

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 1746  
OFFERED BY MR. FRANK OF MASSACHUSETTS**

Strike all after the enacting clause and insert the  
following:

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. FINDINGS.**

5       Congress finds the following:

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

12           (2) After World War II, many Holocaust sur-  
13 vivors and heirs of Holocaust victims presenting  
14 claims to insurance companies lacked policy informa-  
15 tion and vital records needed to satisfy the burden  
16 of proof required to bring an insurance claim be-  
17 cause such documentation was confiscated by the  
18 Nazis or lost in the devastation of World War II.

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

10           (4) In response to the unique difficulties faced  
11           by those seeking to bring claims based on Holocaust-  
12           era insurance policies, Insurance Commissioners of  
13           the several States, the National Association of In-  
14           surance Commissioners (NAIC), major Jewish orga-  
15           nizations and various European insurance companies  
16           established the International Commission on Holo-  
17           caust Era Insurance Claims to provide a forum in  
18           which claimants could bring claims based on Holo-  
19           caust-era insurance policies.

20           (5) In recognition of the preeminence of the  
21           States in protecting consumers in the insurance  
22           marketplace, Congress and the executive branch  
23           have a limited role in facilitating and assisting the  
24           Holocaust-era insurance restitution efforts of the

1 several States as embodied principally in the  
2 ICHEIC process.

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

8 (7) Experts agree that, by the conclusion of the  
9 ICHEIC process, claims based on a substantial por-  
10 tion of Holocaust-era insurance policies issued to  
11 Holocaust victims in Western Europe had been ad-  
12 dressed.

13 (8) Due to the political and economic conditions  
14 in Eastern Europe until the end of the Cold War,  
15 compensation efforts there have been more limited.  
16 The ICHEIC process did provide compensation for  
17 policies issued by the Eastern European branches  
18 and subsidiaries of Western European companies as  
19 well as for policies issued by nationalized or liq-  
20 uidated Eastern European insurers, drawing from  
21 ICHEIC's humanitarian funds. However, the East-  
22 ern European companies and countries did not par-  
23 ticipate in ICHEIC or any of the related compensa-  
24 tion processes. Now that the nations of Eastern Eu-  
25 rope have joined the community of free and modern

1 nations, it is imperative that the nations of Eastern  
2 Europe proactively seek to identify and provide res-  
3 titution for Holocaust-era insurance policies issued  
4 within their borders.

5 (9) All insurers that participated in ICHEIC  
6 are now willing to address all inquiries made by Hol-  
7 ocaust victims and victims' heirs, check their ar-  
8 chives, and settle legitimate claims based on relaxed  
9 standards of proof. To facilitate the ongoing moni-  
10 toring of claims based on Holocaust-era insurance  
11 policies, the Insurance Commissioners of the several  
12 States have agreed to coordinate their Holocaust-era  
13 insurance restitution efforts through the NAIC and  
14 the Holocaust Claims Processing Office. Similarly,  
15 entities that worked in partnership with ICHEIC,  
16 such as the Dutch Sjoa Foundation, have agreed to  
17 maintain their claims processing facilities and co-  
18 operate with the HCPO in the resolution of Holo-  
19 caust-era insurance claims.

20 (10) It has been the policy of the executive  
21 branch to support the resolution of Holocaust-era in-  
22 surance claims through an alternative to litigation.  
23 To that end, the executive branch has filed state-  
24 ments of interest in court seeking the dismissal of  
25 cases involving claims for non-payment of Holocaust-

1 era insurance policies where there have been inde-  
2 pendent legal grounds to support such dismissal.

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

10 **SEC. 3. INSURER RESPONSE TO INQUIRIES ABOUT COV-**  
11 **ERED POLICIES.**

12 (a) REQUIREMENT.—

13 (1) IN GENERAL.—Subject to paragraph (2), an  
14 insurer receiving a written inquiry from an eligible  
15 person regarding a covered policy for which the per-  
16 son may be a beneficiary shall—

17 (A) not later than 90 days after such in-  
18 surer receives such written inquiry, acknowledge  
19 the inquiry in writing and indicate whether  
20 such insurer is in possession of information spe-  
21 cifically relating to such covered policy;

22 (B) within a reasonable period of time,  
23 provide to such eligible person all information  
24 in the possession of such insurer regarding

1           whether such person is a potential beneficiary  
2           of such policy; and

3                   (C) immediately notify the Holocaust  
4           Claims Processing Office in writing of the in-  
5           quiry and provide a copy of all acknowledg-  
6           ments and information provided to such eligible  
7           person under subparagraph (A) or (B) to the  
8           HCPO.

9           (2) TERMINATION OF REQUIREMENT.—An in-  
10          surer receiving a written inquiry under paragraph  
11          (1) is not required to comply with the requirements  
12          of such paragraph for any written inquiry received  
13          on or after the date that is 10 years after the date  
14          of the enactment of this Act.

15          (b) AGREEMENTS WITH EUROPEAN COUNTRIES.—

16                  (1) AGREEMENTS.—The Secretary of State  
17          shall seek to enter into an agreement with each Eu-  
18          ropean country with which no appropriate agreement  
19          exists to facilitate the response requirements of sub-  
20          section (a).

21                  (2) REPORT.—Not later than 180 days after  
22          the date of the enactment of this Act, and annually  
23          thereafter, the Secretary of State shall submit to  
24          Congress a report on efforts to carry out this sub-  
25          section.

1 **SEC. 4. MONITORING BY THE HOLOCAUST CLAIMS PROC-**  
2 **ESSING OFFICE.**

3 The Secretary of the Treasury is authorized and en-  
4 couraged to enter into an agreement with the Holocaust  
5 Claims Processing Office to provide for—

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

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

14 (3) the HCPO to annually notify the Committee  
15 on Financial Services of the House of Representa-  
16 tives, the Committee on Banking, Housing, and  
17 Urban Affairs of the Senate, the Secretary of the  
18 Treasury, and the Secretary of State of the identity  
19 of each insurer that fails to comply with the require-  
20 ments of section 3(a);

21 (4) subject to appropriations, the transfer to  
22 the HCPO of amounts equal to the amounts received  
23 by the Government under section 5 for use in car-  
24 rying out paragraphs (1) and (2); and

1           (5) the issuance of such guidelines and regula-  
2           tions as are necessary to carry out this section and  
3           sections 3 and 5.

4 **SEC. 5. PENALTY.**

5           The Secretary of the Treasury shall assess a civil pen-  
6           alty of not less than \$5,000 for each day that an insurer  
7           fails to comply with the requirements of section 3(a) for  
8           an inquiry referred to in such section, as determined by  
9           the Secretary after consideration of information provided  
10          by the Holocaust Claims Processing Office. Each failure  
11          to comply with the requirements of section 3(a) for an in-  
12          quiry under such section shall be considered a separate  
13          offense.

14 **SEC. 6. FEDERAL CAUSES OF ACTION.**

15          (a) **FEDERAL CAUSE OF ACTION.**—

16           (1) **IN GENERAL.**—There shall exist a Federal  
17          cause of action for any claim arising out of or re-  
18          lated to a covered policy against any insurer.

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

21           (3) **STATUTE OF LIMITATIONS.**—Any action  
22          brought under this Act shall be filed not later than  
23          10 years after the effective date of this Act.

24          (b) **RIGHT TO OPT OUT OF CLASS ACTION PRO-**  
25          **CEEDINGS.**—



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

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

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

13       (a) IN GENERAL.—No cause of action shall exist for  
14 a claim against an insurer relating to, and an insurer is  
15 not required to comply with the requirements of section  
16 3(a) for a written inquiry regarding, a covered policy for  
17 which—

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

20           (2) payment has been received or denied under  
21 the process of the International Commission on Hol-  
22 ocaust Era Insurance Claims, any similar process  
23 that was conducted in partnership with ICHEIC,  
24 any government sponsored Holocaust claims process,  
25 the Holocaust Claims Processing Office, or any proc-

1       ess for the resolution of Holocaust-era insurance  
2       claims established pursuant to a class action settle-  
3       ment; or

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

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

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

12            (2) based on information not reasonably avail-  
13       able before the conclusion of the ICHEIC process.

14 **SEC. 8. EUROPEAN BANK FOR RECONSTRUCTION AND DE-**  
15 **VELOPMENT.**

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

23       (b) REPORT.—Not later than one year after the date  
24 of the enactment of this Act, and three years thereafter,

1 the Secretary of the Treasury shall submit to Congress  
2 a report on the progress of carrying out subsection (a).

3 **SEC. 9. DEFINITIONS.**

4 In this Act:

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

9 (2) COVERED POLICY.—The term “covered pol-  
10 icy” means any insurance policy that was—

11 (A) in effect at any time after January 30,  
12 1933, and before December 31, 1945; and

13 (B) issued to a policyholder or named a  
14 beneficiary who was deprived of their life, suf-  
15 fered damage to their mental or physical health,  
16 suffered loss or deprivation of financial or other  
17 assets, or suffered any other loss or damage to  
18 their property as a result of racial, religious,  
19 political, or ideological persecution by organs of  
20 the National Socialist Government of Germany  
21 or by other Governmental authorities or entities  
22 controlled by such Governmental authorities in  
23 the territories occupied by the National Social-  
24 ist Government of Germany or its European al-

1           lies during the period described in subpara-  
2           graph (A).

3           (3) ELIGIBLE PERSON.—The term “eligible per-  
4           son” means a person who purchased a covered pol-  
5           icy, a beneficiary of such person with respect to such  
6           policy, an heir of such person or such beneficiary  
7           with respect to such policy, or an assignee of such  
8           person, such beneficiary, or such heir with respect to  
9           such policy.

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

15          (5) INTERNATIONAL COMMISSION ON HOLO-  
16          CAUST ERA INSURANCE CLAIMS; ICHEIC.—The terms  
17          “International Commission on Holocaust Era Insur-  
18          ance Claims” and “ICHEIC” mean the Inter-  
19          national Commission on Holocaust Era Insurance  
20          Claims established through the memorandum of un-  
21          derstanding and bilateral or multilateral agreements  
22          between the Commission, relevant foreign govern-  
23          ments, and the following insurers and their succes-  
24          sors in interest:

- 1           (A) The Dutch Association of Insurers and  
2           the members of the Association.
- 3           (B) The AXA Group.
- 4           (C) Generali.
- 5           (D) Zurich.
- 6           (E) Allianz.
- 7           (F) Winterthur.
- 8           (G) All insurers participating in the proc-  
9           ess of the Commission through bilateral or mul-  
10          tilateral agreements.
- 11          (6) INSURER.—The term “insurer” means any  
12          person engaged in the business of insurance in inter-  
13          state or foreign commerce, if the person issued a  
14          covered policy, or a successor in interest to such per-  
15          son.

Amend the title so as to read: “A bill to further fa-  
cilitate payment of Holocaust-era insurance claims.”.

