

42 USC 10609: Justice for United States victims of state sponsored terrorism

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From Title 42-THE PUBLIC HEALTH AND WELFARE

CHAPTER 112-VICTIM COMPENSATION AND ASSISTANCE

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§10609. Justice for United States victims of state sponsored terrorism

(a) Short title

This section may be cited as the "Justice for United States Victims of State Sponsored Terrorism Act".

(b) Administration of the United States Victims of State Sponsored Terrorism Fund

(1) Administration of the Fund

(A) Appointment and terms of Special Master

(i) Initial appointment

Not later than 60 days after December 18, 2015, the Attorney General shall appoint a Special Master. The initial term for the Special Master shall be 18 months.

(ii) Additional terms

Thereafter, each time there exists funds in excess of \$100,000,000 in the Fund, the Attorney General shall appoint or reappoint a Special Master for such period as is appropriate, not to exceed 1 year. In addition, if there exists in the Fund funds that are less than \$100,000,000, the Attorney General may appoint or reappoint a Special Master each time the Attorney General determines there are sufficient funds available in the Fund to compensate eligible claimants, for such period as is appropriate, not to exceed 1 year.

(iii) Special Master to administer compensation from the Fund

The Special Master shall administer the compensation program described in this section for United States persons who are victims of state sponsored terrorism.

(B) Administrative costs and use of Department of Justice personnel

The Special Master may utilize, as necessary, no more than 5 full-time equivalent Department of Justice personnel to assist in carrying out the duties of the Special Master under this section. Any costs associated with the use of such personnel, and any other administrative costs of carrying out this section, shall be paid from the Fund.

(C) Compensation of Special Master

The Special Master shall be compensated from the Fund at a rate not to exceed the annual rate of basic pay for level IV of the Executive Schedule, as prescribed by section 5315 of title 5.

(2) Publication of regulations and procedures

(A) In general

Not later than 60 days after the date of the initial appointment of the Special Master, the Special Master shall publish in the Federal Register and on a website maintained by the Department of Justice a notice specifying the procedures necessary for United States persons to apply and establish eligibility for payment, including procedures by which eligible

United States persons may apply by and through their attorney. Such notice is not subject to the requirements of section 553 of title 5.

(B) Information regarding other sources of compensation

As part of the procedures for United States persons to apply and establish eligibility for payment, the Special Master shall require applicants to provide the Special Master with information regarding compensation from any source other than this Fund that the claimant (or, in the case of a personal representative, the victim's beneficiaries) has received or is entitled or scheduled to receive as a result of the act of international terrorism that gave rise to a claimant's final judgment, including information identifying the amount, nature, and source of such compensation.

(3) Decisions of the Special Master

All decisions made by the Special Master with regard to compensation from the Fund shall be-

- (A) in writing and provided to the Attorney General, each claimant and, if applicable, the attorney for each claimant; and
- (B) final and, except as provided in paragraph (4), not subject to administrative or judicial review.

(4) Review hearing

(A) Not later than 30 days after receipt of a written decision by the Special Master, a claimant whose claim is denied in whole or in part by the Special Master may request a hearing before the Special Master pursuant to procedures established by the Special Master.

(B) Not later than 90 days after any such hearing, the Special Master shall issue a final written decision affirming or amending the original decision. The written decision is final and nonreviewable.

(c) Eligible claims

(1) In general

For the purposes of this section, a claim is an eligible claim if the Special Master determines that-

- (A) the judgment holder, or claimant, is a United States person;
- (B) the claim is described in paragraph (2); and
- (C) the requirements of paragraph (3) are met.

(2) Certain claims

The claims referred to in paragraph (1) are claims for-

- (A) compensatory damages awarded to a United States person in a final judgment-
 - (i) issued by a United States district court under State or Federal law against a state sponsor of terrorism; and
 - (ii) arising from acts of international terrorism, for which the foreign state was determined not to be immune from the jurisdiction of the courts of the United States under section 1605A, or section 1605(a)(7) (as such section was in effect on January 27, 2008), of title 28;

(B) the sum total of \$10,000 per day for each day that a United States person was taken and held hostage from the United States embassy in Tehran, Iran, during the period beginning November 4, 1979, and ending January 20, 1981, if such person is identified as a member of the proposed class in case number 1:00-CV-03110 (EGS) of the United States District Court for the District of Columbia; or

(C) damages for the spouses and children of the former hostages described in subparagraph (B), if such spouse or child is identified as a member of the proposed class in case number 1:00-CV-03110 (EGS) of the United States Court for the District of Columbia, in the following amounts:

- (i) For each spouse of a former hostage identified as a member of the proposed class described in this subparagraph, a \$600,000 lump sum.
- (ii) For each child of a former hostage identified as a member of the proposed class

described in this subparagraph, a \$600,000 lump sum.

(3) Deadline for application submission

(A) In general

The deadline for submitting an application for a payment under this subsection is as follows:

- (i) Not later than 90 days after the date of the publication required under subsection (b)(2)(A), with regard to an application based on-
 - (I) a final judgment described in paragraph (2)(A) obtained before that date of publication; or
 - (II) a claim described in paragraph (2)(B) or (2)(C).

- (ii) Not later than 90 days after the date of obtaining a final judgment, with regard to a final judgment obtained on or after the date of that publication.

(B) Good cause

For good cause shown, the Special Master may grant a claimant a reasonable extension of a deadline under this paragraph.

(d) Payments

(1) To whom made

The Special Master shall order payment from the Fund for each eligible claim of a United States person to that person or, if that person is deceased, to the personal representative of the estate of that person.

(2) Timing of initial payments

The Special Master shall authorize all initial payments to satisfy eligible claims under this section not later than 1 year after December 18, 2015.

(3) Payments to be made pro rata

(A) In general

(i) Pro rata basis

Except as provided in subparagraph (B) and subject to the limitations described in clause (ii), the Special Master shall carry out paragraph (1), by dividing all available funds on a pro rata basis, based on the amounts outstanding and unpaid on eligible claims, until all such amounts have been paid in full.

(ii) Limitations

The limitations described in this clause are as follows:

- (I) In the event that a United States person has an eligible claim that exceeds \$20,000,000, the Special Master shall treat that claim as if it were for \$20,000,000 for purposes of this section.

- (II) In the event that a United States person and the immediate family members of such person, have claims that if aggregated would exceed \$35,000,000, the Special Master shall, for purposes of this section, reduce such claims on a pro rata basis such that in the aggregate such claims do not exceed \$35,000,000.

- (III) In the event that a United States person, or the immediate family member of such person, has an eligible claim under this section and has received an award or an award determination under section 405 of the Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note), the amount of compensation to which such person, or the immediate family member of such person, was determined to be entitled under section 405 of the Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) shall be considered controlling for the purposes of this section, notwithstanding any compensatory damages amounts such person, or immediate family member of such person, is deemed eligible for or entitled to pursuant to a final judgment described in subsection (c)(2)(A).

(B) Minimum payments

(i) Any applicant with an eligible claim described in subsection (c)(2) who has received, or is entitled or scheduled to receive, any payment that is equal to, or in excess of, 30 percent of the total compensatory damages owed to such applicant on the applicant's claim from any source other than this Fund shall not receive any payment from the Fund until such time as all other eligible applicants have received from the Fund an amount equal to 30 percent of the compensatory damages awarded to those applicants pursuant to their final judgments or to claims under subsection (c)(2)(B) or (c)(2)(C). For purposes of calculating the pro rata amounts for these payments, the Special Master shall not include the total compensatory damages for applicants excluded from payment by this subparagraph.

(ii) To the extent that an applicant with an eligible claim has received less than 30 percent of the compensatory damages owed that applicant under a final judgment or claim described in subsection (c)(2) from any source other than this Fund, such applicant may apply to the Special Master for the difference between the percentage of compensatory damages the applicant has received from other sources and the percentage of compensatory damages to be awarded other eligible applicants from the Fund.

(4) Additional payments

On January 1 of the second calendar year that begins after the date of the initial payments described in paragraph (1) if funds are available in the Fund, the Special Master shall authorize additional payments on a pro rata basis to those claimants with eligible claims under subsection (c)(2) and shall authorize additional payments for eligible claims annually thereafter if funds are available in the Fund.

(5) Subrogation and retention of rights

(A) United States subrogated to creditor rights to the extent of payment

The United States shall be subrogated to the rights of any person who applies for and receives payments under this section, but only to the extent and in the amount of such payments made under this section. The President shall pursue these subrogated rights as claims or offsets of the United States in appropriate ways, including any negotiation process that precedes the normalization of relations between the foreign state designated as a state sponsor of terrorism and the United States or the lifting of sanctions against such foreign state.

(B) Rights retained

To the extent amounts of damages remain unpaid and outstanding following any payments made under this subsection, each applicant shall retain that applicant's creditor rights in any unpaid and outstanding amounts of the judgment, including any prejudgment or post-judgment interest, or punitive damages, awarded by the United States district court pursuant to a judgment.

(e) United States Victims of State Sponsored Terrorism Fund

(1) Establishment of United States Victims of State Sponsored Terrorism Fund

There is established in the Treasury a fund, to be designated as the United States Victims of State Sponsored Terrorism Fund.

(2) Deposit and transfer

Beginning on December 18, 2015, the following shall be deposited or transferred into the Fund for distribution under this section:

(A) Forfeited funds and property

(i) Criminal funds and property

All funds, and the net proceeds from the sale of property, forfeited or paid to the United States after December 18, 2015, as a criminal penalty or fine arising from a violation of any license, order, regulation, or prohibition issued under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) or the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.) [now 50 U.S.C. 4301 et seq.], or any related criminal conspiracy,

scheme, or other Federal offense arising from the actions of, or doing business with or acting on behalf of, a state sponsor of terrorism.

(ii) Civil funds and property

One-half of all funds, and one-half of the net proceeds from the sale of property, forfeited or paid to the United States after December 18, 2015, as a civil penalty or fine arising from a violation of any license, order, regulation, or prohibition issued under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) or the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.) [now 50 U.S.C. 4301 et seq.], or any related conspiracy, scheme, or other Federal offense arising from the actions of, or doing business with or acting on behalf of, a state sponsor of terrorism.

(B) Transfer into Fund of certain assigned assets of Iran and election to participate in Fund

(i) Deposit into Fund of assigned proceeds from sale of properties and related assets identified in In Re 650 Fifth Avenue & Related Properties

(I) In general

Except as provided in subclause (II), if the United States receives a final judgment forfeiting the properties and related assets identified in the proceedings captioned as In Re 650 Fifth Avenue & Related Properties, No. 08 Civ. 10934 (S.D.N.Y. filed Dec. 17, 2008), the net proceeds (not including the litigation expenses and sales costs incurred by the United States) resulting from the sale of such properties and related assets by the United States shall be deposited into the Fund.

(II) Limitation

The following proceeds resulting from any sale of the properties and related assets identified in subclause (I) shall not be transferred into the Fund:

(aa) The percentage of proceeds attributable to any party identified as a Settling Judgment Creditor in the order dated April 16, 2014, in such proceedings, who does not make an election (described in clause (iii)) to participate in the Fund.

(bb) The percentage of proceeds attributable to the parties identified as the Hegna Judgment Creditors in such proceedings, unless and until a final judgment is entered denying the claims of such creditors.

(ii) Deposit into Fund of assigned assets identified in Peterson v. Islamic Republic of Iran

If a final judgment is entered in Peterson v. Islamic Republic of Iran, No. 10 Civ. 4518 (S.D.N.Y.), awarding the assets at issue in that case to the judgment creditors identified in the order dated July 9, 2013, those assets shall be deposited into the Fund, but only to the extent, and in such percentage, that the rights, title, and interest to such assets were assigned through elections made pursuant to clause (iii).

(iii) Election to participate in the Fund

Upon written notice to the Attorney General, the Special Master, and the chief judge of the United States District Court for the Southern District of New York within 60 days after the date of the publication required under subsection (b)(2)(A) a United States person, who is a judgment creditor in the proceedings captioned Peterson v. Islamic Republic of Iran, No. 10 Civ. 4518 (S.D.N.Y.), or a Settling Judgment Creditor as identified in the order dated May 27, 2014, in the proceedings captioned In Re 650 Fifth Avenue & Related Properties, No. 08 Civ. 10934 (S.D.N.Y. filed Dec. 17, 2008), shall have the right to elect to participate in the Fund and, to the extent any such person exercises such right, shall irrevocably assign to the Fund all rights, title, and interest to such person's claims to the assets at issue in such proceedings. To the extent that a United States person is both a judgment creditor in the proceedings captioned Peterson v. Islamic Republic of Iran, No. 10 Civ. 4518 (S.D.N.Y.) and a Settling Judgment Creditor in In Re 650 Fifth Avenue & Related Properties, No. 08 Civ. 10934 (S.D.N.Y. filed Dec. 17, 2008), any election by such person to participate in the Fund pursuant to this paragraph shall operate as an election to assign any and all rights, title, and interest in the assets in both actions for the purposes of

participating in the Fund. The Attorney General is authorized to pursue any such assigned rights, title, and interest in those claims for the benefit of the Fund.

(iv) Application for conditional payment

A United States person who is a judgment creditor or a Settling Judgment Creditor in the proceedings identified in clause (iii) and who does not elect to participate in the Fund may, notwithstanding such failure to elect, submit an application for conditional payment from the Fund, subject to the following limitations:

(I) In general

Notwithstanding any such claimant's eligibility for payment and the initial deadline for initial payments set forth in subsection (d)(2), the Special Master shall allocate but withhold payment to an eligible claimant who applies for a conditional payment under this paragraph until such time as an adverse final judgment is entered in both of the proceedings identified in clause (iii).

(II) Exception

(aa) In the event that an adverse final judgment is entered in the proceedings captioned Peterson v. Islamic Republic of Iran, No. 10 Civ. 4518 (S.D.N.Y), prior to a final judgment being entered in the proceedings captioned In Re 650 Fifth Avenue & Related Properties, No. 08 Civ. 10934 (S.D.N.Y. filed Dec. 17, 2008), the Special Master shall release a portion of an eligible claimant's conditional payment to such eligible claimant if the Special Master anticipates that such claimant will receive less than the amount of the conditional payment from any proceeds from a final judgment that is entered in favor of the plaintiffs in In Re 650 Fifth Avenue & Related Properties. Such portion shall not exceed the difference between the amount of the conditional payment and the amount the Special Master anticipates such claimant will receive from the proceeds of In Re 650 Fifth Avenue & Related Properties.

(bb) In the event that a final judgment is entered in favor of the plaintiffs in the proceedings captioned Peterson v. Islamic Republic of Iran, No. 10 Civ. 4518 (S.D.N.Y) and funds are distributed, the payments allocated to claimants who applied for a conditional payment under this subparagraph shall be considered void, and any funds previously allocated to such conditional payments shall be made available and distributed to all other eligible claimants pursuant to subsection (d).

(3) Expenditures from Fund

Amounts in the Fund shall be available, without further appropriation, for the payment of eligible claims and compensation of the Special Master in accordance with this section.

(4) Management of Fund

The Fund shall be managed and invested in the same manner as a trust fund is managed and invested under section 9602 of title 26.

(5) Funding

There is appropriated to the Fund, out of any money in the Treasury not otherwise appropriated, \$1,025,000,000 for fiscal year 2017, to remain available until expended.

(6) Termination

(A) In general

Amounts in the Fund may not be obligated on or after January 2, 2026.

(B) Closing of Fund

Effective on the day after all amounts authorized to be paid from the Fund under this section that were obligated before January 2, 2026 are expended, any unobligated balances in the Fund shall be transferred, as appropriate, to either the Department of the Treasury Forfeiture Fund established under section 9705 of title 31 or to the Department of Justice Assets Forfeiture Fund established under section 524(c)(1) of title 28.

(f) Attorneys' fees and costs

(1) In general

No attorney shall charge, receive, or collect, and the Special Master shall not approve, any payment of fees and costs that in the aggregate exceeds 25 percent of any payment made under this section.

(2) Penalty

Any attorney who violates paragraph (1) shall be fined under title 18, imprisoned for not more than 1 year, or both.

(g) Award of compensation to informers

(1) In general

Any United States person who holds a final judgment described in subsection (c)(2)(A) or a claim under subsection (c)(2)(B) or (c)(2)(C) and who meets the requirements set forth in paragraph (2) is entitled to receive an award of 10 percent of the funds deposited in the Fund under subsection (e)(2) attributable to information such person furnished to the Attorney General that leads to a forfeiture described in subsection (e)(2)(A), which is made after December 18, 2015, pursuant to a proceeding resulting in forfeiture that was initiated after December 18, 2015.

(2) Person described

A person meets the requirements of this paragraph if-

(A) the person identifies and notifies the Attorney General of funds or property-

(i) of a state sponsor of terrorism, or held by a third party on behalf of or subject to the control of that state sponsor of terrorism;

(ii) that were not previously identified or known by the United States Government; and

(iii) that are subsequently forfeited directly or in the form of substitute assets to the United States; and

(B) the Attorney General finds that the identification and notification under subparagraph (A) by that person substantially contributed to the forfeiture to the United States.

(h) Special exclusion from compensation

In no event shall an individual who is criminally culpable for an act of international terrorism receive any compensation under this section, either directly or on behalf of a victim.

(i) Report to Congress

Within 30 days after authorizing the payment of compensation of eligible claims pursuant to subsection (d), the Special Master shall submit to the chairman and ranking minority member of the Committee on the Judiciary of the House of Representatives and the chairman and ranking minority member of the Committee on the Judiciary of the Senate a report on the payment of eligible claims, which shall include-

(1) an explanation of the procedures for filing and processing of applications for compensation; and

(2) an analysis of the payments made to United States persons from the Fund and the amount of outstanding eligible claims, including-

(A) the number of applications for compensation submitted;

(B) the number of applications approved and the amount of each award;

(C) the number of applications denied and the reasons for the denial;

(D) the number of applications for compensation that are pending for which compensatory damages have not been paid in full; and

(E) the total amount of compensatory damages from eligible claims that have been paid and that remain unpaid.

(j) Definitions

In this section the following definitions apply:

(1) Act of international terrorism

The term "act of international terrorism" includes-

(A) an act of torture, extrajudicial killing, aircraft sabotage, or hostage taking as those terms are defined in section 1605A(h) of title 28; and

(B) providing material support or resources, as defined in section 2339A of title 18, for an act described in subparagraph (A).

(2) Adverse final judgment

The term "adverse final judgment" means a final judgment in favor of the defendant, or defendants, in the proceedings identified in subsection (e)(2)(B)(iii), or which does not order any payment from, or award any interest in, the assets at issue in such proceedings to the plaintiffs, judgment creditors, or Settling Judgment Creditors in such proceedings.

(3) Compensatory damages

The term "compensatory damages" does not include pre-judgment or post-judgment interest or punitive damages.

(4) Final judgment

The term "final judgment" means an enforceable final judgment, decree or order on liability and damages entered by a United States district court that is not subject to further appellate review, but does not include a judgment, decree, or order that has been waived, relinquished, satisfied, espoused by the United States, or subject to a bilateral claims settlement agreement between the United States and a foreign state. In the case of a default judgment, such judgment shall not be considered a final judgment until such time as service of process has been completed pursuant to section 1608(e) of title 28.

(5) Fund

The term "Fund" means the United States Victims of State Sponsored Terrorism Fund established by this section.

(6) Source other than this Fund

The term "source other than this Fund" means all collateral sources, including life insurance, pension funds, death benefit programs, payments by Federal, State, or local governments (including payments from the September 11th Victim Compensation Fund (49 U.S.C. 40101 note)), and court awarded compensation related to the act of international terrorism that gave rise to a claimant's final judgment. The term "entitled or scheduled to receive" in subsection (d) (3)(B)(i) includes any potential recovery where that person or their representative is a party to any civil or administrative action pending in any court or agency of competent jurisdiction in which the party seeks to enforce the judgment giving rise to the application to the Fund.

(7) State sponsor of terrorism

The term "state sponsor of terrorism" means a country the government of which the Secretary of State has determined, for purposes of section 4605(j) of title 50, section 2371 of title 22, section 2780 of title 22, or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism.

(8) United States person

The term "United States person" means a natural person who has suffered an injury arising from the actions of a foreign state for which the foreign state has been determined not to be immune from the jurisdiction of the courts of the United States under section 1605A or section 1605(a)(7) (as such section was in effect on January 27, 2008) of title 28 or is eligible to make a claim under subsection (c)(2)(B) or subsection (c)(2)(C).

(k) Severability

The provisions of this section are severable. If any provision of this section, or any application thereof, is found unconstitutional, that finding shall not affect any provision or application of this section not so adjudicated.

(Pub. L. 114–113, div. O, title IV, §404, Dec. 18, 2015, 129 Stat. 3007 .)

REFERENCES IN TEXT

Section 1605(a)(7) of title 28 (as such section was in effect on January 27, 2008),

referred to in subsecs. (c)(2)(A)(ii) and (j)(8), refers to subsec. (a)(7) of section 1605 of title 28 as it existed prior to being struck out by Pub. L. 110-181, §1083(b)(1)(A). See 2008 Amendment note under that section.

Section 405 of the Air Transportation Safety and System Stabilization Act, referred to in subsec. (d)(3)(A)(ii)(III), is section 405 of Pub. L. 107-42, which is set out in a note under section 40101 of Title 49, Transportation.

The International Emergency Economic Powers Act, referred to in subsec. (e)(2)(A), is title II of Pub. L. 95-223, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

The Trading with the Enemy Act, referred to in subsec. (e)(2)(A), is act Oct. 6, 1917, ch. 106, 40 Stat. 411, which was classified generally to sections 1 to 6, 7 to 39, and 41 to 44 of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification and renumbering as chapter 53 (§4301 et seq.) of Title 50. For complete classification of this Act to the Code, see Tables.

The September 11th Victim Compensation Fund, referred to in subsec. (j)(6), probably means the September 11th Victim Compensation Fund of 2001, title IV of Pub. L. 107-42, Sept. 22, 2001, 115 Stat. 237, which is set out in a note under section 40101 of Title 49, Transportation.

CODIFICATION

Section was enacted as part of the James Zadroga 9/11 Victim Compensation Fund Reauthorization Act, and also as part of the Consolidated Appropriations Act, 2016, and not as part of the Victims of Crime Act of 1984 which comprises this chapter.