

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The top bulb has a dark blue cap. The bottom bulb has a light blue cap.

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Report 98-903

*HOLOCAUST-RELATED LEGISLATION OF THE 105TH
CONGRESS*

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Updated October 29, 1998

Abstract. This report lists, describes, and analyzes a selection of Holocaust-related bills and resolutions of the 105th Congress.

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Holocaust-Related Legislation of the 105th Congress

October 29, 1998

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ABSTRACT

This report lists, describes, and analyzes a selection of Holocaust-related bills and resolutions of the 105th Congress:

- ! S. 1564 (P.L. 105-158), the Holocaust Victims Redress Act
- ! S. 1900 (P.L. 105-186), establishing the Presidential Advisory Commission on Holocaust Assets in the United States
- ! S. 1379 (P.L. 105-246), the Nazi War Crimes Disclosure Act
- ! H.R. 4328 (P.L. 105-277), the omnibus appropriation bill which includes funding for the U.S. Holocaust Memorial Council and the U.S. Holocaust Memorial Museum
- ! H.Res. 557, concerning identification and restitution of stolen Holocaust-era assets
- ! H.R. 3121, the Holocaust Victims Insurance Act
- ! H.R. 3143, the Comprehensive Holocaust Accountability in Insurance Measure
- ! H.R. 4138, the Stolen Artwork Restitution Act of 1998
- ! H.R. 4563, which would amend the Internal Revenue Code to exclude income received for settlement of claims of Holocaust victims

This report draws on information contained in several earlier CRS reports: 98-296, *The Holocaust--Recovery of Assets from World War II: A Chronology, August 1, 1997 to March 5, 1998*, March 27, 1998; 97-174, *Swiss Banks and Holocaust Assets from World War II: A Chronology of Recent Investigations*, February 5, 1997; and 97-818, *Swiss Banks and Holocaust Assets from World War II: A Chronology of Recent Events, Part II*, September 1997, all by Barbara Salazar; and 98-699, *Holocaust Survivor and Heir Lawsuits to Recover Swiss Bank Deposits*, by M. Maureen Murphy, August 24, 1998. It is not anticipated that this report will be updated. New reports, however, may continue to track Holocaust-related legislation in the 106th Congress and beyond.

Holocaust-Related Legislation of the 105th Congress

Summary

Over 30 bills and resolutions related in some way to the Nazi-era Holocaust were introduced in the 105th Congress. Five of these were enacted or adopted:

S. 1564 (P.L. 105-158), the Holocaust Victims Redress Act, authorizes \$25 million for Holocaust survivors and \$5 million for archival research on Holocaust-era issues. It also urges the 15 European states receiving gold from the final disbursement of the Tripartite Gold Commission to donate those proceeds to Holocaust-related charities.

S. 1900 (P.L. 105-186), establishes the Presidential Advisory Commission on Holocaust Assets in the United States.

S. 1379 (P.L. 105-246), the Nazi War Crimes Disclosure Act, amends the Freedom of Information Act to facilitate access to U.S. government records concerning Nazi war crimes.

H.R. 4193/S. 2237/H.R. 4328 (P.L. 105-277), the Department of Interior and Related Agencies Appropriations Bill, includes funding for the U.S. Holocaust Memorial Council and the U.S. Holocaust Memorial Museum.

H.Res. 557, a House Resolution, expresses support for U. S. government efforts to identify Holocaust-era assets and urges the restitution of individual and communal property by Central and East European governments.

Among the pieces of legislation that were not adopted were H.R. 3121 and H.R. 3143, which addressed issues of Holocaust victims' claims against European insurance companies. H.R. 4138 dealt with stolen art works, including those looted during the Holocaust. H.R. 4563 sought to amend the Internal Revenue Code to exclude income received for settlement of claims of Holocaust victims. These or similar bills may be introduced in the 106th Congress in 1999.

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Holocaust-Related Legislation of the 105th Congress

Introduction

It is widely recognized that the Nazi Holocaust ranks as one of history's greatest crimes against humanity. Less well understood is the fact that the Holocaust also constitutes one of the largest acts of theft in history. Virtually all property of Holocaust victims was seized by the Nazis, accomplices, and others.¹ It is difficult, if not impossible, to accurately assess the value of this property. A study done for the World Jewish Congress in 1944, with fragmentary data, arrived at a figure of \$9 billion 1944 dollars.² After the war, the government of the Federal Republic of Germany (FRG) undertook an extensive program of reparation payments to Holocaust victims, their heirs, and to the state of Israel. Holocaust survivors and victims' heirs in Central and Eastern Europe suffered a double loss; post-war communist regimes in Central and Eastern Europe prevented them from receiving reparations payments from the FRG. In addition, those regimes took possession of most of the looted property on their territory, denying it to Holocaust survivors and individual and communal claimants.

A half century after these events, several developments revived interest in Holocaust-related issues. Following the collapse of communism in Central and Eastern Europe in 1989 and the emergence of democratic regimes there, previously secret government records were opened and large numbers of Holocaust survivors and their heirs sought to make claims for long-lost property and for reparation payments. At about the same time, a group of Holocaust survivors and victims' heirs brought a class action law suit against three large Swiss banks, charging them with having illegally seized the deposits of Holocaust victims and of refusing, thereafter, to return these assets to survivors and their heirs.³ These developments, plus the recalcitrance of Swiss banking and government officials in responding to the

¹ Looted assets included individual and communal, private and public, movable and unmovable property: countless synagogues, schools, hospitals, orphanages, old-age homes, factories, stores, homes, apartments, land, livestock, financial assets, jewelry, art works, books, furniture, etc. Gold teeth and hair of death camp victims were systematically collected. The Nazi regime required European insurance companies to pay to it the surrender value of many Holocaust victims' insurance policies. Laurence Weinbaum, *Righting an Historic Wrong, Restitution of Jewish Property in Central and East Europe*, Institute of the World Jewish Congress, Jerusalem, 1995, p. 5; and testimony of Under Secretary of State Stuart Eizenstat, before the House International Relations Committee's hearing on Heirless Property Issues of the Holocaust, August 6, 1998.

² Nehemiah Robinson, *Indemnification and Reparations*, New York, 1944. If this \$9 billion had earned the average rate of interest paid on the publicly held portion of the U.S. national debt over the period 1944-1998, it would be worth approximately \$150 billion in 1998.

³ See CRS Report 98-699, *Holocaust Survivor and Heir Lawsuits to Recover Swiss Bank Deposits*, by M. Maureen Murphy, August 24, 1998.

Holocaust-era claims, and the attendant publicity and media attention, helped revive U.S. government interest in many long-dormant Holocaust issues.⁴

In 1995, the Clinton Administration appointed Stuart Eizenstat, then U.S. Ambassador to the European Union, to be the State Department's Special Envoy on Property Restitution in Central and Eastern Europe. In addition, bipartisan efforts in both chambers of Congress sought to address a variety of Holocaust-related issues. The executive and legislative branches have been largely cooperative in these efforts. In testifying at a House International Relations Committee hearing on Holocaust property issues on August 6, 1998, Mr. Eizenstat, now Under Secretary of State, commended the many congressional initiatives in this area and urged the Congress to be even more active in encouraging the governments of Central and Eastern Europe to be more responsive on such issues as restitution of Holocaust-era property.

More than thirty Holocaust-related bills and resolutions were introduced in the 105th Congress. Five have been enacted or adopted. This report lists, describes, and analyzes a selection of significant Holocaust-related legislation of the 105th Congress.

These bills cut across a wide range of subject areas and disciplines. Analysts from five different CRS research divisions contributed to this report. Below is a list of the contributors, plus several other CRS analysts, with their respective areas of expertise concerning Holocaust-related issues.

Name	Area of Expertise	CRS Division	Phone
Boren, Susan	Holocaust Memorial Museum; arts; looted art	EPW	7-6899
Brumbaugh, David	Taxation	ECON	7-7792
Ek, Carl*	Eastern Europe	FAND	7-7286
Goldman, Stuart	European history	FAND	7-7685
Kim, Julie*	Eastern Europe	FAND	7-3692
King, Rawle	Insurance claims	ECON	7-5975
Makinen, Gail	Financial restitution	ECON	7-7797

⁴ See CRS Reports 98-296, *The Holocaust--Recovery of Assets from World War II: A Chronology, August 1, 1997 to March 5, 1998*, March 27, 1998; 97-174, *Swiss Banks and Holocaust Assets from World War II: A Chronology of Recent Investigations*, February 5, 1997; and 97-818, *Swiss Banks and Holocaust Assets from World War II: A Chronology of Recent Events, Part II*, September 1997, all by Barbara Salazar.

Murphy, Maureen*	Swiss bank settlement	ALD	7-6971
Salazar, Barbara*	Overview, documents, looted art	CRD	7-8996
Smith, Stephanie	U.S. Government commissions	GOV	7-8674
Wallace, Paul	War crimes disclosure	ALD	7-7923
Weimer, Douglas	Looted art	ALD	7-6413

* Did not contribute to this report, but works on some Holocaust-related issues.

Enacted or Adopted Legislation

The following bills and resolutions have been enacted or adopted as of October 19, 1998.

S. 1564/P.L. 105-158, Holocaust Victims Redress Act

Summary. Title I of this act directs the President to instruct the commissioner representing the United States on the Tripartite Commission for the Restitution of Monetary Gold to seek and vote for a timely agreement under which all signatories to the Paris Agreement on Reparations with claims against the monetary gold pool in the Commission's jurisdiction contribute all or a substantial portion of such gold to charitable organizations to assist survivors of the Holocaust. As an inducement to do so, it authorizes the President to obligate up to \$30 million for such distribution (this sum represents the present value of the difference between what Congress originally authorized as compensation for the assets of heirless victims of the Holocaust either seized or frozen in the United States at the onset of World War II and the amount actually paid in 1962). Of the \$30 million authorized, \$25 million is to go to organizations paying restitution to Holocaust victims, and \$5 million for archival research to assist in the restitution of assets looted or extorted from victims of the Holocaust and such other activities that would further Holocaust remembrance and education. Title II expresses the sense of the Congress that all governments undertake good faith efforts to return works of art confiscated from rightful owners during the period of Nazi rule.

Status. Introduced by Senator D'Amato, November 13, 1997. Signed into law (P.L. 105-158) February 13, 1998.

Analysis. This legislation has multiple purposes. First, it seeks to redress a perceived inequity in earlier Holocaust legislation. Second, it both instructs the United States to work toward a speedy resolution of the claims some 15 countries have on a stock of gold seized from their central banks by the Nazis during World War II that is now under the control of the United States, Britain, and France, and urges these countries, once distribution is made, to use all or a substantial portion of this gold to aid Holocaust survivors. Third, it expresses the sense of the Congress that all governments undertake good faith efforts to return works of art confiscated from rightful owners during the period of Nazi rule.

A brief discussion of history is necessary to understand the first goal of this legislation. At the outbreak of World War II, the U.S. government seized German

assets in the United States worth some \$198 million and froze assets worth some \$1.2 billion belonging to Swiss nationals and institutions. Among both groups of asset holders were thought to be Jewish Holocaust victims or their beneficiaries. After the war was over, Congress, recognizing that some of the victims of the Holocaust, whose assets were either seized or frozen, might not have had legal heirs, enacted legislation authorizing the transfer of up to \$3 million of such assets to organizations dedicated to providing relief and rehabilitation for Holocaust survivors.

For a variety of reasons, it proved unworkable to transfer the \$3 million as intended. To fulfill the intent of the legislation, Congress in 1962 agreed to a lump-sum settlement and \$500,000 was provided to the Jewish Restitution Successor Organization of New York. One purpose of Title 1 of the current bill is to recognize the moral claim of victims of the Holocaust to the unrestituted portion of the amount originally authorized in the immediate post-World War II legislation, \$3 million, and the amount actually appropriated in 1962, \$500,000. It does so by authorizing the payment to Jewish relief organizations of the *present value* of the difference between these two sums. The *present value* in this legislation is placed at a sum not to exceed \$30 million.⁵

The payment of this sum is also related to the second goal of Title 1, which encourages certain foreign countries to behave in a similar fashion. This goal concerns the final undistributed gold reserves of the central banks of 15 countries that were seized by the Nazis during World War II. This gold (approximately 6 metric tons, worth about \$58 million dollars in 1998), had been under the joint control of the United States, Britain, and France through the Trilateral Gold Commission (TGC), the post-war agency dealing with Nazi looted gold.⁶ This legislation calls for the United States to press for a speedy resolution of outstanding claims so that the gold can be distributed and urges the claimant nations to transfer all or a substantial part of what they receive to charitable organizations assisting survivors of the Holocaust.

Title II expresses the sense of Congress that, consistent with the 1907 Hague Convention, all governments should undertake good faith efforts to return private and public property, including works of art, to the rightful owners in cases where assets were confiscated during Nazi rule and there is reasonable proof that the claimant is the rightful owner. Currently, there are no reliable estimates of the number of artworks confiscated or of the market value of these works of art.

H.R. 3662/S. 1900 (P.L. 105-186), U.S. Holocaust Assets Commission Act of 1998

Summary. The 105th Congress enacted Public Law 105-186 to create and establish the Presidential Advisory Commission on Holocaust Assets in the United

⁵ The implicit nominal rate of interest by which \$2.5 million in 1962 is translated into \$30 million in 1998 is approximately 7.15%. The average rate of interest on U.S. Treasury securities over this 36-year period ranges from 6.27% (for 3-month securities) to 7.65% (for 10-year securities). If inflation (as measured by the consumer price index) is taken into consideration, the real or inflation adjusted rate of interest by which \$2.5 million is translated into \$30 million is approximately 2.25%.

⁶ Part of the impetus for this legislation came from the TGC-sponsored London Gold Conference of December 1997, where British Foreign Secretary Sir Robin Cook proposed the creation of the International Fund for Needy Victims of Nazi Persecution, to which the United States pledged an initial \$4 million.

States. The commission is required to study, and develop an historical record of, the disposition of specified assets of Holocaust victims, survivors, and heirs that are in the possession or control of the U.S. government.

Status. Introduced by Sen. D'Amato on April 1, 1998, and referred to the Banking Committee. On May 1, 1998, it passed the Senate, amended. On June 9, the House struck all after the enacting clause and inserted in lieu thereof the provisions of a similar measure, H.R.3662, which passed the House, amended. The following day, on June 10, the Senate agreed to the House amendments by unanimous consent. President Clinton signed the bill as Public Law 105-186 on June 23, 1998.

Analysis. As enacted, P.L. 105-186 creates the Presidential Advisory Commission on Holocaust Assets in the United States, to be composed of 21 members. Of this total, the President appoints eight members from the private sector, and four members, each representing the Departments of State, Justice, Treasury, and the U.S. Army. The Chairperson of the U.S. Holocaust Memorial Council is also a member of the commission. In addition, four congressional Members are to be appointed to the commission from the House and four congressional Members from the Senate.

The commission is mandated to “conduct a thorough study and develop a historical record” of any assets obtained from Holocaust victims that may be in the possession of the U.S. government. These assets could include gold bullion or money in the possession of a Federal Reserve bank, gems and jewelry, U.S. bank accounts, insurance policies, U.S. real estate, art works, manuscripts, and religious objects. In carrying out its statutory mandate, the commission is authorized to hold public hearings, obtain information from federal agencies, use franked mail, and accept gifts or donations of services or property. The commission is authorized to receive appropriations totaling \$3.5 million for FY 1998 through 2000.

No later than December 31, 1999, the commission is required to submit a final report to the President with any final legislative or administrative recommendations as it deems appropriate. After receiving the final report, the President shall submit to Congress his recommendations for further legislative or administrative action to implement the commission’s final report. The commission terminates 90 days after submission of its final report.

S. 1379/P.L. 105-246, Nazi War Crimes Disclosure Act

Summary. This act amends the Freedom of Information Act (5 U.S.C. § 552) to establish a presumption that Nazi war criminal records are to be made available to the public. This in effect would require all materials to be released in their entirety unless a Federal agency head concludes that the release of all or part of the records would compromise privacy or national security interests. The agency head must notify Congress of any decision not to release the records.⁷

Status. Introduced by Sen. DeWine, November 5, 1997. Passed Senate, as amended, by unanimous consent on June 19, 1998. Passed House and cleared for the White House Aug. 6, 1998. Presented to the President September 28, 1998. Signed into law, October 8.

⁷ For further information, see CRS Report 98-329, *Nazi War Crimes Records Disclosure: S. 1379*, by Paul Wallace, updated July 23, 1998.

Analysis. This legislation establishes the Nazi War Criminal Records Interagency Working Group, to be made up of agency heads selected by the President whose functions are to: (1) "locate, identify, inventory, recommend for declassification, and make available to the National Archives and Records Administration, all Nazi war criminal records [held by the United States]; (2) coordinate with agencies and take such actions as necessary to expedite the release of such records to the public; and (3) submit a report to Congress describing all such records, the disposition of such records, and the activities of the Interagency Group and agencies under this section."

The legislation provides that two classes of material would be released: (1) war crimes information about Nazi persecutions; and (2) information concerning transactions involving assets stolen from Holocaust victims during the period beginning on March 23, 1933, and ending on May 8, 1945.

It provides that the Nazi War Criminal Records Interagency Working Group shall release all records that are described in subsection (a) except for those records whose release would either "constitute a clearly unwarranted invasion of personal privacy"; compromise intelligence sources and methods as well as the national security interests of the United States; or violate a treaty or international agreement.

It provides that for purposes of expedited processing under the Freedom of Information Act (5 U.S.C. §552(a)(6)(E)), any person who had been subject to Nazi persecution, as defined in the Act, who requests a Nazi war criminal record shall be deemed to have a compelling need for the records.

The standard of judicial deference currently accorded to agency classification decisions under Exemption (b)(1) of the Freedom of Information Act applies to exemption decisions provided by agency heads making a withholding decision under section 3(b). This will ensure that the agency head's decision that disclosure and release of a Nazi War Record would be harmful to a specific interest identified in an exemption will be accorded substantial weight pursuant to the agency's affidavit by the federal courts. Section 2(b)(1) provides that the life of the Interagency Group should be extended to three years in recognition of the fact that more time may be needed to review the extensive document holdings.

The legislation also provides that the amendment made by this Act to the Freedom of Information Act shall take effect 90 days after the date of enactment of the Act.

H.R. 4193/S. 2237 (P.L. 105-277), FY1999 Department of Interior and Related Agencies Appropriations Bill

Summary. These bills, a House and Senate version of The FY1999 Department of Interior and Related Agencies Appropriations bill, include funding for programs in five separate federal departments, as well as numerous smaller related agencies including the U.S. Holocaust Memorial Council that oversees the U.S. Holocaust Memorial Museum.

Status. H.R. 4193 was introduced by Rep. Regula on July 8, 1998. Reported to the House from the Committee on Appropriations (H.Rept. 105-609.) Passed the House July 23, 1998. S. 2237 was ordered reported as an original measure on June 25, 1998. Reported to the Senate from the Committee on Appropriations by Senator

Gorton on June 26, 1998 with written report (S.Rept. 105-227.) Continuing resolutions were passed and enacted (P.L. 105-240, P.L. 105-253, P.L. 105-254, H.J.Res. 135) as a temporary authority for appropriations, while awaiting passage of an omnibus appropriations bill, H.R. 4328, which was passed by the House on October 20 and by the Senate October 21, 1998 and signed into law (P.L. 105-277) that same day.⁸

Analysis. The FY 1999 Interior Appropriations bill contains an appropriation for the U.S. Holocaust Memorial Council that governs the U.S. Memorial Holocaust Museum. The U.S. Holocaust Memorial Council, established in 1980, was required to plan and oversee the operations of a memorial museum to the victims of the Holocaust. The U.S. Holocaust Memorial Museum opened in 1993 adjacent to the Washington Monument and the U.S. Bureau of Printing and Engraving in Washington, D. C. The initial legislation provided transfer authority for the land, and the U.S. government donated a site for the museum. The museum was constructed with private funds (\$194 million in private contributions). The U.S. Holocaust Memorial Council Act, P.L. 96-388 was amended in 1992 by P.L. 102-529, providing an authorization for the Museum's operating costs through the year 2000. Federal funds are appropriated for the purpose of maintaining the museum and for the U.S. Holocaust Memorial Council to provide direction to the museum, to support education programs on the Holocaust, and to provide proper annual commemorative observances for the Holocaust.

The U.S. Holocaust Memorial Museum also contains a Holocaust Research Institute. Its archival collections include a library, document archives, photo archives, oral history documentation, recordings, videos, films, and a National Registry of Holocaust Survivors. Some policymakers, educators, and historians believe that the archival collections are crucial to the remembrance of the Holocaust. Because of the sectarian focus of the institution and controversies associated with some exhibits and films that are shown, some individuals have argued that private money should be the sole source of support for the Research Institute and the Museum. Others see it as a permanent federal responsibility to provide an appropriation for the Museum and the Research Institute because of the documentation of the Holocaust, and because the building that houses the institute and museum needs to be maintained on the mall. The House-passed version of the FY1999 Interior appropriations bill would provide \$31.707 million and the Senate-reported version would provide \$32.607 million for the U.S. Holocaust Memorial Council in order to operate the U.S. Holocaust Memorial Museum and the Research Institute under its jurisdiction.

H.Res. 557, Expressing Support for U. S. Government Efforts to Identify Holocaust-era Assets, Urging the Restitution of Individual and Communal Property

Summary. This resolution expresses House support for U. S. government efforts to identify Holocaust-era assets, urges European governments to intensify activities aimed at restitution of unjustly seized Holocaust-era property, and addresses a number of other Holocaust-related issues.

⁸ For further information on the status of Interior appropriations, see CRS Report 98-206, *Appropriations for FY1999: Interior and Related Agencies*, coordinated by Alfred R. Greenwood; updated regularly.

Status. Introduced by Rep. Lantos, September 28, 1998. Referred to the Committee on International Relations. Approved by the Committee on International Relations, October 2. Called up by the House under suspension of the rules, October 8. Passed by the House, October 9.

Analysis. This resolution addresses a variety of different Holocaust-related issues. It incorporates provisions from several bills that had been referred previously to the House International Relations Committee, including H.Res. 443, H.Con.Res. 14, H.Con.Res. 59, and H.Con.Res. 112.

The resolution commends the efforts of U.S. Government agencies, foreign governments, and international organizations for their efforts in identifying and moving toward restitution of or compensation for unjustly seized Holocaust-era individual and communal property. It calls upon certain Central- and East European states to remove citizenship and residency requirements for individuals seeking restitution or compensation for property unjustly seized during the Holocaust and the immediate post-World War II period. It recognizes recent German efforts concerning restitution for Holocaust survivors who were prevented from receiving restitution by the former communist regimes in Central and Eastern Europe, and urges Germany to expand the eligibility criteria for such Holocaust survivors. It urges all countries to include in their educational curricula material on the Holocaust and the consequences of religious, racial, and ethnic intolerance and to continue aggressive investigation and prosecution of individuals involved in Nazi-era war crimes. It also urges international cooperation to help reunite family members separated during the Holocaust.

This resolution does not include language calling for sanctions and penalties to compel international compliance with its many recommendations. However, in addressing the governments of Central and East European states that seek admission to organizations such as NATO and the European Union, it notes the necessity that those states adjust their laws regarding restitution and compensation of property to meet western standards and implies a possible linkage between such action and their accession to western organizations.

Legislation not Passed at October Adjournment

H.R. 3121, Holocaust Victims Insurance Act

Summary. This bill would require all insurance companies doing business in the United States between 1920 and 1945 to report to the Commerce Department on the current status of the insurance policies issued during that period. It requires such companies that issued insurance policies to Holocaust victims to pay to the beneficiaries or descendants of the victims the proceeds of such policies. It extends any applicable statute of limitations on such claims to the year 2010. It encourages firms that do not have records of the individuals to whom they issued life insurance policies during that period to establish a substantial monetary fund to compensate Holocaust victims. It directs the U.S. Holocaust Memorial Museum to develop a registry of those who died in the Holocaust which shall be made available to the public, including insurance companies preparing a report under this Act.

Status. Introduced by Rep. Engel, January 28, 1998. Referred to the Commerce Committee, Subcommittee on Finance and Hazardous Materials, February 11, 1998.

Analysis. This bill came to Congress in the context of some unusual developments in the insurance industry and international efforts to resolve issues surrounding Holocaust-era insurance claims.

This bill would require all insurance companies operating in the United States between 1920 and 1945 to report to the Commerce Department on the current status of insurance policies issued during that period. Reportedly, thousands of Holocaust victims and their families have been unable to collect on life insurance policies sold before World War II. Insurance was an important means of doing retirement planning, providing for a dowry or saving for the education of children.

According to Holocaust survivors and Jewish leaders who testified during public hearings sponsored by the National Association of Insurance Commissioners (NAIC), European insurance companies have refused to honor Holocaust-era claims for several reasons: (1) many Eastern European insurers had their insurance assets confiscated by the Nazis during World War II, or nationalized by communist regimes after the war; (2) insurers paid the proceeds on the policies to the Nazi government, and the modern German government compensated individual Holocaust victims for specific claims as well as Germany's general responsibility for the Nazi genocide; (3) the beneficiaries lacked a death certificate to redeem their murdered relatives' insurance policy; (4) insurers typically inserted a *war clause* in their policies that provided for a return of premium rather than payment of the face amount of the policy if the insured died under excluded circumstances; (5) policies frequently lapsed (canceled) when premiums were not maintained; (6) claims were invalidated by the passage of time; (7) inflation caused the present value of these old policies to become infinitesimal and therefore not worth paying a claim.⁹

In addressing the issues raised by this legislation, it is important to consider three related points: the Holocaust victims were mainly European residents many of whom held insurance coverage with alien¹⁰ insurance companies before World War II; insurance coverage was purchased from European insurers who did not have a presence in the United States; and, although European insurers may have reinsured some portion of their risk with an American insurer or reinsurer, the financial responsibility for paying claims remained with the European insurer who underwrote the coverage.¹¹

European insurers face claims from a class-action lawsuit filed in a U.S. federal court as well as potential claims under a Memorandum of Understanding (MOU) signed in August 1998 by the World Jewish Congress, the NAIC, and six leading

⁹ National Association of Insurance Commissioners. *The Holocaust and Insurance Claims: Preliminary Report of the NAIC Working Group Investigating Claims Against European Insurers by Holocaust Survivors and Heirs*. New York, December 9, 1997.

¹⁰ For regulatory purposes, an insurer may be classified by the location of its charter or domicile: a *domestic* insurer is an insurer chartered pursuant to the laws of a state; a *foreign* insurer is a U.S.-chartered insurer that is domiciled in another state; an *alien* insurer is an insurer domiciled in a foreign country but conducts business in the United States

¹¹ The third point, about reinsurance and the responsibility of European insurers, is based on statutory requirements in the fifty states as well as global reinsurance practices.

European insurance companies¹² who agree to open their records and cooperate in the effort to return insurance benefits to Holocaust survivors and their heirs.

On March 31, 1997, Holocaust survivors and their heirs filed a lawsuit alleging that European insurance companies refused payout on the Nazi-era policies of Holocaust survivors and victims. A central issue in the lawsuit is whether European insurers violated the contract provisions that obligate them to contact beneficiaries regarding the benefits they are due.

The MOU established an international panel to determine the companies' liability and oversee payouts. European insurers had wanted one mechanism for all Holocaust-era insurance claims. Attorneys for survivors are opposed to the MOU.

In August 1998, Italy's largest insurer, Assicurazioni Generali, approved a \$100 million settlement. Under the settlement, the company has agreed to pay \$10 million immediately to Holocaust survivors and their heirs with the rest to be paid upon approval of the settlement by a U.S. federal judge. The company agreed to release documents that are expected to help in recovering claims from other European insurance companies. Also, Generali has established the Holocaust Memorial Fund and a Policy Information Center in the United States, which has already processed hundreds of inquiries.

Despite the legal settlement with Generali, European insurers still face U.S. insurance regulators who could deny or revoke the "Certificate of Authority" of these insurers, preventing them from transacting business in a particular state. In response to publicity surrounding federal and state legislation, U.S. insurance regulators have undertaken several steps to assist Holocaust survivors and their heirs. In September 1997, the NAIC established the Working Group on Holocaust Insurance Issues. The Working Group had two objectives: to determine the scope of the problem, and to recommend ways in which the NAIC and state insurance regulators could help consumers recover benefits they had been denied or had not yet sought.

The NAIC Working Group made four recommendations: 1) complete a model claims process for individual U.S. states; 2) assist state insurance departments in responding to legal jurisdictional questions; 3) assist researchers and insurance archeologists¹³ in developing a national database on insurance claims and potential claimants; 4) establish an International Holocaust Commission Task Force.¹⁴

Several U.S. state legislatures are also putting political pressure on European insurers to resolve Holocaust-era insurance issues. Several states -- California, Florida, New York, and Washington State -- are considering ways to give insurance departments the power to limit the operations of U.S. subsidiaries of European companies. The California legislature, for example, has approved two laws. The

¹² These six European insurance companies are Allianz of Germany, Axa of France, three Swiss companies, Basler Leban, Winterhur, and Zurich Insurance Group, and Generali of Italy.

¹³ Risk management experts specializing in finding "lost policies" or missing documentation to reconstruct past coverage.

¹⁴ The Commission Task Force consists of 12 members and a chairperson: three U.S. insurance regulators, three representatives of survivor groups, and six Europeans, at least two of whom are to be European insurance supervisors.

first would create a comprehensive Holocaust Insurance Registry in that state's Department of Insurance. Under the law, the Commissioner has the authority to suspend the business license of insurers who sold life, casualty, annuity, dowry or education insurance between 1920 and 1945 that failed to file information on the policies and their policyholders. The companies must demonstrate that they had either paid all valid claims, or had been unable to locate the beneficiaries despite diligent searches. Should no beneficiaries be found, the companies would be required to contribute the proceeds to a non-governmental organization to distribute the funds to Holocaust survivors and their heirs. The second law provides \$4 million to enable state insurance department investigators to travel to Europe to examine the records of major insurers that are unwilling to honor Holocaust-era claims.¹⁵

H.R. 3143, Comprehensive Holocaust Accountability in Insurance Measure

Summary. Title I: Provisions Applicable To Certain Foreign Insurance Companies - identifies those foreign insurance companies which, as a prerequisite to conducting any form of business in the United States (or with a U.S. bank), must first disclose to the Attorney General the name of any individual with whom such companies had any financial dealing and who is a Holocaust survivor or victim. It also directs the Attorney General to make such names public. Title II: Provisions Applicable To United States Banking Institutions - prohibits U.S. banks and financial institutions from engaging in specified financial transactions with or on behalf of a foreign insurance company listed under title I until the Attorney General confirms that such company has complied with the disclosure requirements of this Act.

Status. Introduced by Rep. Foley, February 3, 1998. Referred to the Commerce Committee, Subcommittee on Finance and Hazardous Materials, February 11, 1998. Also referred to the Committee on Banking and Financial Services, Subcommittee on Financial Institutions and Consumer Credit, February 20, 1998.

Analysis. This bill would require alien insurers, as a condition for operating in the United States, to disclose to the Attorney General the name of any individual with whom they had any financial dealing who is a Holocaust survivor or victim. The names of these alien insurers would be made public, and banks and financial institutions would be prohibited from doing business with or on behalf of these alien insurers until the Attorney General publishes in the Federal Register that such company has complied with the disclosure requirements.

Establishing a disclosure requirement for alien insurers or reinsurers is not new. Beginning in the early 1990s, for example, alien reinsurers were required to provide state insurance departments with detailed financial information to ensure that the assets on their books were accurate, thus verifying their ability to pay claims. What is new, however, is the historical elements and that a federal entity (the Attorney General), and not the state insurance departments or the NAIC, would be collecting this information. This may be perceived as being inconsistent with the current state regulatory system.

¹⁵ Greg Lucas and Robert B. Gunnison, "Holocaust Insurance Bills Signed by Wilson: 20,000 in State May be Due Unpaid Claims," *San Francisco Chronicle*, September 30, 1998, p. A 17.

Since the passage of the McCarran Ferguson Act of 1945¹⁶, the state insurance regulatory system has required all companies engaging in the business of insurance in the United States to be licensed by their states and therefore subject to state insurance regulation. Some observers contend that the NAIC is perhaps better prepared than the Attorney General to develop this list of alien insurers who may have had financial dealings with Holocaust survivors or victims.

H.R. 4138, Stolen Artwork Restitution Act of 1998

Summary. This bill deals with the restitution of stolen artwork to the original owners or to family members. The Attorney General would be the coordinating official authorized to make grants to research organizations in the identification and the relocation of stolen art work. The Attorney General would also be required to undertake an inquiry of all artwork in the possession of the Federal Government to determine whether any such artwork is stolen property.

Status. Introduced by Rep. Schumer, June 25, 1998. Referred to the House Committee on the Judiciary on June 25, 1998 and referred to the Subcommittee on Crime on July 7, 1998.

Analysis. This bill, directed toward the location and recovery stolen art work, does not specifically focus on Holocaust Era stolen art, although it may cover such materials. The bill provides that the Attorney General may make grants to certain research organizations to identify and relocate¹⁷ stolen artworks. The Attorney General is authorized to establish the terms and conditions for such grants and must require reports from the grant recipients. In turn, the Attorney General must submit an annual report to Congress listing the organizations which have received grants.

The bill stipulates that if a request is made concerning an artwork with a sales price of \$5,000 or more, that at any time has been shipped in interstate or foreign commerce, the seller or purchaser of the artwork shall, before the sale, undertake an inquiry into the ownership history of the artwork and consult one or more of the missing or stolen art registries, provided that the requesting individual produces adequate evidence that the artwork in question was stolen from the individual or from a member of the individual's family.

The Attorney General is also directed to undertake a study of all artwork in the possession of the Federal Government to determine whether any such artwork has been stolen and to report to Congress the results of this study.

The bill expresses the sense of Congress that: (1) a seller or purchaser who fails to undertake an inquiry required by this act should not be permitted to assert in a court in the United States a legal claim of ownership or former ownership of the artwork; (2) all museums and auction houses should undertake inquiries with respect to artwork in their possession to determine whether any such artwork has been stolen; (3) all governments in possession of artwork stolen from victims of the Holocaust should return that artwork to its original owners; and (4) parties attempting to resolve ownership disputes should utilize alternative means, such as arbitration, before seeking judicial remedies.

¹⁶ 42 U.S.C. Section 1011-1015.

¹⁷ The bill does not define the meaning of the word, "relocate."

The bill specifically excludes published or unpublished literary works as artwork. It provides definitions for the concept of family members and registries of missing or stolen art. Appropriations to the Attorney General are authorized.

Concerns arise as to the potentially broad scope of the term “stolen artwork.” Presumably, the bill could cover claims extending back to the Napoleonic Wars, the colonial period in American history, or even farther. The bill does not address issues of restitution, compensation to unknowing and/or innocent purchasers, and the ownership of the artworks if and when they may be returned to family members.

Another concern is expressed regarding the Attorney General’s inquiry into artwork in the possession of the Federal Government. First, “artwork” does not appear to be defined in this section. Second, the magnitude of the task raises questions of feasibility and cost. For example, researching the ownership history of only a portion of the holdings in the Smithsonian Institution would be a major undertaking, let alone all artwork in the possession of the Federal Government. The bill provides no time guidelines for such an inquiry.

H.R. 4563, Amending the Internal Revenue Code to Exclude Income Received for Settlement of Claims of Holocaust Victims

Summary. This bill would amend the Internal Revenue Code of 1986 to exclude from gross income amounts received for settlement of certain claims of Holocaust victims or their heirs.

Status. Introduced by Rep. McIntosh, September 14, 1998. Referred to the Ways and Means Committee, September 14, 1998.

Analysis. Whether amounts received for settlement of claims of Holocaust victims or their heirs would be subject to U.S. federal income tax under current law depends on the type of damages that are awarded. First, U.S. residents and citizens are generally subject to tax on their worldwide income. Thus, for U.S. individuals, at least, awards would fall within U.S. tax jurisdiction, regardless of whether or not they originate abroad. Beyond this, there is uncertainty. Damages received as compensation for loss of property are not taxable under current law, but only to the extent of the taxpayer’s “basis” in the property, or its acquisition cost; any excess of property damages over basis is generally taxable. Personal physical damages are excluded from gross income for tax purposes, but punitive damages are taxed. Thus, the import of H.R. 4563 depends on the character of prospective damage awards or settlements. For some characterizations, the bill may simply repeat an exemption contained in current law. In other cases, it would be striking new ground.