

**MEMORANDUM**

March 5, 2019

**To:** Hon. Peter King  
Attention: Deena Tauster

**From:** Scott D. Szymendera, Analyst in Disability Policy, [sszymendera@crs.loc.gov](mailto:sszymendera@crs.loc.gov), 7-0014

**Subject:** **Summary of the September 11<sup>th</sup> Victim Compensation Fund (VCF) and Announced Reductions in Future VCF Awards**

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This memorandum is in response to your request to the Congressional Research Service (CRS) for information on the September 11<sup>th</sup> 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, current VCF program statistics, and information on the VCF Special Master's recent announcement regarding reductions in future VCF awards.

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](mailto:sszymendera@crs.loc.gov).

Information in this memorandum may be of general interest to Congress and may be presented in other Congressional Research Service (CRS) products while protecting the confidentiality of your request and interactions with CRS.

## 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.<sup>1</sup> 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:

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<sup>1</sup> 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>.

- 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;<sup>2</sup> and
- 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> VCF1 received 7,403 claims and made awards totaling \$7.049 billion to 5,560 claimants.<sup>6</sup>

## 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 11<sup>th</sup> 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”).<sup>7</sup> 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 11<sup>th</sup> 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. Total benefits and administrative costs paid by the reopened VCF were limited to \$2.775 billion, 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. Under the reopened VCF, attorneys’ fees were limited to 10% of the VCF award.

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<sup>2</sup> 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 workers.

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

<sup>4</sup> 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).

<sup>5</sup> 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.

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

<sup>7</sup> P.L. 111-347.

## 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”).<sup>8</sup> 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 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 Group B claims and the following sections of this memorandum will provide detailed information on the Group 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 Group 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 11<sup>th</sup> 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 11<sup>th</sup> terrorist attacks is the time period from September 11, 2001 to May 30, 2002.

#### *September 11<sup>th</sup> Crash Sites*

For the purposes of VCF eligibility, the September 11<sup>th</sup> 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 11<sup>th</sup> 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.

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<sup>8</sup> P.L. 114-113.

## ***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 11<sup>th</sup> 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 Act<sup>9</sup> and those added through rulemaking by the WTC Program Administrator.<sup>10</sup> 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 have registered 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 11<sup>th</sup> 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 11<sup>th</sup> 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

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

<sup>10</sup> 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>.

September 11<sup>th</sup> attacks, or when a claimant's condition is added to the list of conditions covered by the WTCHP.<sup>11</sup>

## 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 to 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 Group 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. Thus, the total funding available for the VCF since its reopening is \$7.375 billion. Funding was made exempt from budget sequestration by the Zadroga Reauthorization Act.<sup>12</sup>

## Special Master's Reduction of Future Awards

Total funding for VCF benefits and administrative costs is capped by the \$7.375 billion in appropriations that have been provided in the Zadroga Act and Zadroga Reauthorization Act with a total cap of \$4.6 billion for VCF Group B awards. The VCF statute requires the Special Master to annually reassess VCF policies and procedures to determine if these policies and procedures satisfy the statutory requirements that claimants with the most debilitating physical conditions have their claims prioritized and that total expenditures for awards and administrative costs associated with Group B claims do not exceed the \$4.6 billion in available funding.<sup>13</sup>

## Special Master's Assessment

### Notice of Inquiry

In October 2018, the Special Master published a Notice of Inquiry in the *Federal Register* seeking public comments on possible policy changes that the Special Master could consider to ensure that there is sufficient funding to administer and pay future VCF claims without exceeding the \$4.6 billion cap on

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<sup>11</sup> 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>.

<sup>12</sup> 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).

<sup>13</sup> Section 405(d)(2)(C)(ii) of the Air Transportation Safety and System Stabilization Act of 2001 (49 U.S.C. § 40101 note).

Group B expenditures.<sup>14</sup> The Special Master received 28 comments in response to this Notice of Inquiry, of which 16 were relevant to the request for information on possible VCF policy and procedure changes.<sup>15</sup>

### Projections of Future VCF Expenditures

In February 2019, the Special Master published her most recent annual assessment of VCF policies and procedures.<sup>16</sup> This report include two sets of projections of future VCF benefit and administrative costs. One projection is based on historical program data, while another projection is based on this historical data, augmented by data on recent program trends. These two models were also used in the 2017 assessment while the 2018 assessment only projected costs based on historical program data.

As shown in **Table 1**, in the 2019 report, the Special Master projects under both models that total VCF program costs by the end of the program will far exceed the \$7.375 billion in available funding. This is the first time the Special Master projects that program funding will be insufficient to pay all VCF benefits and administrative expenses.

**Table 1. Projected VCF Program Costs**

From VCF's reopening on October 3, 2011, through end of program authority (Group A and Group B Claims)

	2019 Report		2018 Report		2017 Report	
	Historical Data Model	Historical Data and Trend Model	Historical Data Model	Historical Data and Trend Model	Historical Data Model	Historical Data and Trend Model
	<i>in millions of dollars</i>					
Projected Award Costs <sup>a</sup>	\$10,064*	\$11,660*	\$7,032	NA	\$4,056	\$7,083
Projected Administrative Costs	\$251	\$251	\$264	NA	\$226	\$226
<b>Total Projected Costs</b>	<b>\$10,315*</b>	<b>\$11,911*</b>	<b>\$7,295</b>	<b>NA</b>	<b>\$4,282</b>	<b>\$7,309</b>

**Sources:** September 11th Victim Compensation Fund, *Seventh Annual Status Report and Third Annual Reassessment of Policies and Procedures*, February 2019, p. 41, <https://www.vcf.gov/pdf/VCFStatusReportFeb2019.pdf>; and earlier versions from 2017 and 2018.

**Notes:** The 2018 report did not use the historical data and trend model for projections.

\*. Exceeds total available funding of \$7.375 billion.

a. Includes initial and revised awards.

<sup>14</sup> Department of Justice, "September 11th Victim Compensation Fund: Compensation of Claims," 83 *Federal Register* 49946, October 3, 2018.

<sup>15</sup> A summary of these public comments and the Special Master's responses to these comments is provided as Appendix A of the Special Master's *Seventh Annual Status Report and Third Annual Assessment of Policies and Procedures*, available online at <https://www.vcf.gov/pdf/VCFStatusReportFeb2019.pdf>.

<sup>16</sup> September 11th Victim Compensation Fund, *Seventh Annual Status Report and Third Annual Reassessment of Policies and Procedures*, February 2019, <https://www.vcf.gov/pdf/VCFStatusReportFeb2019.pdf>.

## Reductions of Future Awards

Because award costs under both models are projected to far exceed the \$7.375 billion in available funding, the Special Master announced in February 2019 the following significant reductions in the amounts of all future VCF awards for all cases pending as of February 25, 2019:

- For all cases filed on or before February 1, 2019; and for all cases that qualify for expedited processing because the claimant has a terminal illness or significant financial hardship, the calculated award will be reduced by 50%; and
- For all cases filed after February 1, 2019, the calculated award will be reduced by 70%.

In all cases, the full amount of any offsets for collateral source payments will continue to be taken.

The award reductions will not apply to appeals decision for appeals of awards initially issued before February 25, 2019. However, there will be scheduling adjustments for future appeals. For appeals of non-economic loss decisions, the VCF will only schedule appeals hearings for cases involving the most severe conditions, such as cancer, interstitial lung disease, and sarcoidosis. For all other cases, the VCF will not schedule appeals hearings until after December 18, 2020. These schedule changes are designed to ensure that there is sufficient funding to pay increased non-economic loss determinations made on appeal for the most severe conditions.

## 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 December 2018, there have been over 26,500 VCF awards totaling over \$4.8 billion in benefits.

**Table 2. September 11<sup>th</sup> Victim Compensation Fund Awards**

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

Compensation Awarded	Number	Amount
Initial Awards	20,981	\$4,291,381,834.60
Revised Awards <sup>a</sup>	5,603	\$509,124,835.90
<i>Total Awards</i>	<i>26,584</i>	<i>\$4,800,506,670.50</i>

**Source:** September 11<sup>th</sup> Victim Compensation Fund, *Seventh Annual Status Report and Third Annual Reassessment of Policies and Procedures*, February 2019, p. 15, <https://www.vcf.gov/pdf/VCFStatusReportFeb2019.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.

**Table 3. September 11<sup>th</sup> Victim Compensation Fund (VCF) Award Amounts**

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

Compensation Awards	Personal Injury Claims	Death Claims
Total Awards	\$4,408,575,405.21	\$391,931,265.29
Highest Award Amount	\$4,133,466.00	\$3,687,255.65
Lowest Award Amount <sup>a</sup>	\$458.13	\$4,124.70
Mean Award Amount	\$227,375.08	\$682,807.08

**Source:** September 11<sup>th</sup> Victim Compensation Fund, *Seventh Annual Status Report and Third Annual Reassessment of Policies and Procedures*, February 2019, p. 15, <https://www.vcf.gov/pdf/VCFStatusReportFeb2019.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 4. September 11<sup>th</sup> Victim Compensation Fund (VCF) Compensation Paid by Category**

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

Claimant Category	Claims Paid	Amount
Responder-New York	16,525	\$3,849,021,080.56
Responder-Pentagon	30	\$8,970,012.20
Responder-Shanksville	7	\$1,441,017.56
Non-Responder-New York (cleaning or maintenance)	693	\$80,939,483.54
Non-Responder-New York (other)	2,671	\$634,886,384.95
Resident in New York Crash Site <sup>a</sup>	471	\$102,953,949.11
Attended School/Childcare/Adult Care in New York Crash Site	35	\$10,754,643.81
Other Person Present in New York Crash Site	164	\$40,725,194.90
Non-Responder-Pentagon	15	\$3,623,901.41
Category Not Available	370	\$67,191,002.46

**Source:** September 11<sup>th</sup> Victim Compensation Fund, *Seventh Annual Status Report and Third Annual Reassessment of Policies and Procedures*, February 2019, p. 16, <https://www.vcf.gov/pdf/VCFStatusReportFeb2019.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.