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Mr. Chairman and Ranking Member, it is an honor to have the opportunity to appear before you again on the subject of the Judgment Fund. I submitted a written statement to the Committee last September in advance of the Hearing entitled, "Oversight of the Judgment Fund: Iran, Big Settlements, and the Lack of Transparency." My statement remains largely applicable, and I would like to incorporate it by reference here.

In my prior statement, I commended the Committee for seeking to increase the transparency and accountability of the Judgment Fund's administration. I continue to regard this as a laudable goal. In the main, then, I fully support the goals of H.R. 1096. I do, however, have a few observations regarding this legislation.

First, the bill would impose a duty on the Treasury Department to release certain information regarding claims paid out of the Judgment Fund as soon as practicable after payment, "but not later than 30 days after the date on which a payment under this section is tendered on or after January 1, 2016." The plain language of the bill applies the duty to disclose retroactively. The problem is that the bill is drafted in a way that also retroactively applies the duty to disclose within 30 days of payment being tendered. As to payments tendered more than 30 days ago, including any payment tendered in 2016, it is physically impossible to comply with this requirement. It does not promote respect for the rule of law for Congress to create legal duties that cannot be complied with. In this case, the problem could be easily avoided. I strongly urge that the bill be amended to state specifically that "the requirement, established by 31 USC 1304(d)(1), to make certain information available within 30 days of payment being

tendered shall not apply to payments tendered prior to the date of enactment of this bill. As to such tendered payments, the Department of the Treasury shall make the information covered by 31 USC 1304(d)(1) available within 60 days of the effective date of this Act."

Second, I understand that the Department of the Treasury has submitted a comment asserting that "the brief description of facts often includes Privacy Act protected information." This is a striking claim. I am no Privacy Act expert, but I would hesitate to offer an endorsement for legislation that has this consequence. I urge the Committee to follow up with the Treasury Department to determine whether there is a way of avoiding what seems like an unintended consequence.

Finally, I have some concern about establishing a substantive exception to the scope of the Judgment Fund. As I set forth in my earlier testimony, and as important Judgment Fund scholars such as Professor Figley have observed in their work, the Judgment Fund fulfills a fundamental constitutional commitment -- it is one way that we effectuate the rule of law. Recall that prior to the enactment of the Judgment Fund, Congress had to enact a private bill to authorize and appropriate funds for the satisfaction of each and every judgment against the United States. As a result, whether a particular litigant actually received a judgment had more to do with their political connections than with the merits of their claim. If Congress embarks on the creation of exceptions, it re-introduces the need for private bills at least as to parties who fall within the exception. Moreover, once Congress begins to establish exceptions, it is difficult to see how or why it would stop. H.R. 1096 creates an exception for a particularly despicable category of potential litigants -- state sponsors of terrorism. But it leaves out other despicable characters. Why retain Judgment Fund eligibility for terrorists, murderers, and sex traffickers? This distinction seems exceedingly difficult to justify in principle. It seems entirely possible,

then, that the categories of exception will grow. With this growth, the capacity of the Judgment Fund to fulfill its constitutional mission of holding the United States government to the rule of law will be correspondingly diminished.

Ultimately, none of the concerns I have raised goes to the central purpose of H.R. 1096, which is to instill transparency and accountability. These are goals worthy of pursuit. The bill can be readily amended to obviate the concerns I have raised while still achieving its commendable aims. I urge you to do just this.