

116TH CONGRESS
2D SESSION

S. 3755

To provide for the establishment of a COVID–19 Compensation Fund, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 18, 2020

Ms. DUCKWORTH (for herself, Mr. MARKEY, Mr. BLUMENTHAL, Mrs. GILLI-
BRAND, and Mr. KAINE) introduced the following bill; which was read
twice and referred to the Committee on the Judiciary

A BILL

To provide for the establishment of a COVID–19
Compensation Fund, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Pandemic Heroes
5 Compensation Act of 2020”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act, the following definitions apply:

8 (1) CLAIMANT.—The term “claimant” means
9 an individual filing a claim for compensation under
10 this Act.

1 (2) COLLATERAL SOURCE.—The term “collat-
2 eral source” means all compensation other than
3 compensation under this Act, including life insur-
4 ance, pension funds, death benefit programs, and
5 payments by Federal, State, Territory, or local gov-
6 ernments.

7 (3) COVID-19.—The term “COVID-19”
8 means novel coronavirus disease 2019, as identified
9 by the Centers for Disease Control.

10 (4) ECONOMIC LOSS.—The term “economic
11 loss” means any pecuniary loss (including the loss of
12 earnings or other benefits related to employment,
13 medical expense loss, replacement services loss, loss
14 due to death, burial costs, and loss of business or
15 employment opportunities) resulting from harm due
16 to COVID-19 to the extent recovery for such loss is
17 allowed under applicable Federal, State, local, Trib-
18 al, or territorial law.

19 (5) ESSENTIAL WORKER.—The term “essential
20 worker” means any individual, employee, or con-
21 tractor working for a person, business, nonprofit en-
22 tity, or Federal, State, Tribal, territorial or local
23 government that is determined, during the response
24 to the COVID-19 pandemic, to be essential, based
25 on State, local, Tribal, or territorial orders or dec-

1 larations (or equivalent), or Federal guidance pub-
2 lished by the Cyber & Infrastructure Security Agen-
3 cy (CISA), and who performed work outside their
4 place of residence.

5 (6) NONECONOMIC LOSSES.—The term “non-
6 economic losses” means losses for physical and emo-
7 tional pain, suffering, inconvenience, physical im-
8 pairment, mental anguish, disfigurement, loss of en-
9 joyment of life, loss of society and companionship,
10 loss of consortium (other than loss of domestic serv-
11 ice), hedonic damages, injury to reputation, and all
12 other nonpecuniary losses of any kind or nature.

13 (7) SPECIAL MASTER.—The term “Special Mas-
14 ter” means the Special Master appointed by the At-
15 torney General under section 3.

16 (8) PLACE OF RESIDENCE.—The term “place of
17 residence” means the physical location or locations
18 at which claimant resided or was residing during the
19 eligibility period.

20 (9) ELIGIBILITY PERIOD.—The term “eligibility
21 period” means any time during which any Federal,
22 State, Tribal, territorial, or local COVID–19 related
23 emergency order or declaration (or equivalent) is or
24 was in effect, regardless of the claimant’s place of
25 residence.

1 **SEC. 3. ADMINISTRATION.**

2 (a) IN GENERAL.—The Attorney General, acting
3 through a Special Master appointed by the Attorney Gen-
4 eral, shall—

5 (1) administer the compensation program es-
6 tablished under this Act;

7 (2) promulgate all procedural and substantive
8 rules for the administration of this Act; and

9 (3) employ and supervise hearing officers and
10 other administrative personnel to perform the duties
11 of the Special Master under this Act.

12 (b) APPOINTMENT OF SPECIAL MASTER AND DEP-
13 UTY SPECIAL MASTERS.—The Attorney General may ap-
14 point a Special Master and no more than two Deputy Spe-
15 cial Masters without regard to the provisions of title 5,
16 United States Code, governing appointments in the com-
17 petitive service. Any such employee shall serve at the
18 pleasure of the Attorney General. The Attorney General
19 shall fix the annual salary of the Special Master and the
20 Deputy Special Masters.

21 (c) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated such sums as may be
23 necessary to pay the administrative and support costs for
24 the Special Master in carrying out this Act.

1 **SEC. 4. DETERMINATION OF ELIGIBILITY FOR COMPENSA-**
2 **TION.**

3 (a) **FILING OF CLAIM.—**

4 (1) **IN GENERAL.—**A claimant may file a claim
5 for compensation under this Act with the Special
6 Master. The claim shall be on the form developed
7 under paragraph (2) and shall state the factual basis
8 for eligibility for compensation and the amount of
9 compensation sought.

10 (2) **CLAIM FORM.—**

11 (A) **IN GENERAL.—**The Special Master
12 shall develop a claim form that claimants shall
13 use when submitting claims under paragraph
14 (1). The Special Master shall ensure that such
15 form can be filed electronically, if determined to
16 be practicable.

17 (B) **CONTENTS.—**The form developed
18 under subparagraph (A) shall request—

19 (i) information from the claimant con-
20 cerning the harm that the claimant suf-
21 fered as a result of COVID–19, or in the
22 case of a claim filed on behalf of a dece-
23 dent, information confirming the dece-
24 dent’s death, as a result of COVID–19;

1 (ii) information establishing that the
2 claimant or decedent was an essential
3 worker;

4 (iii) information from the claimant
5 concerning any possible economic and non-
6 economic losses that the claimant suffered
7 as a result of COVID-19 or that was
8 caused by the death of the decedent from
9 COVID-19; and

10 (iv) information regarding collateral
11 sources of compensation the claimant has
12 received or is entitled to receive as a result
13 of COVID-19.

14 (3) LIMITATION.—No claim may be filed under
15 paragraph (1) after the date that is 5 years after
16 the end of the eligibility period.

17 (b) REVIEW AND DETERMINATION.—

18 (1) REVIEW.—The Special Master shall review
19 a claim submitted under subsection (a) and deter-
20 mine—

21 (A) whether the claimant is an eligible in-
22 dividual under subsection (c); and

23 (B) with respect to a claimant determined
24 to be an eligible individual—

1 (i) the extent of the harm to the
2 claimant, including any economic and non-
3 economic losses; and

4 (ii) subject to paragraph (7), the
5 amount of compensation to which the
6 claimant is entitled based on the harm to
7 the claimant, the facts of the claim, and
8 the individual circumstances of the claim-
9 ant.

10 (2) NEGLIGENCE.—With respect to a claimant,
11 the Special Master shall not consider negligence or
12 any other theory of liability.

13 (3) DETERMINATION.—A determination under
14 this subsection shall be final and not subject to judi-
15 cial review.

16 (4) RIGHTS OF CLAIMANT.—A claimant in a re-
17 view under paragraph (1) shall have—

18 (A) the right to be represented by an at-
19 torney or other representative;

20 (B) the right to present evidence, including
21 the presentation of witnesses and documents;
22 and

23 (C) any other due process rights deter-
24 mined appropriate by the Special Master.

1 (5) NO PUNITIVE DAMAGES.—The Special Mas-
2 ter may not include amounts for punitive damages
3 in any compensation paid under a claim under this
4 Act.

5 (6) COLLATERAL COMPENSATION.—The Special
6 Master shall reduce the amount of compensation de-
7 termined under paragraph (1) by the amount of the
8 collateral source compensation the claimant has re-
9 ceived or is entitled to receive as a result of the
10 claimant suffering from COVID–19.

11 (7) LIMITATIONS ON CLAIMS.—Noneconomic
12 losses shall not exceed such limit as the Special Mas-
13 ter may impose.

14 (c) ELIGIBILITY.—

15 (1) IN GENERAL.—A claimant or decedent shall
16 be determined to be an eligible individual for pur-
17 poses of this subsection if the Special Master deter-
18 mines that such claimant or decedent—

19 (A) was designated an essential worker
20 during the eligibility period or was a family
21 member of such an essential worker who re-
22 sided with the essential worker during the eligi-
23 bility period;

24 (B) expressed symptoms consistent with
25 COVID–19, including those with laboratory

1 confirmations, diagnosis by a healthcare pro-
2 vider, or for whom there is or was an absence
3 of an alternate diagnosis that explains claim-
4 ant's or decedent's symptoms;

5 (C) suffered economic loss; and

6 (D) meets the requirements of paragraph
7 (2).

8 (2) SINGLE CLAIM.—Not more than one claim
9 may be submitted under this Act by an individual or
10 on behalf of a deceased individual. If the claimant
11 dies during the pendency of a claim, the decedent's
12 family or other individual representing the decedent
13 may continue the claimant's claim with added ex-
14 penses related to the claimant's death, as needed.

15 **SEC. 5. ASSISTANCE TO CLAIMANTS.**

16 The Special Master will establish an office to provide
17 assistance to all claimants in submitting claims.

18 **SEC. 6. PAYMENTS TO ELIGIBLE INDIVIDUALS.**

19 (a) IN GENERAL.—Subject to the limitations under
20 subsection (d), not later than 20 days after the date on
21 which a determination is made by the Special Master re-
22 garding the amount of compensation due a claimant under
23 this Act, the Special Master shall authorize payment to
24 such claimant of the amount determined with respect to
25 the claimant.

1 (b) FUNDING.—

2 (1) IN GENERAL.—The Attorney General is au-
3 thorized to accept such amounts as may be contrib-
4 uted by individuals, business concerns, or other enti-
5 ties to carry out this Act, under such terms and con-
6 ditions as the Attorney General may impose.

7 (2) USE OF SEPARATE ACCOUNT.—In making
8 payments under this section, amounts contained in
9 any account containing funds provided under para-
10 graph (1) shall be used prior to using appropriated
11 amounts.

12 (c) DEVELOPMENT OF AGENCY POLICIES AND PRO-
13 CEDURES.—Not later than 120 days after the date of en-
14 actment the Special Master shall develop agency policies
15 and procedures that meet the requirements including poli-
16 cies and procedures for presumptive award schedules, ad-
17 ministrative expenses, and related internal memoranda.

18 (d) ATTORNEY FEES.—The Special Master shall have
19 the sole discretion to determine reasonable compensation
20 for services rendered for attorney fees for services ren-
21 dered, if any.

22 **SEC. 7. REGULATIONS.**

23 Not later than 90 days after the date of enactment
24 of this Act, the Attorney General, in consultation with the

1 Special Master, shall promulgate regulations to carry out
2 this Act, including regulations with respect to—

3 (1) forms to be used in submitting claims under
4 this Act;

5 (2) the information to be included in such
6 forms;

7 (3) procedures for hearing and the presentation
8 of evidence;

9 (4) procedures to assist an individual in filing
10 and pursuing claims under this Act; and

11 (5) other matters determined appropriate by
12 the Attorney General.

13 **SEC. 8. RIGHT OF SUBROGATION.**

14 The United States shall have the right of subrogation
15 with respect to any claim paid by the United States, sub-
16 ject to the limitation described in this Act.

17 **SEC. 9. VICTIM COMPENSATION FUND.**

18 (a) IN GENERAL.—There is established in the Treas-
19 ury of the United States a fund to be known as the
20 “COVID–19 Compensation Fund”, consisting of amounts
21 deposited into such fund under subsection (b).

22 (b) AVAILABILITY OF FUNDS.—Amounts deposited
23 into the COVID–19 Compensation Fund shall be avail-
24 able, without further appropriation, to the Special Master
25 to provide compensation.

1 (c) **TERMINATION.**—The COVID–19 Compensation
2 Fund shall be permanently closed on the date that is 1
3 year after the Special Master determines that no addi-
4 tional claims may be filed.

5 **SEC. 10. APPROPRIATION.**

6 There is authorized to be appropriated for purposes
7 of carrying out this Act such sums as may be necessary
8 for fiscal year 2020 and each fiscal year thereafter
9 through fiscal year 2026, to remain available until ex-
10 pended.

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