



MEMORANDUM

December 19, 2018

To: Hon. Kirsten Gillibrand
Attention: Brooke Jamison

From: Scott D. Szymendera, Analyst in Disability Policy, sszymendera@crs.loc.gov, 7-0014

Subject: **Summary of S. 3591, the “Never Forget the Heroes: Permanent Authorization of the September 11th Victim Compensation Fund Act”**

This memorandum is in response to your request to the Congressional Research Service (CRS) for a summary of S. 3591, the “Never Forget the Heroes: Permanent Authorization of the September 11th Victim Compensation Fund Act.” This legislation was introduced by Senator Kirsten Gillibrand on October 11, 2018.

S. 3591 would reauthorize the September 11th Victim Compensation Fund (VCF) through 2090 and would provide for appropriations of such sums as may be necessary for the VCF during this period as well as make other changes to the VCF.

If you have any questions about the material presented in this memorandum or if you would like any additional information, please contact Scott Szymendera by phone at x7-0014 or by email at sszymendera@crs.loc.gov. While this material may be included in other CRS products, the confidentiality of your request will be maintained.

September 11th Victim Compensation Fund (VCF)

The September 11th Victim Compensation Fund (VCF) of 2011 was created by Title IV of the Air Transportation Safety and System Stabilization Act of 2001.¹ The original VCF (VCF1) paid compensation in cases of deaths or injuries immediately caused by the terrorist-related aircraft crashes at the World Trade Center, Pentagon, and Shanksville, PA, on September 11, 2001, including to the passengers and crew of the hijacked aircraft and those at the crash sites. VCF1 was closed to new claims in December 2003.

Reopening of the VCF

Concerns about injuries and illnesses incurred by persons involved in emergency response, recovery, and debris removal operations at the September 11th aircraft crash sites led Congress to reopen the VCF with the enactment of Title II of the James Zadroga 9/11 Health and Compensation Act of 2010 (“Zadroga

¹ P.L. 107-42. The VCF is codified at 49 U.S.C. §40101 note.

Act”).² The Act reopened the VCF and extended eligibility for benefits to persons who suffered physical injuries or illnesses as a result of rescue, recovery, or debris removal work at or near the September 11th aircraft crash sites during the period from September 11, 2001, to May 30, 2002, and was originally reopened for new claims through October 3, 2016.

Reauthorization of the VCF

The VCF was reauthorized on December 18, 2015, with the enactment of Title IV of Division O of the Consolidated Appropriations Act, 2016 (“Zadroga Reauthorization Act”).³ Under this reauthorization, claims approved before the date of the reauthorization are considered Group A claims while all other claims filed before the final VCF deadline of December 18, 2020, are considered Group B claims subject to certain limitations, including limitations on benefits for economic and noneconomic losses.

S. 3951, the Never Forget the Heroes: Permanent Authorization of the September 11th Victim Compensation Fund Act

Section 1. Short Title

Section 1 of S. 3591 assigns a short title to the legislation.

Section 2. September 11th Victim Compensation Fund of 2001

Appropriations

Section 2(a)(1) of S. 3591 would change the appropriations for the VCF from a one-time appropriation of \$4.6 billion for Group B claims to an appropriation of “such sums as may be necessary” for each fiscal year through FY2090.

Sunset Date

Section 2(a)(2) of S. 3591 would change the sunset date of the VCF from the date when the \$4.6 billion appropriation has been expended to October 1, 2090. This would match the sunset date of the World Trade Center Health Program (WTCHP).⁴

Deadline for Filing Claims

Section 2(b) of S. 3591 would change the deadline for filing VCF claims from December 18, 2020 (five years after the date of enactment of the Zadroga Reauthorization Act), to October 1, 2089.

² P.L. 111-347.

³ P.L. 114-113.

⁴ The WTCHP was established by Title I of the Zadroga Act and is codified at 42 U.S.C §§300mm et seq. For additional information on the WTCHP, see the program’s website at <https://www.cdc.gov/wtc/>.

Reassessment of Special Master Policies and Procedures

Section 2(c)(1) of S. 3591 would change the frequency of the Special Master's assessment that the VCF's policies and procedures are continuing to satisfy the requirement that VCF expenditures do not exceed available funds and that priority is given to those claims with the most debilitating physical conditions. The bill would change the frequency of this assessment from once every year to at least once every five years.

Compensation Reduced due to Insufficient Funding

Section 2(c)(2) of S. 3591 would require that, in the case of any VCF Part B claim that was reduced due to insufficient funding before the date of enactment, the Special Master shall, in the first fiscal year that sufficient funding is available, pay the claimant the difference between the full award and the reduced amount.

Exception to Noneconomic Loss Limits

Section 2(d) of S. 3591 would permit the Special Master to exceed the limitations on compensation for noneconomic losses (\$250,000 if the loss results from any type of cancer or \$90,000 if the loss does not result from cancer) if the Special Master determines that the claim presents "special circumstances." S. 3591 does not provide a definition for "special circumstances."

Adjustment of Gross Income Limit

Section 2(e) of S. 3591 would require that the gross income limit used to determine the amount of economic loss in a case (currently set at \$200,000 and not subject to adjustment) be adjusted no more than once every five years. This adjustment would be based on the difference between the Consumer Price Index for All Urban Consumers (CPI-U) for the month of October immediately preceding the adjustment, and the CPI-U for the month of October that immediately precedes the date that is five years before the date of adjustment.