



MEMORANDUM

November 28, 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 the September 11th Victim Compensation Fund (VCF)**

This memorandum is in response to your request to the Congressional Research Service (CRS) for information on the September 11th Victim Compensation Fund (VCF). Per your request, this memorandum includes a history of the VCF, an overview of VCF eligibility requirements, operations, benefits, and financing, and current VCF program statistics.

If you have any questions about the material presented in this memorandum or if you would like any additional information, please contact me by phone at x7-0014 or by email at sszymendera@crs.loc.gov.

History of the VCF

The VCF has its origins in the days immediately after the September 11th terrorist attacks. Originally designed to compensate persons injured or killed in the immediate aftermath of the attacks, the program (referred to in this memorandum as “VCF1”) was reopened (“reopened VCF”) and reauthorized (“reauthorized VCF”) and expanded to include persons who responded to the attacks, as well as rescue and recovery workers, including those with latent illnesses.

VCF1

VCF1 was created by Title IV of the Air Transportation Safety and System Stabilization Act of 2001.¹ VCF1 provided cash benefits to the following groups of persons who suffered physical injury or death as a result of the terrorist attacks of September 11, 2001:

- Persons who were present at the World Trade Center, Pentagon, or aircraft crash site in Shanksville, PA, at the time of or in the immediate aftermath of the aircraft crashes at those sites on September 11, 2001;² and

¹ P.L. 107-42. The VCF is codified at 49 U.S.C. § 40101 note. For additional information on VCF1, see Kenneth R. Feinberg, *Final Report of the Special Master for the September 11th Victim Compensation Fund 2001*, Department of Justice, 2004, <https://permanent.access.gpo.gov/lps55611/lps55611.html>.

² The term “immediate aftermath” was defined in the original VCF regulations at 28 C.F.R. § 104.2(b) [2002] to include the period of time from a crash until 12 hours after a crash for all persons except rescue workers and 96 hours after a crash for rescue

- Passengers and crew of any aircraft that crashed on September 11, 2001, as a result of terrorist activity.

The amount of benefits available to each claimant was determined by a Special Master appointed by the Attorney General.³ The amount of benefits payable to each claimant was based on the economic losses (such as loss of future earnings) and non-economic losses (such as pain and suffering) of each person. The VCF statute specifically prohibited the payment of punitive damages. Benefits were reduced by certain collateral source payments, such as life insurance benefits, available to the claimant. There was no cap on the amount of benefits that any one person could receive or on total benefits paid. By filing a VCF claim, a person waived his or her right to file a civil action in any federal or state court for damages related to the September 11, 2001 terrorist-related aircraft crashes.⁴

Congress provided funding for VCF1 through an appropriation of “such sums as may be necessary” for the payment and administration of VCF1 benefits. The Special Master of VCF1 was required to promulgate regulations to govern the program within 90 days of the law’s enactment and all claims had to be filed within two years of the promulgation of these regulations, at which time VCF1 would close.⁵ VCF1 received 7,403 claims and made awards totaling \$7.049 billion to 5,560 claimants.⁶

Reopened VCF

VCF1 was closed to new claims in December 2003. However, 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 Act”).⁷ The reopened VCF extended eligibility for cash 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.

The VCF was initially reopened for new claims through October 3, 2016. Unlike in VCF1 in which there was no cap on total funding for benefits and the Special Master thus could make benefit awards without taking into consideration the total cost of benefits, total benefits and administrative costs paid by the reopened VCF were limited to \$2.775 billion. Under the reopened VCF, attorneys’ fees were limited to 10% of the VCF award.

VCF Reauthorization

The reopened VCF was scheduled to stop taking claims on October 3, 2016. 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”).⁸ Under this reauthorization, claims approved before the date of the reauthorization are considered Group A claims. Group A claims are subject to the same rules as

workers.

³ Attorney General John Ashcroft appointed Kenneth Feinberg as Special Master of the VCF on November 26, 2001.

⁴ This provision was amended later in 2001 to permit civil actions against persons who were knowing participants in any conspiracy to hijack any aircraft or commit any terrorist act (P.L. 107-71, § 201).

⁵ Interim final regulations for VCF1 were promulgated on December 21, 2001 (Department of Justice, “September 11th Victim Compensation Fund of 2001; Interim Final Rule,” 66 *Federal Register* 66282, December 21, 2001), resulting in a sunset date for the VCF of December 22, 2003.

⁶ Kenneth R. Feinberg, *Final Report of the Special Master for the September 11th Victim Compensation Fund 2001*, Department of Justice, 2004, p. 109.

⁷ P.L. 111-347.

⁸ P.L. 114-113.

claims under the reopened VCF and are subject to the \$2.775 billion cap on total benefit payments. All other claims filed before the final VCF deadline of December 18, 2020, are considered Group B claims subject to additional rules and funding caps established by the reauthorization legislation. Thus, all current claims are Part B claims and the following sections of this memorandum will provide detailed information on the Part B claims rules, processes, and funding caps.

Overview of the VCF

This section of the memorandum provides information on current eligibility rules, operations, benefits, and financing of the VCF, under the provisions for Part B claims established by the Zadroga Reauthorization Act.

VCF Eligibility

In order to be eligible for VCF benefits, a person must have:

- died as a passenger or crew member on one of the aircraft hijacked on September 11, 2001;
- died as a direct result of the terrorist-related aircraft crashes or rescue, recovery, or debris removal in the *immediate aftermath* of the September 11, 2001, terrorist attacks; or
- been present at a *September 11th crash site* in the immediate aftermath of the September 11, 2001 terrorist attacks and suffered *physical harm* as a direct result of the crashes or the rescue, recovery, and debris removal efforts.

Immediate Aftermath

For the purposes of VCF eligibility, the immediate aftermath of the September 11th terrorist attacks is the time period from September 11, 2001 to May 30, 2002.

September 11th Crash Sites

For the purposes of VCF eligibility, the September 11th crash sites include:

- the World Trade Center, Pentagon, or Shanksville, PA, crash sites;
- the buildings or portions of buildings that were destroyed as a result of the September 11th terrorist attacks;
- the area in Manhattan that is south of the line that runs along Canal Street from the Hudson River to the intersection of Canal Street and East Broadway, north on East Broadway to Clinton Street, and east on Clinton Street to the East River; and
- any area related to debris removal such as the debris-removal barges and Fresh Kills in Staten Island.

Physical Harm

To be eligible for the VCF, individuals who did not die as passengers or crew members of one of the hijacked aircraft, or as a direct result of the September 11th terrorist attacks (including rescue, recovery, and debris removal) must have suffered physical harm as a result of the attacks. For the purposes of VCF eligibility, physical harm includes either a physical injury that was treated by a medical professional within a reasonable time of the injury or a World Trade Center (WTC)-related physical health condition as defined for the purposes of the World Trade Center Health Program (WTCHP). Thus, for those with latent

conditions, such as respiratory conditions or cancer, their conditions must be covered by the WTCHP in order to be covered by the VCF.

WTC-Related Physical Health Condition

A WTC-related physical health condition is a physical health condition covered by the WTCHP. These conditions are those provided in statute at Section 3312(a) and 3322(b) of the Public Health Service Act⁹ and those added through rulemaking by the WTC Program Administrator.¹⁰ Mental health conditions covered by the WTCHP may not be used to establish VCF eligibility as the VCF does not include any provisions for the payment of benefits for mental health conditions.

VCF Operations

The VCF is administered by the Civil Division of the Department of Justice. Decisions on VCF eligibility and benefits are made by the VCF Special Master, appointed by the Attorney General. Rupa Bhattacharyya is the current VCF Special Master. A claimant dissatisfied with the decision of the Special Master on his or her claim may file an appeal and request a hearing before a VCF hearing officer appointed by the VCF. There is no further right of appeal or judicial review of VCF decisions. A claimant may amend his or her claim after a decision has been made if the claimant has new material relevant to the claim.

Registration and Claim Deadlines

All claims for VCF benefits must be filed by December 18, 2020, five years after enactment of the VCF reauthorization act. Before filing a claim, a potential claimant must register with the VCF by one of the following applicable deadlines:

- by October 3, 2013, if the claimant knew, or reasonably should have known, that he or she suffered a physical harm or died as a result of the September 11th attacks or rescue, recovery, or debris removal efforts, and that he or she was eligible for the VCF, on or before October 3, 2011;
- within two years of the date the claimant knew, or reasonably should have known, that he or she has a WTC-related physical health condition or died as a result of the September 11th attacks and is eligible for the VCF.

If a claimant has a condition that is later added to the list of conditions covered by the WTCHP, then the two-year period begins on the later of the dates when a government entity, such as the WTCHP or a state workers' compensation agency, determines that the condition is related to the September 11th attacks, or when a claimant's condition is added to the list of conditions covered by the WTCHP.¹¹

⁹ 42 U.S.C. §§ 300mm-22(a) and 300mm-32(b).

¹⁰ The complete list of conditions covered by the WTCHP is provided in regulation at 42 C.F.R. § 88.15 and on the website of the WTCHP at <https://www.cdc.gov/wtc/conditions.html>.

¹¹ A table of deadlines for each type of medical condition is provided on the website of the WTCHP at <https://www.vcf.gov/pdf/RegisterChart.pdf>.

VCF Benefits

Benefits under VCF1 were not subject to any caps on individual or total payments. When the VCF was reopened, total benefits were subject to a cap of \$2.775 billion, however, there were no specific caps on individual benefits. VCF for Group B are subject caps on non-economic losses and total benefits.

Benefits under the VCF for Group B claims are determined by the Special Master based on the economic and non-economic losses of the claimant. For non-economic losses, there is a cap of \$250,000 for claims based on cancer and \$90,000 for all other claims. When calculating economic losses, the Special Master is only permitted to consider the first \$200,000 in annual income when determining losses to past earnings and future earning capacity which serves to limit the amount of economic losses that can be paid. There is a total cap of \$4.6 billion for VCF Part B awards. As in past iterations of the VCF, benefits are reduced by certain collateral source payments available to claimants, such as life insurance benefits.

Financing of the VCF

The costs of VCF benefits and administration are not subject to annual appropriations. Rather, costs for Group A benefits and administration were financed by the \$2.775 billion in appropriations provided by the 2010 legislation to reopen the VCF. Costs for Group B benefits and administration are financed by the one-time appropriation of \$4.6 billion provided in the Zadroga Reauthorization Act. Funding was made exempt from budget sequestration by the Zadroga Reauthorization Act.¹²

VCF Statistics

The following tables provide data on the VCF. These tables include data for all VCF claims since the VCF was reopened by the Zadroga Act in 2011 (Group A and B claims). Through the end of August 2018, there have been over 24,000 VCF awards totaling over \$4.2 billion in benefits.

Table 1. September 11th Victim Compensation Fund Awards

From VCF's reopening on October 3, 2011, through August 31, 2018 (Group A and Group B Claims)

Compensation Awarded	Number	Amount
Initial Awards	19,204	\$3,901,216,187.22
Revised Awards ^a	5,011	\$378,211,225.51
<i>Total Awards</i>	<i>24,215</i>	<i>\$4,279,427,412.73</i>

Source: September 11th Victim Compensation Fund, *VCF Program Statistics*, Through August 31, 2018, September 5, 2018, p. 5, <https://www.vcf.gov/pdf/VCFProgramStatistics09052018.pdf>.

Notes: Award amounts are after offsets for benefits from collateral sources such as life insurance.

a. Revised Awards include compensation awarded after an amendment or appeal of an initial decision.

¹² 2 U.S.C. § 905(g)(1)(B). The exemption applies to any sequestration order on or after the date of enactment of the Zadroga Reauthorization Act (December 18, 2015).

Table 2. September 11th Victim Compensation Fund (VCF) Award Amounts

From VCF's reopening on October 3, 2011, through August 31, 2018 (Group A and Group B Claims)

Compensation Awards	Personal Injury Claims	Death Claims
Total Awards	\$3,973,762,555.08	\$305,664,857.65
Highest Award Amount	\$4,133,466.00	\$3,688,255.65
Lowest Award Amount ^a	\$458.13	\$10,067.64
Mean Award Amount	\$223,182.40	\$717,523.14

Source: September 11th Victim Compensation Fund, VCF Program Statistics, Through August 31, 2018, September 5, 2018, p. 5, <https://www.vcf.gov/pdf/VCFProgramStatistics09052018.pdf>.

Note: Award amounts are after offsets for benefits from collateral sources such as life insurance.

- a. Does not include awards of \$0.00 due to total reduction of award due to offsets or because the claimant was already fully compensated by an earlier VCF award.

Table 3. September 11th Victim Compensation Fund (VCF) Compensation Paid by Category

From VCF's reopening on October 3, 2011, through August 31, 2018 (Group A and Group B Claims)

Claimant Category	Claims Paid	Amount
Responder-New York	15,238	\$3,475,524,150.84
Responder-Pentagon	25	\$6,749,590.02
Responder-Shanksville	7	\$1,441,017.56
Non-Responder-New York (cleaning or maintenance)	667	\$74,698,571.66
Non-Responder-New York (other)	2,236	\$522,740,618.24
Resident in New York Crash Site ^a	406	\$85,956,278.38
Attended School/Childcare/Adult Care in New York Crash Site	35	\$10,363,295.46
Other Person Present in New York Crash Site	140	\$35,651,531.92
Non-Responder-Pentagon	12	\$3,073,901.41
Category Not Available	348	\$63,228,457.24

Source: September 11th Victim Compensation Fund, VCF Program Statistics, Through August 31, 2018, September 5, 2018, p. 6, <https://www.vcf.gov/pdf/VCFProgramStatistics09052018.pdf>.

Notes: Only includes cases in which compensation has been paid by the VCF to the claimant. Does not include cases pending review or appeal. Compensation amounts are after offsets for benefits from collateral sources such as life insurance.

- a. The New York Crash Site is defined as the area in Manhattan that is south of the line that runs along Canal Street from the Hudson River to the intersection of Canal Street and East Broadway, north on East Broadway to Clinton Street, and east on Clinton Street to the East River.