administrations, ICHEIC was broadly criticized, including by Members of Congress. Critics put forward the following charges: ICHEIC's administrative and claims processes suffered from a lack of transparency and oversight; ICHEIC often did not meet its commitment to apply relaxed standards of proof in assessing claims; and ICHEIC and participating insurance companies did not make comprehensive policyholder lists available to the public.<sup>19</sup> Since ICHEIC's closure, critics have emphasized that the roughly \$306 million made available to Holocaust survivors and their heirs falls far short of their estimates of the total value of unpaid Holocaust-era insurance policies, which range from \$17 billion to \$200 billion.<sup>20</sup> ICHEIC proponents have responded that ICHEIC administered a claims-based process, giving all claims fair consideration. They argue, for example, that the total amount ICHEIC paid falling short of some estimates of the value of unpaid policies suggests a lack of claimants rather than a flawed claims process.

## Policy Valuation

A central critique of the ICHEIC process is that it paid out a relatively low proportion of the value of the insurance assets in question. In the 110<sup>th</sup> Congress, one House bill on the issue (H.R. 1746, 110<sup>th</sup> Congress) would have included a finding that “(12) Experts estimate that the value in 2006 of unpaid life, annuity, endowment, and dowry insurance theft from European Jewry from the Holocaust and its aftermath ranges between \$17,000,000,000 and \$200,000,000,000.”

The estimates referenced, \$17 billion to \$200 billion, generally came from critics of the ICHEIC process and advocates for Jewish survivors and their heirs.<sup>21</sup> The insurance companies involved have produced estimates that are significantly less, in the range of \$2 billion to \$3 billion. ICHEIC itself commissioned a task force led by Glenn Pomeroy (then insurance commissioner of North Dakota) and Philippe Ferras (then executive vice-president of AXA Insurance) to assess the value of Holocaust-era insurance markets.<sup>22</sup> The Pomeroy-Ferras Report, as it is usually known, lays out in great detail various facts and assumptions around the issue of valuation, including ranges of estimates for each country in the home currency. It does not itself give a current-day number for the value of all unpaid claims, although it would

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<sup>18</sup> 539 U.S. 396 (2003).

<sup>19</sup> Eizenstat captures much of the criticism surrounding ICHEIC in his characterization of ICHEIC Chairman Eagleburger's own complaints about the ICHEIC process as follows: “there was incessant internal bickering over every issue—how to value policies from prewar days, which lists of policyholders should be opened, the costs to be borne in processing claims, the ICHEIC claims process itself. Eagleburger had difficulty getting the companies, particularly Allianz, to fulfill the terms of the MOU ... And ICHEIC's administrative failings led to few claims paid and large costs.” Eizenstat, *op. cit.*, p. 267.

<sup>20</sup> See, for example, Sidney Zabudoff, “The International Commission of Holocaust-Era Insurance Claims: Excellent Concept but Inept Implementation,” *Jewish Political Studies Review*, Spring 2005.

<sup>21</sup> The \$17 billion figure appears to come from the previously cited work of Mr. Sydney Zabudoff. The \$200 billion appears to come from the work of Professor Joseph Belth in *The Insurance Forum*, “Life Insurance and the Holocaust,” vol. 25, no 9 (September 1998), p. 81.

<sup>22</sup> ICHEIC, *Report to Lawrence Eagleburger, Chairman, by the Task Force Co-Chaired by Glenn Pomeroy and Philippe Ferras on the Estimation of Unpaid Holocaust Era Insurance Claims in Germany, Western and Eastern Europe*, at <http://www.icheic.org/pdf/Pomeroy-Ferras%20Report.pdf>.

be possible to calculate such a value using the ICHEIC valuation calculations applied to individual claims (these guidelines are discussed below).

Despite the seemingly wide range of estimates—between \$2 billion and \$200 billion—the basic method for the competing calculations is largely the same—estimate the total amount of insurance held by Jews in the relevant parts of Europe prior to World War II, subtract the amounts that have been previously paid on these policies, and adjust this amount for the intervening decades. Although the figures for total insurance amounts and the approximate Jewish population are generally accepted, the figures used in most other steps of the calculation are often disputed. These include the specific propensity for the Jewish population to purchase insurance and the method used to value assets denominated in historical foreign currencies from the 1930s in current U.S. dollars. Unfortunately, there is often little objective evidence upon which to base the choice of what figure to use.

Perhaps the single factor that can have the widest impact on the range of estimates is the method used to translate the values of insurance policies from the 1930s denominated in European currencies to current-day U.S. dollars.

- The first part of this question is, *what index does one use to adjust for the intervening decades?* The answer to this can change the final value dramatically. At the current day, using the U.S. Consumer Price Index, \$1 in 1938 is equivalent to approximately \$18.33; if that \$1 from 1938 had been invested in 10-year U.S. government bonds, it would be worth approximately \$70.09; if it had been invested in the S&P 500, \$1 in 1938 would be worth approximately \$5,096. The corresponding figures for Germany, for example, are much lower, reflecting, of course, the economic damage suffered during the war, among other factors. One unit of German currency adjusted from 1938 to the current day using German inflation would be multiplied by approximately 8.3; adjusted using German bond returns, the figure would be 15.2; and, using German stock returns, it would be 357.5.<sup>23</sup> In general, the ICHEIC process used multipliers based on long-term bond rates, although there were times when the multipliers apparently were arrived at through negotiation between the parties involved.
- The second part of the question is, *when does one choose to exchange the policy value from the original currency into U.S. dollars?* This is particularly important for German policies since, following World War II, West Germany reformed its currency from Reichsmarks (RM) to Deutsche Marks (DM). This was done at a rate of 10 RM to 1 DM for most currency and 5 RM to 1 DM for long-term financial assets. Thus, if one chooses to change a RM policy into dollars prior to the currency reform, the current-day dollar value of that policy would be 5 or 10 times greater than if one chooses to change that policy into dollars after the currency reform. In general, for Germany and Western Europe, values were kept in original currencies until the current day. For Eastern Europe, currencies were converted to dollars in the past.

ICHEIC's method of determining the present-day value of individual policies differed according to the country of origin and whether not the policy specified a particular currency. German policies were paid according to a formula in a general German postwar restitution law that was then adjusted using German

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<sup>23</sup> The stock and bond yield calculations assume reinvestment of interest and dividends and do not include the effect of taxes. Calculations by CRS using data series from <http://www.globalfinancialdata.com> and <https://finance.yahoo.com/>. For inflation and bond yields, the series used for the entire time periods were “United States BLS Consumer Price Index,” “Germany Consumer Price Index,” “USA 10 year Government Bond Total Return Index,” and the “Germany 10 year Government Bond Return Index.” For stock returns, the series used were “S&P 500® Total Return Index” (1938-2008), and “Germany CDAX Total Return Index” (1938-2008) and “S&P Total Return Index” and “DAX Performance Index” (2008-2019).

long-term bond rates. ICHEIC offers on German policies were made in euros or converted to dollars at the then-current exchange rate. Other Western European policies generally were left in the original currencies and brought forward in time using long-term bond rates in the country of origin, with ICHEIC offers made in the original currencies. Eastern European policies were first converted into dollars, using 1938 exchange rates that were discounted 30%, and then multiplied by 11.286 to bring the value to the year 2000.<sup>24</sup> After 2000, the values were brought forward to the current day using a rate based on long-term bond rates. Policies that specified a currency, such as British pounds or Swiss francs, were generally left in those currencies and then brought to the current day using long-term bond rates. ICHEIC also used minimum valuation thresholds for each individual policy claimant. If the ICHEIC valuation standards resulted in a present-day value that was below a certain minimum value, the actual offer given to the claimant was raised. The minimum values ranged from \$500 to \$4,000, depending on the country involved and whether the policy was held by someone who survived the Holocaust.<sup>25</sup>

## Congressional Concerns and Proposed Legislation

Since the late 1990s, Members of Congress have taken a variety of steps seeking to ensure that Holocaust survivors and their heirs receive fair compensation for unpaid insurance policies. Between 2001 and 2003, several congressional concerns regarding problems with ICHEIC administration, oversight, and its claims process were brought to light during a series of hearings before the House Committee on Government Reform focused specifically on ICHEIC and on proposed legislation intended to create alternative and more effective means for Holocaust survivors and their heirs to resolve unpaid insurance claims. During the 2001 hearing, critics expressed dismay that ICHEIC had not launched its claims process until early 2000—1½ years after the MOU was signed—and that a year-long “pilot” claims process resulted in what some considered remarkably high rejection rates.<sup>26</sup> ICHEIC also was confronted with complaints of high administrative costs and board secrecy. ICHEIC supporters generally acknowledged that the claims process got off to a slow and problematic start, but they argue that initial missteps were addressed and that the claims process was ultimately fair and comprehensive.

In the year following the 2001 congressional hearing, an Executive Monitoring Group appointed by Chairman Eagleburger to investigate claims handling found widespread mismanagement in insurance company handling of documented claims. As a result, ICHEIC implemented a system to “verify” company claims decisions and compelled participating insurance companies to undergo audits of their claims decisions after 2002.<sup>27</sup>

In 2003, the Supreme Court’s *Garamendi* ruling effectively halted initiatives that would have required European insurers to disclose policyholder records and provided Holocaust survivors and their heirs a cause of action to pursue claims substantiated by these records. In *Garamendi*, the Supreme Court cited an absence of congressional action to counter or amend Administration support of ICHEIC. Specifically, the failure of numerous legislative proposals aimed at amending Administration policy was considered evidence that “Congress has done nothing to express disapproval of the President’s policy” and that

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<sup>24</sup> The 30% discount on the exchange rates and the multiplier value of 11.286 were the result of negotiations by the ICHEIC participants and apparently included because of the postwar nationalization of Eastern European insurance companies.

<sup>25</sup> ICHEIC, “Guide to Valuation Procedures: Edition Dated 22-10-02,” at [http://www.icheic.org/pdf/ICHEIC\\_VG.pdf](http://www.icheic.org/pdf/ICHEIC_VG.pdf).

<sup>26</sup> U.S. Congress, House Committee on Government Reform, *The Status Of Insurance Restitution For Holocaust Victims And Their Heirs*, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., November 8, 2001, Serial No. 107-47.

<sup>27</sup> In June 2007, ICHEIC reported having “verified” 30,000 total claims. ICHEIC Final Report, op. cit.

furthermore, “Given the President’s independent authority ‘in the areas of foreign policy and national security,... congressional silence is not to be equated with congressional disapproval.’”<sup>28</sup>

Several bills introduced in Congress since *Garamendi* would have largely counteracted the ruling, including altering U.S. policy by requiring European insurers to disclose policyholder lists from the Holocaust era and by strengthening survivors’ ability to bring cases against European insurers in U.S. courts.<sup>29</sup> None of these bills was enacted, and each was opposed by the George W. Bush and Barack Obama Administrations, which continued to consider ICHEIC the exclusive vehicle for resolving Holocaust-era insurance claims.

The most recent legislation, introduced in the House and Senate in the 115<sup>th</sup> Congress (H.R. 762 and S. 258), would have provided a congressionally sanctioned vehicle for the pursuit of claims by individuals. The bills would have granted beneficiaries of insurance policies purchased during the period surrounding World War II in Nazi Germany, or areas controlled by that government, as well as their heirs or successors in interest, the right to sue in a civil action against insurers and their successors in interest to enforce any rights under the policy. The legislation essentially would have reversed *Garamendi* by explicitly stating that the state laws that create a cause of action related to covered policies against insurance companies (i.e., the laws at issue in the class action lawsuits, described above) and the state laws that imposed disclosure requirements on insurance companies relating to covered policies (i.e., the California statute at issue in *Garamendi*) should not be preempted by executive agreements or executive foreign policy. Furthermore, the proposed legislation would have prohibited the use of federal funds to file the statements of interest that the Department of Justice has filed in the civil suits against insurance companies stating that it is the policy of the United States to resolve all claims through ICHEIC.

In general, those supportive of proposed legislation on the Holocaust-era insurance issues have argued that both the ICHEIC process and previous agreements between the United States and European governments failed to compensate a significant number of Holocaust survivors and their heirs and beneficiaries. Some of those critical of ICHEIC and supportive of the proposed legislation acknowledge that the standards of proof placed on a claimant in a U.S. court of law would likely be far more stringent than those exercised by ICHEIC. However, they argue that in light of ICHEIC’s closure, the courts represent one of the few, if not the only, remaining avenues by which to pursue claims. Furthermore, a strong sense of distrust regarding ICHEIC’s application of its relaxed standards of proof, and of insurers’ thoroughness in searching their records, appears to have increased hope that public disclosure of Holocaust-era records could lead to substantive claims.

Opponents of the proposed legislation often argued that by effectively reversing past commitments made by the U.S. government—specifically, the granting of legal peace to German companies—the bills could damage future cooperation with European governments on other Holocaust compensation and restitution issues. In addition, some U.S. and German government representatives suggest that the credibility of future U.S. and German commitments to European companies in these areas could be called into question. Specifically, German government officials indicated that new lawsuits against German companies would likely limit their ability to gain future financial commitments from these and other German companies in Holocaust compensation and restitution cases.<sup>30</sup> Critics also argued that given the legal and historical

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<sup>28</sup> In its decision, the Supreme Court highlighted the failure of the following proposed legislation to achieve enactment: H.R. 1210, 108<sup>th</sup> Congress (2003); S. 972, 108<sup>th</sup> Congress (2003); H.R. 2693, 107<sup>th</sup> Congress (2001); H.R. 126, 106<sup>th</sup> Congress (1999). 539 U.S. at 429, *citing*, *Haig v. Agee*, 543 U.S. 280, 291 (1981).

<sup>29</sup> See, for example, H.R. 3129, 108<sup>th</sup> Congress, the Holocaust Victims Insurance Act, introduced by Rep. Adam Schiff on September 17, 2003; H.R. 1746, 110<sup>th</sup> Congress, the Holocaust Insurance Accountability Act of 2008, introduced by Rep. Ileana Ros-Lehtinen on March 28, 2007; H.R. 4596, 111<sup>th</sup> Congress, the Holocaust Insurance Accountability Act of 2010, introduced by Rep. Ileana Ros-Lehtinen on February 4, 2010; and S. 4033, 111<sup>th</sup> Congress, the Restoration of Legal Rights for Claimants under Holocaust-Era Insurance Policies Act of 2010, introduced by Sen. Arlen Specter on December 15, 2010.

<sup>30</sup> CRS interviews of German foreign ministry officials, Berlin, November 2007.

complexities of substantiating the existence and value of Holocaust-era insurance policies, it is unlikely that claims would be satisfactorily settled in U.S. courts. They maintained that it was precisely this fact that drove U.S. insurance regulators, the Claims Conference, and others to back ICHEIC. In addition, given the likelihood of legal challenges from European insurers, some question whether claims could ever be resolved within a reasonable period of time.