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# The Foreign Claims Settlement Commission of the United States

The Foreign Claims Settlement Commission (FCSC or Commission) offers an avenue to provide compensation to Americans who suffered harm due to the acts of foreign governments. U.S. nationals (citizens, individuals who owe permanent allegiance to the United States, and U.S. corporations) that are injured by foreign governments often do not have a forum to pursue damages in U.S. or foreign courts. In many cases, recourse may not be available in foreign judicial systems, and sovereign immunity often bars suits against foreign governments in U.S. courts. The FCSC provides a forum for U.S. nationals to pursue claims against foreign governments in some cases, but its authority is limited to select “programs.” Each program involves defined categories of claims against one or more specific countries. As of 2017, the FCSC and its predecessor commissions have exercised jurisdiction over more than 740,000 claims in 47 programs. It has granted nearly \$4 billion in awards to U.S. nationals.

## Background and Origins

The FCSC has its origins in two post-World War II claims commissions. In 1948, Congress created the War Claims Commission, which adjudicated claims by American prisoners of war and civilian internees that suffered maltreatment by enemy nations during World War II. Two years later, Congress created the International Claims Commission, which adjudicated claims against foreign countries that nationalized (i.e., assumed state ownership and control of) or took U.S. citizens’ private property without compensation. Both commissions were in the executive branch. Federal law limited the International Claims Commission’s jurisdiction to foreign countries that provided lump sum payments to the United States as a part of an international claims settlement agreement.

In Presidential Reorganization Plan No. 1 of 1954, President Eisenhower combined the functions of the War Claims Commission and International Claims Commission into the newly created FCSC in the executive branch. In 1980, Congress passed legislation transferring the FCSC to the Department of Justice (DOJ) as a separate and independent agency within DOJ.

## Composition

The FCSC’s statutory authority (22 U.S.C. § 1622c) calls for the Commission to be composed of a full-time Chairman and two part-time Commissioners appointed by the President with the advice and consent of the Senate. The Chairman and Commissioners may be removed only for malfeasance in office or neglect of duty. Currently, the FCSC consists of two Commissioners—one appointed by President Obama and one by President Trump. The FCSC currently does not have a Chairman.

## Legal Authority

The FCSC’s current authority to administer claims settlement programs arises from three sources. First, the FCSC retained the International Claims Commission’s authority to adjudicate claims for nationalizing or taking private property against countries that have a claims settlement agreement with the United States.

Second, Congress has passed legislation that specifically authorizes certain FCSC programs. Such program-specific legislation defines the country against whom claims can be brought and the scope of available claims. For example, Congress authorized the FCSC to hear claims against the People’s Republic of China (PRC) arising between 1949 and 1966 for either (1) uncompensated taking of private property or (2) the disability or death of U.S. nationals resulting from the PRC’s actions. Congress has passed program-specific legislation authorizing certain claims against Czechoslovakia, East Germany, Iran, the Soviet Union, and Vietnam, among others.

Third, the FCSC may establish programs based on referrals of categories of claims from the Secretary of State. Most of the FCSC’s programs opened in the last two decades began with referrals from the Department of State. For example, the FCSC opened three programs involving claims against Libya based on Department of State referrals. The Libya programs allowed certain claims for personal and commercial injuries arising from terrorist incidents prior to 2006. In 2005, the Secretary of State referred a program involving claims against Cuba for the uncompensated taking of U.S. nationals’ property after 1967. (An earlier Cuban Claims Program for pre-1967 takings closed in 1972.) The Department of State referred two programs—one of which is still ongoing—concerning torture, extrajudicial killing, aircraft sabotage, hostage-taking, or material support for such acts by the Iraqi government.

FCSC programs often are open for a defined period of years, after which the FCSC no longer accepts claims.

## Funding for FCSC Programs

FCSC programs differ depending on whether there is a source of funds available to pay claimants. Some programs begin with a defined source of funds to pay U.S. nationals that receive awards. The FCSC opens other programs with the expectation that the United States will adjudicate the total amount owed in all claims and then pursue payment from the foreign country responsible for the harm.

## Funded Programs

For funded programs, the United States often derives funding from its international claims settlement agreements. Under such agreements, the responsible foreign country

provides a lump sum payment to the United States in exchange for the release of all U.S. nationals' claims against that country within certain parameters. The executive branch typically negotiates and concludes such agreements, treating them as executive agreements that do not require the Senate's advice and consent.

When the United States receives a lump payment under an international claims settlement agreement, it places the monies in a special Treasury fund dedicated to an FCSC program. The FCSC then opens a program in which it evaluates the merits of each individual claim and makes awards to U.S. nationals that successfully present them. The Department of the Treasury disburses funds to claimants that receive awards. Although claims settlement agreements are the most common source of funding, congressional appropriations, liquidation of foreign assets in the United States, or another source defined by statute may also provide funding to pay FCSC awards.

### Pre-settlement Adjudication

In some cases, the FCSC opens programs before there are funds available to pay awards. In unfunded programs, the Commission adjudicates the validity of claims and certifies its decisions to the Secretary of State as a "pre-settlement adjudication." The FCSC certifies to the Department of State the total amount owed to all claimants. After certification, the United States may pursue payment of the aggregate amount from the foreign country as a part of its international negotiations. If the foreign country ultimately concludes an international claims settlement agreement and pays the sought-after amount (in whole or in part), the United States may distribute funds to U.S. nationals with awards from the FCSC. Such pre-settlement adjudication serves dual purposes of (1) allowing adjudication of U.S. nationals' claims while evidence is still fresh and available, and (2) establishing a negotiating position for the United States to pursue in its international relations.

Oftentimes, foreign nations agree to an international claims settlement as part of a broader normalization of relations (e.g., resumption of trade and diplomatic relations) with the United States. But when a foreign country is not willing to make a claims settlement payment, the FCSC's pre-settlement adjudication awards can remain unpaid for many years or even decades. For example, the FCSC processed all claims in its East Germany program in 1981, but the United States did not conclude a claims settlement agreement funding that program until after the reunification of Germany more than a decade later. To date, the United States has not obtained funding for either of its two Cuban Claims Programs. Those programs closed in 1972 and 2006, respectively. The FCSC certified more than \$1.9 billion in unpaid claims in the two programs combined.

### Current Programs

The FCSC currently has three open programs:

**Albania Claims Program:** The FCSC has an ongoing program to adjudicate U.S. nationals' claims against Albania for uncompensated taking of property prior to 1995. A 1995 claims settlement agreement with Albania provides funding for the program.

**Second Iraq Program:** In 2014, the Department of State referred to the FCSC three categories of claims against Iraq related to hostage-taking in violation of international law that occurred prior to 2004. A 2010 claims settlement agreement with Iraq is the source of funding for the program. The FCSC concluded a prior Iraq program, also based on referral from the Department of State, in 2016.

**Guam Claims Program:** The Guam World War II Loyalty Recognition Act (22 U.S.C. § 1621 note), enacted in 2016, authorizes the FCSC to make awards to U.S. nationals or their decedents who suffered death, rape, personal injury, severe personal injury, forced labor, forced march, internment, and hiding to evade internment during the Japanese occupation and American liberation of Guam in World War II. Duties, taxes, and fees collected from Guam under existing law provide funding for the program.

### Procedure for Resolving Claims

Under 22 U.S.C. § 1623 and 50 U.S.C. § 4109, the decisions of the FCSC are final and conclusive on all questions of fact and law. These statutes provide that the Commission's decisions are not subject to review by any other U.S. official or by any court, including in a mandamus proceeding. Prior to issuing a final decision, the Commission issues a written proposed decision. Claimants have an opportunity to object to the proposed decision before it becomes final. Regulations defining the FCSC's procedures are provided in 45 C.F.R. §§ 500.1-509.7.

### Advisory Function

An amendment to the Foreign Assistance Act of 1961 known as the Hickenlooper Amendment (codified at 22 U.S.C. § 2370) authorized the FCSC to assist the President in evaluating whether to suspend foreign assistance to certain countries. The Hickenlooper Amendment states that the President shall suspend foreign assistance to the government of any country that has (1) "nationalized, expropriated, or seized ownership or control" of U.S. nationals' property; (2) taken steps to repudiate or annul U.S. nationals' contracts; or (3) imposed discriminatory taxation or restrictive conditions that have the effect of nationalizing, expropriating, or seizing ownership or control of U.S. nationals' property. The Hickenlooper Amendment authorizes the FCSC, upon the request of the President, to provide an advisory report in evaluating whether these conditions were triggered.

### Congressional Interest

Because Congress possesses authority to create new FCSC programs and define the scope of available claims, it may have interest in the FCSC's functions and capabilities. Congress exercised its authority to create new claims programs most recently in 2016, when it created the Guam Claims Program. Bills have been introduced in prior Congresses that would have opened FCSC programs for claims against Turkey involving American-owned property in Cyprus (H.R. 2597, 112th Cong.) and against Libya for the bombing of Pan Am Flight 103 (H.R. 3713, 112th Cong.), among other things.

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