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## Justice for United States Victims of State Sponsored Terrorism Act: Eligibility and Funding

Since 1996, the Foreign Sovereign Immunities Act (FSIA) has authorized U.S. courts to order state sponsors of terrorism—namely, Iran, Sudan, North Korea, and Syria, and previously Libya, Iraq, and Cuba—to pay monetary damages to terrorism victims. Courts have since awarded an estimated \$90 billion against these states. Although these states have largely not participated in this litigation at the merits phase, some of these states have appeared in court to attempt to prevent plaintiffs from collecting their assets.

### Satisfaction of Terrorism Judgments

Claims against Libya were ultimately resolved through a bilateral claims settlement agreement, and judgments against Iraq were paid through liquidating Iraqi assets frozen pursuant to the International Emergency Economic Powers Act (IEEPA; 50 U.S.C. §§ 1701 *et seq.*), prior to vesting the remaining Iraqi assets in the United States for the Development Fund for Iraq. Some judgment holders against other state sponsors of terrorism received compensation through Section 2002 of the Victims of Trafficking and Violence Protection Act (P.L. 106-386) or by attaching frozen assets pursuant to Section 201 of the Terrorism Risk Insurance Act (28 U.S.C. § 1610 note). But due to the scarcity of these states' attachable assets in the United States, the vast majority of terrorism judgments remain outstanding.

Congress has taken steps to enable these judgment creditors to obtain at least some of the damages owed to them. Passed as part of the Consolidated Appropriations Act, 2016 (P.L. 114-113), the "Justice for United States Victims of State Sponsored Terrorism Act" (Act), 34 U.S.C. § 20144, established the United States Victims of State Sponsored Terrorism Fund (Fund) to provide a means for creditors with terrorism judgments against designated state sponsors of terrorism to satisfy the compensatory portion of their judgments. Congress has since amended the Act to expand the scope of eligibility for compensation under the Fund, among other things.

### 2019 Clarification Act

In 2019, Congress passed the "Justice for United States Victims of State Sponsored Terrorism Clarification Act" (Title VII of P.L. 116-69) (Clarification Act). The Clarification Act amended the Act to provide coverage for 9/11 victims with judgments against Iran, some of whom were prohibited under the original Act from receiving compensation from the Fund because they had already received compensation from the September 11th Victim Compensation Fund established by Section 405 of the "Air Transportation Safety and System Stabilization Act" (49 U.S.C. § 40101 note). The Clarification Act also enabled

some previously excluded Iran Hostage claimants to receive compensation.

### Fund Administration

The Attorney General initially appointed Kenneth R. Feinberg as the Special Master to administer the Fund on May 17, 2016. After Feinberg's term ended, the Department of Justice named Deborah L. Connor, Chief of the Money Laundering and Asset Recovery Section, Criminal Division, U.S. Department of Justice, the interim Special Master on March 8, 2019. The Fund is set to expire on January 2, 2030.

### Eligibility

In order to be eligible for compensation from the Fund, a claimant must be a natural person (as opposed to a corporation or some other legal entity), regardless of citizenship:

- who holds a final judgment, decree, or order on liability and damages:
  - issued by a U.S. federal district court;
  - against a designated state sponsor of terrorism;
  - based on an injury arising from an act of torture, extrajudicial killing, aircraft sabotage, or hostage taking, or the provision of material support for such an action;
  - for which the state is not immune under the FSIA's terrorism exception (28 U.S.C. § 1605A or previous 28 U.S.C. § 1605(a)(7)); and
  - that has not been satisfied, relinquished, espoused by the United States, or resolved pursuant to a bilateral claims agreement;

or

- who was held hostage by Iran from November 4, 1979, through January 20, 1981, or is the spouse or child of such a person if identified as a member of the proposed class in case number 1:00-CV-03110 (D.D.C.);

or

- who was held hostage by Iran during the period from November 4, 1979, through January 20, 1981, and has not previously received an award from the Fund; and

- who is not criminally culpable for an act of international terrorism.

The Fund entitles eligible claimants to receive up to \$20 million per individual or \$35 million for families. 9/11 family members who are not spouses or dependents of 9/11 decedents are capped at \$20 million for each family. Qualifying victims of the Iran Hostage Crisis are eligible for compensation, up to \$4.4 million per former hostage who was held hostage for the entire 441 days, or the amount of \$600,000 each for their spouses and children. Hostages taken from the U.S. Embassy in Tehran but held for less than the entire period of the Iran Hostage Crisis are eligible to receive \$10,000 per day of captivity; their spouses and children remain ineligible for compensation from the Fund.

Applicants whose claims are denied may request a hearing with the Special Master, but awards or denials of awards are not subject to court appeal.

## Funding

Congress established the Fund with an initial deposit of \$1,025,000,000 from the amount paid to the United States pursuant to the June 27, 2014, plea agreement and settlement between the United States and the French bank BNP Paribas for sanctions violations. The Fund continues to be financed:

- from all funds and the net proceeds from the sale of property forfeited or paid to the United States as criminal penalty or fine arising from the violation of regulations issued under IEEPA; the “Trading with the Enemy Act” (50 U.S.C. App. §§ 1 *et seq.*); or any related civil or criminal conspiracy, scheme, or other federal offense related to doing business or acting on behalf of a state sponsor of terrorism;
- from half of all funds and net proceeds from the sale of property forfeited or paid to the United States as a civil penalty or fine arising out of the same types of violations prior to November 19, 2019, and 75% of such funds and proceeds thereafter;
- using proceeds from the sale of any Iranian property forfeited in *In re 650 Fifth Avenue and Related Properties*, No. 08 Civ. 10934 (S.D.N.Y. filed Dec. 17, 2008), minus litigation expenses and sales cost, and not including the proceeds attributable to any party identified as a Settling Judgment Creditor in that case who did not elect to participate in the Fund; and
- using the assets distributed (about \$1.7 billion) in *Peterson v. Islamic Republic of Iran*, No. 10 Civ. 4518 (S.D.N.Y.) to the extent the creditors elected to participate in the Fund.

Eligible claimants who provide information to the Attorney General that leads to a forfeiture required to be paid into the Fund may receive a reward amounting to 10% of the amount deposited into the Fund if (1) such information is not previously known to the government, and (2) if the

Attorney General finds that the information substantially contributed to the forfeiture.

## Payments

The Fund made an initial series of payments beginning on March 10, 2017, amounting to \$1,040,902,501.89. The Fund allocated another \$1.095 billion for second-round payments beginning on January 2, 2019. After the second round of payments, the Special Master reported that \$27,070,685,391.39 in compensatory damages (or statutory award amounts for Iran hostages and their spouses and children) remained outstanding. That amount will likely increase significantly due to new judgments and expanded eligibility under the Clarification Act. The Special Master will authorize a third round of pro rata payments by May 19, 2020, with any subsequent rounds to be made on January 1 of each following calendar year if sufficient funds are available.

Payments are made on a pro rata basis, with half of the available funds to be distributed to 9/11 claimants and half to be distributed among non-9/11 claimants. Claimants who have received 30% or more of the amount of their compensatory damages from sources other than the Fund (including life insurance; pension funds; death benefit programs; payments by federal, state, or local governments, not including the September 11 Victim Compensation Fund; and court-awarded compensation) will not receive payment from the Fund until such time as all other eligible claimants have received 30% of their compensatory damages or amount of the claim under the Iran Hostage Crisis provision. Applicants who have received less than 30% of compensatory damages from other sources may apply for the difference between the percentage of compensatory damages received from other sources and the percentage of compensatory damages to be awarded to other eligible applicants from the Fund.

The Act prohibits attorneys representing claimants from charging more than 25% of any payment made from the Fund. After November 21, 2019, no attorney representing a 9/11-related claimant may charge any payment of fees and costs that in the aggregate exceeds 15% of any award payment.

The United States is to be subrogated to the rights of applicants who receive payment from the Fund. The Act requires the President to pursue subrogation rights as claims or offsets of the United States in appropriate ways, such as through potential negotiations surrounding the normalization of relations with foreign countries currently designated as state sponsors of terrorism. Judgment holders are permitted to pursue satisfaction of any unpaid portion of their judgments—including punitive damages and pre- or post-judgment interest awarded by the district court—through enforcement actions in court.

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