

NEVER FORGET THE HEROES: PERMANENT AUTHORIZATION OF THE SEPTEMBER 11TH VICTIM COMPENSATION FUND ACT

JULY 12, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 1327]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1327) to extend authorization for the September 11th Victim Compensation Fund of 2001 through fiscal year 2090, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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**Purpose and Summary**

H.R. 1327, the “Never Forget the Heroes: Permanent Authorization of the September 11th Victim Compensation Fund Act,” would extend the authorization for the September 11th Victim Compensation Fund (“VCF”) until 2090. The VCF provides compensation for

those individuals who were physically injured as a result of the September 11, 2001 terrorist attacks on the United States, as well as for those physically injured as a result of their involvement in debris removal efforts thereafter and for the families of those killed in the attacks. H.R. 1327 also directs that funds not otherwise appropriated be placed into the VCF in “such sums as may be necessary” to fund its payment of claims and its administrative expenses. With respect to any awards to claimants that were reduced because of the current funding deficiency faced by the VCF, the bill directs the VCF Special Master to pay the claimant the difference between the amount to which the claimant is entitled to and the amount that the claimant was actually paid when there is sufficient funding to do so. It also provides the VCF Special Master with the discretion to grant awards for noneconomic losses in amounts beyond the statutory caps contained in current law when special circumstances warrant. Finally, the bill would ensure that, with respect to the calculation of economic losses, the limit of \$200,000 annual gross income is adjusted based on the Consumer Price Index for All Urban Consumers at least once every five years.

House Judiciary Committee Chairman Jerrold Nadler (D–NY), together with Representatives Carolyn Maloney (D–NY), and Peter King (R–NY), introduced H.R. 1327 on February 25, 2019. As of this writing, this bipartisan measure has 332 cosponsors, including all Democratic Members of the Committee as well as Ranking Member Doug Collins (R–GA) and Committee Members Ben Cline (R–VA), Mike Johnson (R–LA), Debbie Lesko (R–AZ), and Guy Reschenthaler (R–PA). H.R. 1327 is also supported by 21 law enforcement organizations,<sup>1</sup> more than 200 mayors and local government officials,<sup>2</sup> the New York Police Department Sergeants Benevolent Association,<sup>3</sup> and the International Union of Operating Engineers.<sup>4</sup>

## Background and Need for the Legislation

### BACKGROUND

#### *I. September 11, 2001 attacks and environmental toxins*

On September 11, 2001, terrorists hijacked four commercial airliners and flew two of them into the World Trade Center (“WTC”) towers in New York City and one into the Pentagon in Arlington, Virginia while crashing a fourth aircraft in Shanksville, Pennsylvania (“9/11 attacks”). Almost 3,000 people were killed in the collapse of the WTC alone, including hundreds of firefighters, police officers, and other first responders. Additionally, 125 people were killed at the Pentagon and 246 people (excluding the hijackers) aboard the four hijacked aircraft. According to *Newsweek*, more American lives were lost on that day as a result of the 9/11 attacks

<sup>1</sup>Letter from 21 Law Enforcement Organizations to Rep. Steve Cohen (D–TN), Chairman, Subcomm. on the Constitution, Civil Rights, & Civil Liberties of the H. Comm. on the Judiciary, et al. (June 10, 2019).

<sup>2</sup>Letter from Local Government Officials to Rep. Nancy Pelosi (D–CA), Speaker of the House, et al. (June 10, 2019).

<sup>3</sup>Letter from the New York Police Department Sergeants Benevolent Association to Rep. Carolyn Maloney (D–NY) et al., Feb. 28, 2019.

<sup>4</sup>Letter from the Int’l Union of Op. Engineers to Rep. Carolyn Maloney (D–NY) (Mar. 5, 2019).

than on any other day in U.S. history with the exception of the Civil War battle of Antietam.<sup>5</sup>

Beyond the devastating loss of life, the collapse of the WTC towers and the adjacent buildings released numerous hazardous substances into the environment. These hazardous substances included hundreds of tons of asbestos, nearly half a million pounds of lead, and untold amounts of glass fibers, steel, and concrete. The substances formed into a massive cloud of toxic dust and smoke which blanketed parts of New York City and New Jersey and was blown or dispersed into many of the surrounding office buildings, schools, and residences. In addition to the debris, fires burned for many months, partly due to the 150,000 gallons of oil stored in the buildings, which emitted particulate matter, various heavy metals, and other potentially deadly substances. All told, the building collapses dumped about one million tons of dust on the area around Lower Manhattan, creating a 16-acre disaster zone. It is estimated that approximately 400,000 people, including “rescue and recovery workers, residents, students and school staff, building occupants, and passersby,” were exposed to “the immense cloud of dust and debris, the indoor dust, the fumes from persistent fires, and the mental trauma” of the WTC’s collapse.<sup>6</sup>

The Natural Resources Defense Council, in its report on the environmental impact of the WTC collapse, stated that the simultaneous release of thousands of toxic components constituted a “pollution event” and called it “an unprecedented environmental assault for Lower Manhattan.”<sup>7</sup> According to the Federal Emergency Management Agency, “as many as seven contaminants of potential concern may have spread into buildings as a result of the collapse of the WTC buildings.”<sup>8</sup> Evidence accumulated since the collapse of the WTC indicated that the air was hazardous, notwithstanding safety assurances from the Environmental Protection Agency (“EPA”), and that exposure to these hazards have caused serious physical injury and death.

## *II. Federal Government’s failure to acknowledge human exposure and health consequences*

The day after the collapse of the WTC towers, a top federal scientist issued a warning against the quick reoccupation of Lower Manhattan because of possible threats to health from asbestos and other toxins. In response to a White House request for a health advisory, Dr. Ed Kilbourne, an associate administrator at the U.S. Agency for Toxic Substances and Disease Registry, wrote: “We are concerned about even being asked to write a document for the pub-

<sup>5</sup> Leah McGrath Goodman, *9/11’s Second Wave: Cancer and Other Diseases Linked to the 2001 Attacks Are Surging*, Newsweek, Sept. 7, 2016, available at <https://www.newsweek.com/2016/09/16/9-11-death-toll-rising-496214.html>.

<sup>6</sup> Joe Murphy *et al.*, *Measuring and Maximizing Coverage in the World Trade Center Health Registry*, *Statistics in Medicine* (Nov. 16, 2006), available at <http://www.nyc.gov/html/doh/wtc/downloads/pdf/wtc/wtc-article-20070207.pdf>.

<sup>7</sup> Megan Nordgrén, Eric Goldstein, & Mark Izeman, *The Environmental Impacts of the World Trade Center Attacks*, Natural Resources Defense Council, at 3 (2002).

<sup>8</sup> Office of the Inspector General, Federal Emergency Management Agency, *FEMA’s Delivery of Individual Assistance Program*, New York, September 2001 (hereinafter “FEMA Report”), at 25 (Dec. 18, 2002).

lic about reentry at this point. Does this mean that unrestricted access to the WTC vicinity is imminent?”<sup>9</sup>

Even before the WTC’s collapse, the EPA knew that the towers contained 400 to 1,000 tons of asbestos. The EPA became aware of this danger following the 1993 terrorist attack on the WTC.<sup>10</sup> Yet after the 9/11 attacks, the EPA repeatedly assured New Yorkers that the air was “safe to breathe.”<sup>11</sup> On September 18, 2001, for example, EPA Administrator Christine Todd Whitman announced to the public that results of EPA tests indicated “little risk to rescue workers or the public.”<sup>12</sup>

Ms. Whitman has since admitted that her reassurances made in September 2001 about air quality in and around the WTC site were wrong and she has apologized for making them.<sup>13</sup> Lila Nordstrom, a student at Stuyvesant High School, which is located in the area contaminated by the 9/11 attacks in New York City, testified at a hearing before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties (“Subcommittee”) on the need to reauthorize the September 11th Victim Compensation Fund. In explaining her subsequent illnesses incurred from being exposed to such contamination, she explained:

I am sitting before you as someone who was present on 9/11 but I was not caught in the dust cloud. There is no reason that my respiratory health or my gastrointestinal health . . . should have been impacted by the events of 9/11. I only have these conditions because I was sent back [into the school building and surrounding area.] And I was only sent back because the Federal Government assured New Yorkers that the air downtown was safe to breathe.<sup>14</sup>

Indeed, Ms. Whitman’s statements from September 2001 have since been widely discredited and were suspect even at the time. Less than a month after the fall of the WTC towers, the Ground Zero Elected Officials Task Force released sample results from dust collected in two downtown apartments having asbestos levels nearly 460 times the EPA’s allowable limit.<sup>15</sup> Historically, the EPA has stated that any level of asbestos is a public health danger and that asbestos-containing material must be handled and disposed of fol-

<sup>9</sup>Dr. Kilbourne warned that the bulk dust samples analyzed by the EPA contained four times the established standard of asbestos, which he labeled a “substantial concentration.” He also strongly cautioned that it was “important to characterize how far significant levels of asbestos extend before allowing unrestricted access by unprotected individuals.” *New York Daily News* (October 28, 2003).

<sup>10</sup>Office of Inspector General, Federal Emergency Management Agency, FEMA’s Development of Individual Assistance Programs: New York—September 11, 2001; Gonzales, Juan, *Fallout: The Environmental Consequences of the World Trade Center Collapse* 91 (2003).

<sup>11</sup>Jeremy P. Jacobs, *EPA Regulators Say They’ve Learned From 9/11 Blunders, But Critics Remain Unconvinced*, N.Y. Times, Sept. 9, 2011, available at <https://archive.nytimes.com/www.nytimes.com/gwire/2011/09/09/greenwire-epa-regulators-say-theyve-learned-from-911-bl-24494.html?pagewanted=all>.

<sup>12</sup>*Ex-EPA Chief Grilled Over Her 9/11 Role*, Albion Monitor, Jun. 26, 2007, available at <http://www.albionmonitor.com/0706a/whitmantestimony.html>

<sup>13</sup>*Former EPA Head Admits She Was Wrong to Tell New Yorkers Post-9/11 Air Was Safe*, The Guardian, Sept. 10, 2016, available at <https://www.theguardian.com/us-news/2016/sep/10/epa-head-wrong-911-air-safe-new-york-christine-todd-whitman>.

<sup>14</sup>*The Need to Reauthorize the September 11th Victim Compensation Fund: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary*, 116th Cong., Unofficial Tr. 83–84 (2019) [hereinafter “VCF Hearing”].

<sup>15</sup>Eric J. Chatfield (Ph.D) and John R. Kominshy (M.Sc., CIH, CSP, CHMM), Summary Report: Characterization of Particulate Found in Apartments After Destruction of the World Trade Center (October 12, 2001).

lowing specific procedures under the law.<sup>16</sup> Moreover, toxic hazards present in the WTC area, including asbestos and toxins about which the EPA had not even inquired (including acid gases, volatile organic compounds and heavy metals) were confirmed by other public and private agencies.<sup>17</sup>

On September 17, 2001, the United States Geological Survey presented to the WTC emergency response teams its chemical leach tests of WTC dust, which was found to be highly caustic.<sup>18</sup> A week later, New York Daily News columnist Juan Gonzalez reported that dust samples taken from within two blocks of Ground Zero by the New York Environmental Law & Justice Project showed asbestos levels were nearly five times higher than the 1% definitional threshold of “asbestos containing material,” as well as significant amounts of fiberglass.<sup>19</sup> Newsweek also reported that more asbestos was released into lower Manhattan than EPA tests had originally indicated, “and in potentially more dangerous forms.”<sup>20</sup> On February 21, 2002, Dr. Thomas Cahill of the University of California at Davis testified in New York City about his air sampling results, which showed that there were very high levels of ultra-fine toxic particulates in the air from Ground Zero.<sup>21</sup>

### *III. Escalating health impact*

As a result of incomplete medical monitoring both before and after the 9/11 attacks, experts may never know the full extent of the damage caused by the attacks, nor predict with certainty all of the future adverse health effects from exposure to toxins from the WTC and other 9/11-related sites. There is, however, growing certainty that such exposure has caused adverse health effects in thousands of responders, workers, and others at or near Ground Zero in the immediate aftermath of 9/11.

Ongoing medical monitoring and related studies of groups of people exposed to WTC toxins have yielded very troubling health statistics on illnesses related to such exposure. Within a few years of 9/11, these studies connected exposure to myriad severe symptoms, including respiratory diseases presenting as asthma or asthma-like conditions, pulmonary fibrosis, and significant loss of lung function (now commonly referred to jointly as “World Trade Center cough”<sup>22</sup>); upper respiratory conditions, including chronic sinusitis; and gastrointestinal problems. These medical problems have been documented in peer-reviewed scientific publications of research studies done by several independent research groups.

Based on the evidence, it is clear that these disorders are occurring at a much higher rate than would be expected in such popu-

<sup>16</sup> Office of Inspector General, Environmental Protection Agency, EPA’s Response to the World Trade Center Collapse: Challenges, Successes, and Areas for Improvement, Rpt. No. 2003-P-00012, at 65 (Aug. 21, 2003).

<sup>17</sup> Sierra Club, Pollution and Deception at Ground Zero, Sierra Club Report, Appendix E (August 2004).

<sup>18</sup> Andrew Schneider, “Public Was Never Told That Dust from Ruins is Dangerously Caustic,” *St. Louis Post Dispatch* (February 10, 2002).

<sup>19</sup> Juan Gonzalez, “Doc’s WTC Note: Don’t Hurry Back,” *N.Y. Daily News* (Oct. 28, 2003).

<sup>20</sup> *Id.*

<sup>21</sup> EPA National Ombudsman First Investigative Hearing on World Trade Center Hazardous Waste Contamination, hosted by U.S. Representative Jerrold Nadler (Feb. 21, 2002), available at: <http://www.nyenvirolaw.org/PDF/Transcript-EPA-OmbudsmanHearing-2-23-2002.pdf>.

<sup>22</sup> Levin, S.M., Physical Health Status of World Trade Center Rescue and Recovery Workers and Volunteers—New York City, July 2002—August 2004,” Centers for Disease Control and Prevention (Sept. 10, 2004).

lations and that the disorders are due to the toxic exposures related to 9/11. Dr. Jacqueline Moline, Director of the Northwell Queens World Trade Center Health Program, testified at the Subcommittee's June 11, 2019 hearing that "over 50 percent of firefighters who worked the World Trade Center site had developed a persistent respiratory condition. Rates of asthma remain elevated along with a variety of other diseases."<sup>23</sup> As early as 2006, a Mount Sinai Medical Center study of responders and recovery workers reported that lower respiratory disease was found in 46% of those evaluated; upper respiratory health problems in 64%; and mental health problems in 32%.<sup>24</sup> The study found that *nearly 70%* of the 19,000 first responders tracked in the study suffered from new or worsened respiratory symptoms.<sup>25</sup> Similar results have been found in other studies of groups exposed to WTC toxins.<sup>26</sup>

While many of the above conditions can improve with medical treatment, the ultimate medical outcome for people currently being treated or who will become ill in the future is uncertain. In many cases, individuals suffer from progressive loss of pulmonary capacity. Many of these patients have become incapacitated because of that pulmonary disease. Lung function rapidly deteriorates, and the individuals become increasingly incapable of performing job duties or even everyday activities that healthy people take for granted. With the increasing loss of lung function, such individuals become incapacitated and unable to work. As Dr. Moline testified, "Studies have shown the impact of 9/11 exposures, not only on health, but also on employment, as individuals with WTC related health conditions were more likely to retire before age 60."<sup>27</sup>

A decade after the 9/11 attacks, responders and survivors began suffering from a second, more severe wave of adverse health effects among populations exposed to 9/11 toxins. For instance, there were reported increases in cases of serious lung diseases, including sarcoidosis and interstitial lung disease, among exposed populations a decade after 9/11.<sup>28</sup> Michael O'Connell, a 9/11 first responder who engaged in recovery work at the WTC site and is now a retired Lieutenant with the Fire Department of New York, testified that more than six years after 9/11 he "was one of the youngest and first firefighters diagnosed with sarcoidosis," which was "a rare autoimmune disease," and, as a result, he was unable to continue working as a full-duty firefighter.<sup>29</sup> Sarcoidosis is a multisystem

<sup>23</sup>VCF Hearing, Unofficial Tr. at 46.

<sup>24</sup>Mt. Sinai WTC Medical Monitoring Program, *The World Trade Center Disaster and the Health of Workers: Five-Year Assessment of a Unique Medical Screening Program* (Sept. 6, 2006).

<sup>25</sup>*Id.*

<sup>26</sup>Ninety-nine percent of exposed firefighters, who were screened and monitored through the FDNY-WTC Medical Screening and Treatment Program, reported at least one new onset respiratory symptom while working at the WTC site. *Progress Since 9/11: Protecting Public Health and Safety Against Terrorist Attacks*, Hearing Before the Subcommittee on National Security, Emerging Threats and International Relations of the House Committee on Government Reform, (testimony of J. Kelly Kerry, MD, Chief Medical Officer, Bureau of Health Services, FDNY and Co-Director, FDNY-WTC Medical Program New York City) (Feb. 28, 2006).

<sup>27</sup>VCF Hearing (written statement of Dr. Jacqueline Moline, M.D., M.Sc., Director, Northwell Health Queens World Trade Center Program, at 4) [hereinafter "Moline Statement"].

<sup>28</sup>See, e.g., *Cancer may be "third wave" of WTC illnesses*, Associated Press (May 31, 2007), available at <http://www.msnbc.msn.com/id/18969197/>; Gabriel Izbicki, M.D., et al., *World Trade Center "Sarcoid-Like" Granulomatous Pulmonary Disease in New York City Fire Department Rescue Workers*, *Chest Journal* (Jan. 26, 2007) (noting that the incidence of sarcoidosis was significantly (nearly 8 times) increased when compared to the years before 9/11), abstract available at: <http://www.chestjournal.org/content/131/5/1414.abstract>.

<sup>29</sup>VCF Hearing, Unofficial Tr. at 69.

disorder characterized by small inflammatory nodules that can affect any organ but are often found in the lungs and can severely limit air flow into the lungs. Interstitial lung disease is a condition in which the lung gradually loses its elasticity, preventing the patient from getting adequate oxygen into the bloodstream and normally requiring lung transplantation.

Since 2011, medical experts have also seen cancer rates dramatically increase among those exposed to 9/11 contaminants, and these cancers constitute a third wave of adverse health effects among populations exposed to 9/11 toxins.<sup>30</sup> As Dr. Moline testified before the Subcommittee:

Here we are nearly 20 years later . . . As someone who specializes in occupational diseases, I am used to diseases with long latency—40, 50, 60 or more years after someone has had exposure . . . Since 2012, . . . there have been 11,824 people with cancers certified by the [WTC Health Program]. This includes 2,614 prostate cancers, 552 lung cancers, 741 breast cancers, as well as over 35 male breast cancers, 667 thyroid cancers, and dozens more . . . To date, there have been 571 cases of lymphoma certified.<sup>31</sup>

Part of the difficulty in predicting an exact number of people who could develop 9/11-related cancer in the future stems from the fact that cancers can have a very long latency period. Different forms of cancer have different latency periods<sup>32</sup>, with some forms of cancer such as mesothelioma not manifesting symptoms in their victims until 20 to 50 years after exposure to carcinogens.<sup>33</sup> Experts note, however, that although it is thus far difficult to establish conclusively a causal connection between exposure to 9/11-related toxins and increased cancer rates, the results they are seeing among individuals exposed to the mix of carcinogens at the WTC site is “odd, unusual and troubling.”<sup>34</sup>

Recent studies have further bolstered the increasingly strong link between exposure to 9/11-related toxins and cancer, as evident in the sharp increase in cancer rates among 9/11 responders and survivors. For example, a January 2019 Rutgers University study identified a significant increase in head and neck cancers among 9/11 responders, finding a 40 percent increase in diagnoses of such cancers among this population between 2009 and 2012.<sup>35</sup> The study’s lead author stated that “[s]ince cancers are diseases of long latency, the findings of significant excess cancer in this period point to a newly emerging trend that requires ongoing monitoring

<sup>30</sup> Jonathan M. Samet, M.D., et al., *The Legacy of World Trade Center Dust*, *The New England Journal of Medicine* (May 31, 2007), available at <http://content.nejm.org/cgi/content/full/356/22/2233>.

<sup>31</sup> Moline Statement at 3.

<sup>32</sup> See John Howard, *Minimum Latency & Types or Categories of Cancer*, World Trade Center Health Program, Nov. 7, 2014 (outlining the different minimum latency periods for five types or categories of cancer covered by the WTC Health Program, ranging from a minimum latency period of 2.5 years for thyroid cancer to an 11-year-minimum latency period for mesothelioma).

<sup>33</sup> Aria Bendix, *14 Years Later, Here’s What We Know About 9/11 And Cancer*, Citylab.com, Sept. 10, 2015, available at <https://www.citylab.com/equity/2015/09/14-years-later-heres-what-we-know-about-911-and-cancer/403888/>.

<sup>34</sup> Jonathan M. Samet, M.D., et al., *The Legacy of World Trade Center Dust*, *The New England Journal of Medicine* (May 31, 2007), available at <http://content.nejm.org/cgi/content/full/356/22/2233>.

<sup>35</sup> *World Trade Center responders at increased risk for head and neck cancers: 9/11 first responders’ health still threatened from exposure at deadly attack, study finds*, *Science Daily* (Jan. 17, 2019), available at <https://www.sciencedaily.com/releases/2019/01/190117090432.htm>.

and treatment of WTC-exposed persons.”<sup>36</sup> Last year, *The New York Post* reported that, according to the WTC Health Program,<sup>37</sup> almost 10,000 “first responders, downtown workers, residents, students and others [had] cancer deemed 9/11-related” and that the “number of cancer patients has rapidly risen since the federal program started tracking the disease in 2013,”<sup>38</sup> The *Post* also reported that “epidemiology studies have confirmed that 9/11 rescue and recovery workers have significantly higher rates of thyroid cancer and skin melanoma, which is potentially fatal, than found in the general population, and face a higher risk of bladder cancer.”<sup>39</sup>

As Ms. Nordstrom, who has been diagnosed with 9/11-related asthma, gastroesophageal reflux disease, chronic rhinosinusitis, and post-traumatic stress disorder, testified at the Subcommittee’s June 11, 2019 hearing:

I haven’t even had my 20th high school reunion yet, but I already have five former classmates with lymphomas that I just know personally. My friend Michele is in remission from thyroid cancer. Other classmates of mine have been diagnosed with rare bone cancers, testicular cancers, melanomas . . . Classmates are also starting to die now. Just a couple of months ago, Cathy Choy, who graduated just a year after me [from Stuyvesant High School], passed away at aged 33 of a 9/11-linked gastric cancer . . . And that is just my school.<sup>40</sup>

The Subcommittee also received testimony from a number of other witnesses who were 9/11 responders or survivors who have since developed 9/11-related cancers or had a loved one who died from a 9/11-related cancer. Thomas Mohnal is a retired Supervisory Agent of the Federal Bureau of Investigation who was a responder at the Pentagon crash site on 9/11 and subsequently participated in the investigation of the 9/11 attacks.<sup>41</sup> As part of his duties, he sifted through contaminated debris and human remains and inhaled contaminated air while collecting evidence.<sup>42</sup> He testified that in August 2016, 15 years after 9/11, he was diagnosed with three tumors that were consistent with lymphoma and that he has had 18 cycles of chemotherapy treatment, two bone marrow biopsies, and nine PET/CT scans.<sup>43</sup> In 2017, he was certified by the WTC Health Program for his illness, meaning that he is suffering from a 9/11-related lymphoma.<sup>44</sup>

Anesta St. Rose Henry testified as to her experiences as the widow of construction worker Candidus Henry, who died of 9/11-related glioblastoma, a brain cancer, just two weeks prior to her ap-

<sup>36</sup> *Id.*

<sup>37</sup> The WTC Health Program provides medical monitoring and treatment for responders at the WTC and related sites in New York City, Pentagon, and Shanksville, PA, and survivors who were in the New York City disaster area. It was created by the same legislation that re-opened the VCF in 2011. James Zadroga 9/11 Health and Compensation Act of 2010, Pub. L. No. 111-347 (2010).

<sup>38</sup> Susan Edelman, *Nearly 10K People Have Gotten Cancer From Toxic 9/11 Dust*, N.Y. Post, Aug. 11, 2018, available at <https://nypost.com/2018/08/11/nearly-10k-people-have-gotten-cancer-from-toxic-9-11-dust/>.

<sup>39</sup> *Id.*

<sup>40</sup> VCF Hearing, Unofficial Tr. at 53.

<sup>41</sup> VCF Hearing (written statement of Thomas J. Mohnal, retired Supervisory Special Agent, Federal Bureau of Investigation, at 1) [hereinafter “Mohnal Statement”].

<sup>42</sup> *Id.* at 2.

<sup>43</sup> *Id.* at 3.

<sup>44</sup> *Id.*

pearance at the Subcommittee’s June 11, 2019 hearing.<sup>45</sup> Mr. Henry had been assigned to wash the dust and debris off of trucks that were transporting contaminated materials from the WTC site to barges for removal.<sup>46</sup> He had been diagnosed with glioblastoma in 2017, 15 years after he stopped working at the WTC site.<sup>47</sup>

Luis Alvarez, a retired New York Police Department bomb squad detective and 9/11 responder at the WTC site, was scheduled to receive his 69th round of chemotherapy the day after the hearing.<sup>48</sup> He had developed 9/11-related liver cancer that had metastasized throughout the rest of his body. Sadly, Detective Alvarez passed away at age 53 just two and half weeks after testifying before the Subcommittee.<sup>49</sup>

#### *IV. September 11th Victim Compensation Fund*

The September 11th Victim Compensation Fund (“VCF”), which is administered by the Department of Justice, provides compensation for individuals who were physically injured as a result of the 9/11 attacks or debris removal efforts, or for the families of those killed in the attacks. The first iteration of the VCF operated from 2001 to 2004. Congress then reopened the VCF in response to the fact that thousands of individuals were manifesting symptoms from illnesses stemming from injuries caused by the 9/11 attacks or the debris removal efforts in the aftermath of those attacks long after the deadline for filing claims under the original VCF. Congress extended the authorization for the VCF in December 2015 for an additional five years and authorization for the VCF is currently set to expire in December 2020.

As of June 30, 2019, the VCF had received 50,730 eligibility claims and found 24,037 claimants eligible for compensation, making an initial award determination for 22,939 of those claims.<sup>50</sup> It has also issued revised awards for 5,970 claims due to an amendment or appeal of a claim.<sup>51</sup> Of the eligibility claims submitted, 16,319 had yet to be processed.<sup>52</sup> The VCF has awarded a total of \$5,222,632,837.43 from its reopening in 2011 through June 30, 2019.<sup>53</sup>

##### *A. VCF 1*

Shortly after the 9/11 attacks, Congress created the original VCF (“VCF 1”) to provide compensation for economic and noneconomic losses for individuals who were physically injured, or for relatives of those who were killed, as a result of the 9/11 attacks.<sup>54</sup> Congress intended for the VCF to provide an alternative to 9/11-related tort litigation. Any person who chose to seek compensation from the

<sup>45</sup> VCF Hearing (written statement of Anesta St. Rose Henry at unnumbered 1) [hereinafter “Henry Statement”].

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at unnumbered 2.

<sup>48</sup> VCF Hearing (written statement of Luis Alvarez, retired Detective, New York Police Department, at unnumbered 1) [hereinafter “Alvarez Statement”].

<sup>49</sup> Sam Roberts, *Luis Alvarez, Champion of 9/11 Responders, Dies at 53*, N.Y. Times, June 29, 2019, available at <https://www.nytimes.com/2019/06/29/obituaries/luis-alvarez-dead.html>.

<sup>50</sup> September 11th Victim Compensation Fund, *VCF Program Statistics*, July 8, 2019, available at <https://www.vcf.gov/pdf/VCFMonthlyReportJune2019.pdf>.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Air Transportation Safety and System Stabilization Act of 2001, Pub. L. No. 107–42 (2001), codified at 49 U.S.C. § 4101 note.

VCF waived the right to sue for damages for 9/11-related injuries.<sup>55</sup> Awards for noneconomic losses were to be offset by any collateral sources of compensation, such as pensions or workers compensation benefits. VCF 1 operated from 2001 to 2004 and awarded over \$7 billion to 2,880 surviving representatives of those who died in the attacks and to 2,680 individuals who were injured in the attacks or in rescue efforts immediately following the attacks.<sup>56</sup> Congress did not impose any overall spending limit on VCF 1.

### *B. VCF 2*

Congress reopened the VCF in 2011 (“VCF 2”) with the passage and enactment of the James Zadroga 9/11 Health and Compensation Act of 2010.<sup>57</sup> In addition to reopening the VCF and keeping the original structure of VCF 1 intact, the Act expanded eligibility for the VCF to include those who participated in debris removal efforts in the months following the attack.<sup>58</sup> VCF 2 was set to close in October 2016. Congress capped funding for VCF 2 at \$2.775 billion to cover both the payment of awards and administrative costs.

### *C. 2015 Reauthorization*

On December 18, 2015, President Barack Obama signed into law appropriations legislation that extended authorization for the VCF for five more years, among other things.<sup>59</sup> The legislation also added an appropriation of \$4.6 billion to cover awards and expenses during the reauthorization period, and also appropriated money to pay any claims awarded prior to the reauthorization period for which there had been insufficient funding to pay all valid claims in full, with the proviso that the VCF could not spend any more than the total amount appropriated to the VCF (i.e., \$2.775 billion for pre-December 18, 2015 VCF 2 claims, \$4.6 billion for post-December 18, 2015 claims, for a total of \$7.375 billion.)<sup>60</sup> The reauthorization legislation also included changes to the VCF’s policies and procedures for evaluating claims and calculating losses. Most notably, with respect to compensation for noneconomic losses like pain and suffering, the bill added a cap of \$250,000 per claim if the claim was based on cancer, and a cap of \$90,000 for non-cancer claims.<sup>61</sup> The bill also limited the calculation of economic loss to a maximum of \$200,000 annual gross income per claimant.<sup>62</sup> Finally, the reauthorization also required the VCF Special Master to conduct an annual assessment of policies and procedures to ensure, among other things, that the VCF would not spend more money than the \$4.6 billion allocated by Congress to pay claims for which the Special Master postmarks and transmits award determinations after December 18, 2015.<sup>63</sup>

### *D. VCF Eligibility and Compensation*

In order to be eligible for a VCF award, an individual must: (1) register a claim by the relevant deadline; (2) obtain a certification

<sup>55</sup> *Id.*

<sup>56</sup> H. Rept. 111–560, Part 2, at 32.

<sup>57</sup> Pub. L. No. 111–347 (2010).

<sup>58</sup> *Id.*

<sup>59</sup> Consolidated Appropriations Act, 2016, Title IV, Pub. L. No. 114–113 (2015).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

from the WTC Health Program for treatment of a physical injury or condition that is determined to be a result of the 9/11 attacks or debris removal following the attacks; and (3) demonstrate presence at a 9/11 crash site or along debris removal routes at some point between September 11, 2001 and May 30, 2002, the day that debris removal efforts officially ended.<sup>64</sup> Where relevant, a claimant must also timely dismiss, withdraw, or settle any 9/11-related lawsuit; if already compensated under VCF 1, establish a new condition or loss that was not previously compensated for; and, if the individual filing the claim is someone other than the victim, show that the claimant is authorized to act on the victim's behalf.<sup>65</sup> Once the VCF determines that an individual is eligible for compensation, it calculates awards based on the specific circumstances of the individual claimant, determining non-economic loss amounts based on the nature and severity of the claimant's physical injury or condition as well as any economic loss.<sup>66</sup> The VCF must subtract from the award amount certain "collateral offsets," which are benefits paid to the claimant by other entities for the eligible 9/11 condition, including disability benefits, life insurance payments, or settlements from 9/11-related lawsuits.<sup>67</sup>

#### *E. 2019 Announcement of Funding Deficiency and Award Reductions*

On February 15, 2019, the VCF Special Master, Rupa Bhattacharyya, published the VCF's Seventh Annual Status Report and Third Annual Reassessment of Policies and Procedures.<sup>68</sup> The Special Master is required to ensure each year that the VCF's policies and procedures do not result in the payment of more money than the total amount allocated for its funding, in this case, \$7.375 billion.<sup>69</sup> After completing the most recent assessment, the Special Master determined that there was insufficient funding to pay all pending and projected claims under then-current VCF policies and procedures, mainly because of a sharp increase in the number of claims in the preceding four months.<sup>70</sup> According to the report, the VCF had already paid \$5 billion in awards as of the date of the report, with \$2 billion remaining to pay future awards with two years remaining in the VCF's authorization and thousands of claims yet to be decided.<sup>71</sup> As a result, the Special Master announced that the VCF would substantially reduce awards to ensure that the VCF did not run out of money.<sup>72</sup>

<sup>64</sup>VCF Hearing (written statement of Rupa Bhattacharyya, Special Master, September 11th Victim Compensation Fund, at 3) [hereinafter "Bhattacharyya Statement"]; September 11th Victim Compensation Fund, *Policies and Procedures*, Feb. 2019, available at <https://www.vcf.gov/pdf/VCFPolicy.pdf> [hereinafter "VCF Policies and Procedures"] See also September 11th Victim Compensation Fund, *VCF General Information*, Feb. 2019, available at <https://www.vcf.gov/pdf/VCFInfoSheet.pdf>.

<sup>65</sup>VCF Policies and Procedures.

<sup>66</sup>Bhattacharyya Statement at 3.

<sup>67</sup>*Id.*

<sup>68</sup>Rupa Bhattacharyya, Special Master, September 11th Victim Compensation Fund, *Seventh Annual Status Report and Third Annual Reassessment of Policies and Procedures*, Feb. 15, 2019, [hereinafter "Special Master Report"] available at <https://www.vcf.gov/pdf/VCFStatusReportFeb2019.pdf>.

<sup>69</sup>Air Transportation Safety and System Stabilization Act of 2001, Pub. L. No. 107-42, §§ 406(d)(2)(C)(i)(II) and (ii) (2001); Bhattacharyya Statement at 5.

<sup>70</sup>Special Master Report at 42-43; Bhattacharyya Statement at 5-6.

<sup>71</sup>Special Master Report at 43; see also Bhattacharyya Statement at 6.

<sup>72</sup>*Id.*

In her testimony before the Subcommittee on June 11, 2019, Special Master Bhattacharyya stated that the VCF was “able to pinpoint several new trends, which reflect significant changes to the composition of the VCF’s claimant population since Congress last examined [the VCF authorizing statute] in 2015” that explained the sharp increase in claims.<sup>73</sup> First was a dramatic increase in claims filed on behalf of those who have died as a result of their 9/11-related physical health condition.<sup>74</sup> Second was “a marked increase in cancer claims.”<sup>75</sup> Third was “a marked increase in claims from the survivor population, meaning those who lived, worked, or went to school in the [WTC] area.”<sup>76</sup> According to the Special Master, these trends, combined with the fact that deceased claims and cancer claims tend to be higher value awards, resulted in the VCF expending available funds more quickly than anticipated.<sup>77</sup>

In determining how to respond to the funding deficiency, the Special Master sought to ensure that funding be prioritized for awards for those with the most debilitating conditions (as required by the statute), that every individual suffering from a physical health condition as a result of 9/11 receive at least some compensation, and that at least some allowance be made for claimants who had already filed their claims as of February 2019.<sup>78</sup> The Special Master “concluded that the fairest way to implement the required reduction of awards was to do so across the board” and that this approach was consistent with the “clear majority” of public comments that the VCF received on how best to respond to the funding deficiency.<sup>79</sup> In light of these goals, the VCF announced that effective February 25, 2019, it would substantially reduce awards for pending and future claims.<sup>80</sup> For any claim or amendment to a claim submitted on or before February 1, 2019, the economic and non-economic loss amounts (prior to subtraction of any offsets) were to be reduced by 50%.<sup>81</sup> For any claim or amendment to a claim submitted on or after February 2, 2019, the economic and non-economic loss amounts (prior to subtraction of any offsets) were to be reduced by 70%.<sup>82</sup> Offsets must be subtracted in full from the calculated reduced award, meaning that it is possible that some claimants who might otherwise have been entitled to compensation from the VCF may receive nothing.<sup>83</sup> According to the Special Master, 835 claims have been subject to these cuts so far.<sup>84</sup>

#### NEED FOR THE LEGISLATION

H.R. 1327 would extend the authorization for the VCF until 2090. It would also direct that funds not otherwise appropriated be placed into the VCF in “such sums as may be necessary” to fund the VCF’s payment of claims and its administrative expenses. With

<sup>73</sup> Bhattacharyya Statement at 6.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> September 11th Victim Compensation Fund, *Determination of Funding Insufficiency: Questions and Answers*, March 2019, available at <https://www.vcf.gov/pdf/VCFFIQandA.pdf> [hereinafter “Funding Q&A”].

<sup>79</sup> Bhattacharyya Statement at 7.

<sup>80</sup> Funding Q&A.

<sup>81</sup> *Id.*; Bhattacharyya Statement at 8.

<sup>82</sup> *Id.*

<sup>83</sup> Bhattacharyya Statement at 8; VCF Hearing, Unofficial Tr. at 81–82.

<sup>84</sup> Bhattacharyya Statement at 8.

respect to any claimants whose awards were cut because of the current funding deficiency faced by the VCF, the bill directs the VCF Special Master to pay the difference between the amount that the claimant is entitled to and the amount that the claimant was actually paid when there is sufficient funding to do so. It also provides the VCF Special Master with the discretion to issue awards for noneconomic losses in amounts beyond the statutory caps contained in current law when special circumstances warrant. Finally, the bill would ensure that, with respect to the calculation of economic losses, the limit of \$200,000 annual gross income is periodically adjusted based on at least once every five years.

A long-term extension of the VCF's authorization is necessary in light of the substantial evidence outlined above that 9/11-related illnesses, including cancers, continue to manifest themselves in responders and survivors after long latency periods and that they will continue to do so for decades to come. Given the uncertainty surrounding the exact number of those who will become ill in the future from 9/11-related diseases, on the one hand, and the certainty that many more people will become sick, on the other, a long-term reauthorization is justified. By extending the VCF's authorization to 2090, H.R. 1327 ensures that almost all of those alive today who may be impacted by a 9/11-related health condition and who would otherwise meet the VCF's eligibility requirements can be compensated in the future. Experience from two short five-year authorization periods since 2011 has demonstrated that the need for the VCF is long-term. As the VCF Special Master testified:

while the population of potential claimants is a finite set, its exact numbers are unknown. There is no accurate count of how many people might have been exposed to toxins stemming from the attacks, and there is considerable uncertainty about the number of individuals who ultimately will fall ill due to the long latency periods that can elapse before manifestation of the cancers determined to be related to 9/11 exposure.<sup>85</sup>

Dr. Moline testified that while it is “not possible to know the exact number [of people who will develop 9/11-related illnesses in the next 25 to 50 years], there are going to be 10,000 to 20,000 more cancers . . . plus other diseases,” including “lung diseases that may require lung transplants” and “sarcoidosis, which is a fairly rare disease but is common in World Trade Center-exposed individuals.”<sup>86</sup> And, as advocate Jon Stewart put it in his Subcommittee testimony, “the idea that you can only give [9/11 responders] five more years of the VCF because you are not quite sure what is going to happen five years from now? Well, I can tell you, I am pretty sure what is going to happen five years from now: more of these men and women are going to get sick, and they are going to die.”<sup>87</sup>

For the same reasons, there should be no overall spending limitation on the VCF, as was the case with VCF 1, and H.R. 1327 rightly does not include such an overall spending limitation. Indeed, as VCF Special Master Bhattacharyya outlined in her testimony, it

<sup>85</sup> Bhattacharyya Statement at 5.

<sup>86</sup> VCF Hearing, Unofficial Tr. at 82.

<sup>87</sup> Id. at 78.

was, in part, a combination of increases in cancer and other types of claims that were unanticipated during consideration of the last reauthorization in 2015 and the overall funding limitation of \$7.375 billion that led to the current funding deficiency and, with it, the 50 percent and 70 percent cuts in awards. Congress must not make the same mistake again.

H.R. 1327 also ensures that those VCF claimants whose awards were cut by either 50 or 70 percent because of the 2019 funding deficiency have their awards fully restored. As many of the responder and survivor witnesses at the Subcommittee hearing testified, there is no justification for valuing some victims' lives at 50 to 70 percent less than other similarly-situated victims or denying some victims the opportunity to receive any compensation at all should the VCF be allowed to expire in 2020, solely because of when they happen to become ill.<sup>88</sup>

To the extent that there is a concern that the VCF is intended mostly to help those from the New York City region, the witnesses provided testimony that establishes that the VCF is of national significance and that people from every part of the country are impacted by it. To begin with, it should go without saying that the 9/11 attacks were an act of war against the United States, not just an attack on New York City. As Mr. Stewart put it,

I am awfully tired of hearing that it is a 9/11 New York issue. Al-Qaida didn't shout 'Death to Tribeca.' They attacked America. And these men and women and their response to it is what brought our country back. It is what gave a reeling Nation a solid foundation to stand back upon, to remind us of why this country is great, of why this country is worth fighting for.<sup>89</sup>

It is also worth noting that the VCF is a national program, and as VCF Special Master Bhattacharyya testified, the

VCF has received claims from individuals in every state of the nation. This includes those who traveled to New York City, the Pentagon, and Shanksville from all over the country as part of the response efforts, both in official capacities and as volunteers, and those who have relocated elsewhere in the intervening years since the attacks.<sup>90</sup>

<sup>88</sup> Henry Statement at unnumbered 1 ("The reason I have to worry is because Congress thinks its ok for my husband's life to be worth at least 70% less than other construction workers that have died or become sick from being at Ground Zero. If he died 2 years ago, everything would be ok. I feel horrible for those that will die 2 years from now because their families will get nothing [if Congress does not reauthorize the VCF]"); Mohnal Statement at 1, 3 ("My life was certainly worth no more or less than the other First Responders that came to the Pentagon and whether it is Shanksville, the World Trade Center or the Pentagon, we were one then and we are one now as we sit before you . . . I am here today to ask why Congress believes that my life is no worth the same as those that became sick before me and some how my life is worth more than those that will most certainly come after me"); O'Connell Statement at 5 ("how is it fair that I was duly compensated, but others that are now sick and dying from their exposure will not be? It seems unfair that I was unlucky to get sick, but lucky in that I got sick early, so that I could avoid a potential cut, or worse, having no VCF after December 2020?"); Alvarez Statement at unnumbered 2 ("Now the 9/11 illnesses have taken many of us and we are all worried about our children, our spouses and our families and what happens if we are not here. The VCF has done a wonderful job and treated my family with great respect. But my life isn't worth more than the next responder to get cancer. My family's needs are not worth less than others that have already died"); Nordstrom Statement at 6 ("A responder or a survivor who gets sick in 2027 deserves the same help that they would've have [sic] received if they got sick in 2017").

<sup>89</sup> VCF Hearing, Unofficial Tr. at 78.

<sup>90</sup> Bhattacharyya Statement at 2. See also Mohnal Statement at 2 (describing how FBI agents and members of the Evidence Response Teams from FBI offices around the country were de-

H.R. 1327's grant of discretionary authority to the Special Master to exceed the current statutory caps on awards for noneconomic losses is necessary to ensure that, in rare cases, the Special Master may exceed the cap when special circumstances warrant. For example, current law caps awards for non-economic loss for non-cancer claims at \$90,000, but a claimant who may require a double-lung transplant because of a non-cancer but nonetheless severe lung condition may need more than \$90,000 to be made whole.

In addition, H.R. 1327 would require the Special Master to index the current \$200,000 annual gross income limitation to the Consumer Price Index for All Urban Consumers. This provision ensures that calculations of economic loss accurately reflect increasing consumer prices and that a lack of such indexing will not effectively function as a cut in award amounts.

While the terrorists who carried out the 9/11 attacks bear the ultimate moral responsibility for the harms inflicted on Americans on that terrible day, the federal government also bears moral responsibility for causing or exacerbating the illnesses that many responders and survivors now suffer from, years after 9/11. As noted above, many people in Lower Manhattan relied on the EPA's false assurances that the air was safe to breath in the immediate aftermath of the attacks. As such, the federal government, acting through Congress and the Executive Branch, bears an obligation to act quickly to extend the VCF and help those who became sick or whose illnesses were worsened because of such reliance. As Dr Moline noted in her testimony, "Soon, the day will come when there are more people who have died of WTC related illnesses after 9/11 than perished on that horrible day when our nation was attacked."<sup>91</sup>

### Hearings

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearing was used to consider H.R. 1327: Hearing on "The Need to Reauthorize the September 11th Victim Compensation Fund" held before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties on June 11, 2019.<sup>92</sup> The Subcommittee heard from two witness panels. The first panel consisted of Rep. Carolyn Maloney (D-NY) and Rep. Peter King (R-NY), two of the lead sponsors of H.R. 1327. The second panel consisted of a bipartisan witness panel consisting of: (1) Rupa Bhattacharyya, Special Master of the September 11th Victim Compensation Fund; (2) Dr. Jacqueline Moline, a 9/11 health care provider; (3) Lila Nordstrom, a 9/11 WTC survivor; (4) Anesta Maria St. Rose Henry, widow of a construction worker Candidus Henry, who was a WTC responder; (5) Tom Mohnal, a retired Federal Bureau of Investigation Supervisory Agent and Pentagon responder; (6) Luis Alvarez, a retired New York Police Department detective and WTC responder; (7) Michael O'Connell, a retired Fire Department of New York lieutenant and WTC responder; and (8) Jon Stewart, advocate

ployed to the Pentagon to assist in the terrorism investigation); Nordstrom Statement at 6 ("Stuyvesant alumni alone live in locales from rural Tennessee, to coastal Oregon, to Texas and beyond. Thousands of other New York City kids have begun their adult lives in other parts of the country as well").

<sup>91</sup>Moline Statement at 4.

<sup>92</sup>VCF Hearing.

for 9/11 responders and survivors. At the hearing, the witnesses testified about the work of the VCF; the continuing emergence of new cases of serious and life-threatening illnesses with long latency periods, including cancers, among 9/11 responders and survivors linked to their exposure to 9/11-related toxins; and the impact of substantial cuts in awards that the VCF instituted effective since February 2019 due to a funding deficiency.

### **Committee Consideration**

On June 12, 2019, the Committee met in open session and ordered the bill, H.R. 1327, favorably reported without amendment by voice vote, a quorum being present.

### **Committee Votes**

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that no rollcall votes occurred during the Committee's consideration of H.R. 1327.

### **Committee Oversight Findings**

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

### **New Budget Authority and Tax Expenditures**

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

### **Congressional Budget Office Cost Estimate**

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1327 the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 11, 2019.*

Hon. JERROLD NADLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1327, the Never Forget the Heroes: Permanent Authorization of the September 11th Victim Compensation Fund Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jon Sperl, who can be reached at 226-2860.

Sincerely,

PHILLIP L. SWAGEL,  
*Director.*

Enclosure.

cc: Honorable Doug Collins  
Ranking Member

At a Glance			
H.R. 1327, Never Forget the Heroes: Permanent Authorization of the September 11th Victim Compensation Fund Act			
As ordered reported by the House Committee on the Judiciary on June 12, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	6,785	10,180
Revenues	0	0	0
Deficit Effect	0	6,785	10,180
Spending Subject to Appropriation (Outlays)	0	0	0
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	> \$5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

The bill would

- Appropriate such sums as are necessary for the September 11th Victim Compensation Fund (VCF) to pay claims to eligible victims through fiscal year 2090
- Require the VCF to fully compensate claimants who have received reduced awards in the past because of declining balances in the fund

Estimated budgetary effects would primarily stem from

- Payments to currently eligible claimants and to those found eligible in the future
- Costs to administer the VCF

Areas of significant uncertainty include

- Identifying incidence rates for adverse health conditions, particularly cancer, in the eligible population
- Estimating the number of people who will file successful claims

Bill Summary: H.R. 1327 would authorize the appropriation of whatever amounts are necessary for the September 11th Victim Compensation Fund to pay claims to eligible people through fiscal year 2090. The bill also would require the VCF to fully compensate claimants who have received reduced awards in the past because of declining fund balances.

Estimated Federal Cost: The estimated budgetary effect of H.R. 1327 is shown in Table 1. The costs of the legislation fall within budget function 750 (administration of justice).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 1327

	By fiscal year, millions of dollars—													
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019-2024	2019-2029	
Increases in Direct Spending														
Cost of Claims Filed Before Enactment:														
Estimated Budget Authority .....	0	600	940	1,370	1,260	0	0	0	0	0	0	4,170	4,170	4,170
Estimated Outlays .....	0	600	940	1,370	1,260	0	0	0	0	0	0	4,170	4,170	4,170
Cost of Claims Filed After Enactment:														
Estimated Budget Authority .....	0	350	440	570	590	600	610	620	630	670	700	2,550	5,780	5,780
Estimated Outlays .....	0	350	440	570	590	600	610	620	630	670	700	2,550	5,780	5,780
Administrative Costs:														
Estimated Budget Authority .....	0	0	7	7	18	33	33	33	33	33	33	65	230	230
Estimated Outlays .....	0	0	7	7	18	33	33	33	33	33	33	65	230	230
Total:														
Estimated Budget Authority .....	0	950	1,387	1,947	1,868	633	643	653	663	703	733	6,785	10,180	10,180
Estimated Outlays .....	0	950	1,387	1,947	1,868	633	643	653	663	703	733	6,785	10,180	10,180

Background: The Congress created the September 11th Victim Compensation Fund in 2001 to compensate people (or their heirs) who were injured or killed in the terrorist attacks of September 11, 2001. The fund compensates eligible claimants or their surviving personal representatives (often, family members) for their economic and noneconomic losses.<sup>1</sup>

In 2004, after paying \$7.0 billion in claims, the VCF closed. In 2011, the James Zadroga 9/11 Health and Compensation Act of 2010, appropriated \$2.775 billion to the VCF for five years to pay new claims. On December 18, 2015, the Congress extended the VCF's authority to accept claims for five more years and appropriated an additional \$4.6 billion.

Under current law, payments to claimants and the administrative costs of the VCF are capped at \$7.375 billion, and people have until December 18, 2020, to file claims.

After that date, CBO expects, the VCF will spend its remaining balances—which totaled about \$3.2 billion at the beginning of fiscal year 2019—to pay eligible claims. The fund is expected to cease operations near the beginning of fiscal year 2023.

If balances are insufficient to pay the full amounts awarded, claimants will receive payments in proportion to the fund's balance. Beginning in February 2019, the VCF's special master began to reduce some award payments because the fund's administrators anticipated that the VCF would not have sufficient funds to pay all valid claims. In June 2019, the special master reported that the program had awarded \$5.174 billion in compensation since 2011, and that the fund would need \$4.616 billion above the current appropriation to pay all remaining claims including those expected to be filed before the statutory deadline.<sup>2</sup>

Claims process: Under the Zadroga Act, prospective claimants must register with the VCF to be eligible to file a claim or to preserve their right to file a claim in the future. Claimants are considered to have met the registration deadline if they submit their application within two years of the date on which they knew (or reasonably should have known) the following had occurred:

- They suffered physical harm as a result of the attacks on September 11, or as a result of hazardous exposure during the rescue period or during debris removal;
- They have received a diagnosis by a medical professional that is approved by the VCF as a qualifying physical injury or health condition;<sup>3</sup> and
- They have a determination by a government entity, such as the World Trade Center (WTC) Health Program or a state or local government, that their injury or condition was caused

<sup>1</sup>Economic losses consist of lost earnings or benefits related to employment; personal losses of business or employment opportunities; losses due to death; burial costs; and medical expenses that a claimant has already paid. Noneconomic losses consist of physical and emotional pain, physical impairment, disfigurement, loss of enjoyment of life, and other losses except psychological or mental health conditions, which are not covered.

<sup>2</sup>See the testimony of Rupa Bhattacharyya, Special Master, September 11th Victim Compensation Fund, before the Subcommittee on the Constitution, Civil Rights and Civil Liberties of the House Committee on the Judiciary (June 11, 2019), <https://go.usa.gov/xyrzh> (PDF, 288 KB).

<sup>3</sup>Qualifying health conditions and physical injuries under the Zadroga Act and VCF program regulations include various types of cancer, aerodigestive disorders, musculoskeletal disorders, and acute traumatic injury. The VCF does not pay claims for post-traumatic stress disorder or psychological or mental health conditions. See Eligibility Definitions and Requirements, 28 C.F.R. § 104.2 (2016), <http://tinyurl.com/y4t5oup4>.

by exposure at the attack sites or other locations during specified periods.<sup>4</sup>

Most of the people registered with the VCF have been diagnosed with an eligible condition confirmed by the WTC Health Program, which is administered by the Centers for Disease Control and Prevention (CDC).<sup>5</sup>

Claimants must meet statutory requirements and be found eligible by the VCF to obtain compensation. Award amounts for non-economic losses are based on the type and severity of the victim's condition and the degree to which those conditions affect the victim's ability to maintain normal activities and enjoyment of daily life. Almost all successful claimants have received compensation for noneconomic losses. About one-fifth of successful claimants also have received compensation for economic losses, including loss of wages and employer-provided benefits. Their claims are calculated based on occupational disability and are offset by any other payments they receive (such as disability benefits).

Claims data: Since the VCF was reopened in 2011, the program has paid awards to about 22,400 claimants at a cost of about \$5.2 billion (see Table 2). Thirty-seven percent of those awards were paid to people with cancer and 63 percent were paid to people who had noncancerous conditions alone. From January 2017 to the present, the share of awards paid to claimants with cancer has risen to 45 percent. Since 2017, the average amount of awards for both cancerous and noncancerous conditions also increased, in large part because the size of revisions to awards increased over that period.

TABLE 2.—CBO'S ESTIMATE OF CLAIMS AND AWARDS PAID FROM THE VICTIM COMPENSATION FUND SINCE 2011

Health Condition	Number of Claims	Percentage of Claims	Average Award (Dollars)	Total Cost of Claims (Millions of dollars)
Claims Paid From 2011 Through May 2019				
Cancer .....	8,310	37	351,000	2,920
Noncancerous .....	14,120	63	160,000	2,260
Total .....	22,430	100	n.a.	5,180
Subset of Claims Paid From January 2017 Through May 2019 <sup>a</sup>				
Cancer .....	4,960	45	413,000	2,050
Noncancerous .....	5,980	55	213,000	1,270
Total .....	10,940	100	n.a.	3,320

n.a. = not applicable.

<sup>a</sup> Average award amounts and the total costs of claims combine compensation received from initial awards plus compensation received later in revised awards. As a result, the \$3,320 million estimated to have been spent on claims from January 2017 through May 2019 includes some compensation from initial awards that was spent by the Victim Compensation Fund before 2017.

<sup>4</sup> Under the Zadroga Act and VCF program regulations, claimants must document their physical presence at an attack site or other specified location during a specific period and for a minimum duration. For example, people who participated in rescue and cleanup in Lower Manhattan between September 11 and September 30, 2001, must document their presence for at least 24 hours at that location. See Filing for Compensation, 28 C.F.R. § 104.22 (2016), <http://tinyurl.com/y5ok38sy>.

<sup>5</sup> The WTC Health Program provides treatment and monitoring to eligible first responders and survivors. Participation is not a prerequisite for registering with the VCF.

From the time the VCF reopened in 2011 through May 2019, more than 47,000 claims for compensation have been filed; those claims have the following status:<sup>6</sup>

- About 22,400 received compensation,
- About 17,600 are under review, and
- About 7,200 either have been determined to be ineligible or cannot be processed because of problems with documentation.

Over that period, nearly 6,000 claimants qualified for additional compensation—revisions of original awards—either because claimants successfully appealed a denial or because they filed an amendment seeking a revised award determination on the basis of new information or because of a newly diagnosed health condition.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the end of fiscal year 2019.

CBO's estimate of payments under H.R. 1327 is based on an analysis of the number, amounts, and type of awards the fund has paid in recent years; estimates of the incidence rates of qualifying health conditions—cancerous and noncancerous—in the eligible population; and estimates of the number of people who would successfully file claims.

As shown in Table 2, the VCF has paid awards to about 22,400 claimants over the history of the program. CBO's estimate of the costs of H.R. 1327 is based on an analysis of the costs to compensate three groups of claims:

- 19,000 additional claims, filed before October 1, 2019, that CBO estimates will not yet have been paid by the time this legislation is enacted;
- Several hundred claims that have already been paid at reduced compensation levels because of declining fund balances; and
- 18,100 new claims that CBO estimates will be filed and paid after October 1, 2019.

CBO estimates that all of the 19,000 claims filed by October 1, 2019 will be paid by 2023 (see Table 3). Some payments under the current program have been reduced to accommodate the fund's declining balances.

TABLE 3.—CBO'S ESTIMATE OF AMOUNTS REQUIRED TO FULLY PAY CLAIMS FILED WITH THE VICTIM COMPENSATION FUND BEFORE OCTOBER 2019

Health Condition	Number of Claims	Percentage of Claims	Average Award (Dollars)	Total Cost of Claims (Millions of dollars)
Estimated Claims				
Cancer .....	8,550	45	415,000	3,550
Noncancerous .....	10,450	55	214,000	2,240
Total .....	19,000	100	n.a.	5,790
Estimated Total Cost to Pay Claims				
Estimated Total Cost to Fully Pay Claims Filed Before October 2019 .....				5,790
Less Estimated Unobligated Balances <sup>a</sup> .....				1,620

<sup>6</sup>See September 11th Victim Compensation Fund, "VCF Program Statistics (As of May 31, 2019)" (accessed July 3, 2019), <https://go.usa.gov/xygBh> (PDF, 426 KB).

VCF = Victim Compensation Fund; n.a. = not applicable.

<sup>a</sup>The unobligated balances is CBO's estimate of amounts already appropriated to the VCF that will be available to pay claims at the end of September 2019.

<sup>b</sup>The net additional cost under the bill includes about \$250 million in compensation that would be paid, retroactively, to claimants who received awards at reduced levels. Starting in late February 2019, the VCF began reducing the value of some claims in anticipation of the VCF running out of funding.

Estimated cost to fully pay claims filed before fiscal year 2020: The 19,000 claims that CBO estimates will have been filed by the beginning of fiscal year 2020 and that will eventually receive awards include more than 15,000 claims currently in review that CBO estimates will be approved, 2,800 claims that have documentation problems that CBO estimates eventually will be resolved, and 1,200 eligible claims that CBO estimates will be filed by the time the legislation is enacted.

The amount of an award depends on whether the claim is for:

- A cancerous or noncancerous condition,
- Injury or death, and
- Economic loss, noneconomic loss, or both.

Using information provided by the VCF about the number and amounts of awards paid over the 2011–2019 period, CBO estimates that all 19,000 claimants will receive awards of varying size over the 2020–2023 period. The largest determinant of differences in the size of awards is whether the compensation is for cancer or for a noncancerous illness.<sup>7</sup> The amount also depends on whether a claimant would be eligible for additional compensation for economic losses and whether the claim is for an individual who has died.

CBO's estimates of average awards for each type of claim combine compensation from initial awards with any additional compensation provided in revisions to those awards. CBO estimated the distribution and average amount of each type of claim on the basis of data provided by the VCF for 2017 to the present. The estimate of the costs of full compensation for all claims filed before the end of fiscal year 2019 is summarized in Table 3.

Of the 19,000 claims, CBO estimates that 45 percent will be for cancer and 55 percent will be for noncancerous conditions and that compensation would be provided for noneconomic losses alone in 76 percent of those cases. Six percent of the claims would be for victims who have died, CBO estimates.

In total, CBO estimates, full compensation for those 19,000 claims would cost about \$5.8 billion. Based on the program's activity in recent years, CBO estimates that the VCF would process 4,000 to 5,000 claims annually and would close out that set of claims in 2023.

By October 2019, CBO estimates, VCF will carry unobligated balances of \$1.6 billion to cover claims. Under current law, those balances will be spent over the 2020–2023 period to pay claims filed before October 2019—with some awards reduced because of insufficient funding. As a result, CBO estimates, compensating all 19,000 claimants for the full value of their estimated awards would cost

<sup>7</sup>CBO estimates that the average cancer award for claims filed before enactment (as shown in Table 3) and for claims that would be filed over the 2020–2029 period (as shown in Table 4) would be roughly double the average noncancerous award. Much of the difference is attributable to VCF regulations, which authorize the program to award up to \$250,000 in noneconomic damages to claimants with cancer and up to \$90,000 to claimants with noncancerous illnesses. See Determination of Presumed Economic Losses for Injured Claimants, 28 C.F.R. §104.46 (2016), <http://tinyurl.com/y5tlu4lb>.

an additional \$4.2 billion.<sup>8</sup> That additional amount would be attributable to H.R. 1327.

Estimate of claims filed and paid after October 1, 2019: The second component of CBO’s analysis focused on the population that CBO estimates will develop qualifying health conditions—and seek compensation—after enactment of H.R. 1327. CBO estimates that future claims—those filed and paid after enactment—would total roughly 18,000 over the 2020–2029 period (see Table 4).

TABLE 4.—CBO’S ESTIMATE OF THE FUTURE COST OF CLAIMS FILED WITH AND PAID BY THE VICTIM COMPENSATION FUND AFTER OCTOBER 1, 2019

Health Condition	Number of Claims	Percentage of Claims	Average Award (Dollars)	Total Cost of Claims (Millions of dollars)
Cancer .....	11,470	63	395,000	4,530
Noncancerous .....	6,600	37	190,000	1,250
Total .....	18,070	100	n.a.	5,780

n.a. = not applicable.

**Affected Population and Mortality.** According to New York City’s World Trade Center Health Registry, more than 410,000 people, including 90,000 first responders, were directly exposed to environmental contaminants in the aftermath of the September 11 attacks.<sup>9</sup> To date, about 95,000 people—80 percent of them first responder—participate in the WTC Health Program.<sup>10</sup> About half of those participants have been treated for health conditions; others who are at risk of developing illnesses, particularly cancer, are being monitored by the program.

To estimate the number of people who will develop health conditions in future years and would seek compensation from the VCF under H.R. 1327, CBO first reduced the eligible population of 410,000 exposed people, to account for the following information:

- About 67,000 people that CBO estimates have died since 2001,
- Roughly 22,500 people who already have received full compensation from the VCF, and
- About 19,000 claimants expected to file before October 2019 who already are accounted for elsewhere in this cost estimate.

For the remaining potential claimants—estimated to total about 300,000 people in 2020—CBO used CDC’s mortality data to remove from that group the estimated number of deaths from all possible causes over the 2020–2029 period.

**Cancer Incidence.** CBO used CDC’s current data on incidence rates for cancer in the general population to estimate the number

<sup>8</sup>The \$4.2 billion includes \$250 million in compensation that would be paid, retroactively, to claimants who received awards at reduced levels. Starting in late February 2019, the VCF began reducing the value of some claims in anticipation of the VCF running out of funding. Using information provided by the VCF about the number of claims that have been subject to reduction and the value of those reductions so far, CBO estimates that claimants subject to reductions, in the aggregate, will be paid about \$250 million less than the full value of their awards through the end of fiscal year 2019. H.R. 1327 would make that estimated amount available to fully compensate those claimants.

<sup>9</sup>For more information, see NYC 9/11 Health, “World Trade Center Health Registry” (accessed July 3, 2019), <https://go.usa.gov/xyTxX>.

<sup>10</sup>Currently, about 75,000 first responders and 20,000 other survivors are enrolled in the WTC Health Program. About 3 percent of those enrollees have psychological ailments only, which do not qualify for compensation from the VCF. Over the history of the WTC Health Program, 2,355 enrollees have died.

of people in the affected population who can be expected to develop cancer each year. CBO used rates that account for differences in the incidence of cancer by sex, age, race, and ethnicity in a manner that is representative of the reported demographic characteristics of the eligible population.

CBO also reviewed several recent studies on cancer incidence in the population directly exposed to carcinogens as a result of the attacks. Those studies indicate that the incidence of several types of cancer—particularly prostate and skin cancers—is elevated in the exposed population. However, the magnitude of the increase varies widely by the type of cancer.<sup>11</sup> Demonstrated increases in cancer incidence range from 5 percent to 20 percent higher among people directly exposed to carcinogens at the attack sites compared with rates in the general population. Most of the published research has focused on first responders and recovery workers, who experienced greater exposures to carcinogens than other survivors did.<sup>12</sup>

On that basis, CBO estimates that cancer incidence would be about 11 percent higher, on average, among first responders and recovery workers and about 6 percent higher among other eligible survivors, relative to the general population. (The estimated incidence of cancer for the combined populations of responders and survivors, using a weighted average, is about 8 percent higher.)

About a third of the claims paid by the VCF since it reopened in 2011 have involved cancer diagnoses; however, that percentage is increasing. Over the past year, for example, 50 percent of claims included compensation for cancer. Using information from the WTC Health Program and the VCF, CBO estimates that both the number of cancer claims and the share of total claims that involve cancer relative to noncancerous conditions will continue to increase, driven principally by increases in cancer incidence related to age and to the amount of time elapsed since exposure.<sup>13</sup>

Over the VCF's history, about 60 percent of all awards for cancer claims have been made to first responders, but in the past several years the share of new cancer claims from other survivors—who constitute the bulk of the remaining exposed population—has risen to 50 percent. CBO expects that, over the next 10 years, the share of cancer claims from those survivors will continue to rise; correspondingly, CBO's projection of future cancer rates is weighted more heavily toward its estimate for cancer incidence in that

<sup>11</sup> See Eli J. Kleinman and others, "NYPD Cancer Incidence Rates 1995–2014 Encompassing the Entire World Trade Center Cohort," *Journal of Occupational and Environmental Medicine*, vol. 57, no. 10, pp. e101–e113 (October 2015), <https://doi.org/10.1097/JOM.0000000000000542>.

<sup>12</sup> See Ankura Singh and others, "Estimation of Future Cancer Burden Among Rescue and Recovery Workers Exposed to the World Trade Center Disaster," *Journal of the American Medical Association (JAMA) Oncology*, vol. 4, no. 6 (June 2018), pp. 828–831, <https://doi.org/10.1001/jamaoncol.2018.0504>; Jiehui Li and others, "Ten-Year Cancer Incidence in Rescue/Recovery Workers and Civilians Exposed to the September 11, 2001 Terrorist Attacks on the World Trade Center," *American Journal of Industrial Medicine*, vol. 59, no. 9 (September 2016), pp. 709–721, <https://doi.org/10.1002/ajim.22638>; and Samara Solan and others, "Cancer Incidence in World Trade Center Rescue and Recovery Workers, 2001–2008," *Environmental Health Perspectives*, vol. 121, no. 6 (June 2013), pp. 699–704, <https://doi.org/10.1289/ehp.1205894>.

<sup>13</sup> CBO estimates that cancer claims will grow from about 50 percent of new claims in 2020 to over 80 percent by 2029 because noncancerous conditions are more likely to become evident sooner—in years closer to the terrorist attacks—and victims are more likely to be treated earlier. Moreover, because many types of cancer have long latencies—mesothelioma, for example, has an average latency of more than 30 years—the incidence of those cancers will increase as those who were exposed grow older. CBO also estimates that claims for deceased victims will grow from about 6 percent of new claims in 2020 to 18 percent by 2029 because of the increase in mortality as the affected population ages and as cancer incidence rises. Since 2011, over 90 percent of awards paid to deceased claimants have involved cancer. CBO estimates that share will continue to increase over the 2020–2029 period.

group. Over the 2020–2029 period, CBO expects that 31,000 will develop cancer out of the remaining population of about 265,000 in 2029.

**Incidence of Noncancerous Illnesses.** Using data from the WTC Health Program about the number of people who have been newly certified with illnesses since 2015, CBO estimates that about 19,000 people out of the remaining population can be expected to develop noncancerous illnesses over the next 10 years. In producing that estimate, CBO accounted for trends in the ratio of cancer to noncancerous claims in recent years, which show that the share of noncancerous claims is declining. The WTC Health Program and other observers have noted that noncancerous conditions are more likely to be identified and treated earlier because noncancerous symptoms generally present sooner than cancer symptoms do. Accordingly, CBO estimates that the number of new noncancerous illnesses will decrease gradually over time. To date, the WTC Health Program has certified more than 40,000 people with noncancerous illnesses (mostly aerodigestive disorders, which affect both the respiratory and the digestive tracts). The VCF has paid claims to more than 14,000 people for noncancerous conditions alone.

**Filing a Claim With the Victim Compensation Fund.** After estimating the number of people in the exposed population who will develop eligible health conditions, CBO estimated how many in that group would enroll in the WTC Health Program and receive certification that their conditions are related to the September 11, 2001, terrorist attacks. Although enrollment in the WTC Health Program is not a prerequisite for filing a claim with the VCF, enrollment in that program is the primary predictor of who will file a VCF claim. Over 85 percent of VCF registrants have certified their conditions through that program and over 90 percent of those enrollees have registered with the VCF.

Currently, about 95,000 people participate in the WTC Health Program. To arrive at an estimate of the share who will develop health conditions and enroll in the program, CBO estimated the proportion of the eligible population that may have developed health conditions since 2001 and compared that information with the number of enrollees with certified conditions. Since the WTC Health Program began in 2011, CBO estimates, roughly two-thirds of those who have developed conditions have received certification—although significant uncertainty surrounds that estimate.

If two-thirds of the people who develop eligible illnesses go on to enroll, CBO anticipates that participation in the WTC Health Program would grow by an average of 3,200 members (with certified health conditions) annually over the next decade. That pace is consistent with growth over the past five years.

Finally, to estimate how many WTC Health Program members would submit VCF claims and receive awards, CBO used data from the VCF’s February 2019 annual report about the stages of claim-filing activity over the program’s history.<sup>14</sup> CBO estimates that, over the 2020–2029 period, nearly 33,000 people will be certified by the WTC Health Program with eligible health conditions, and that about 18,100 within that group—55 percent—would file claims and

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<sup>14</sup> See September 11th Victim Compensation Fund, *Seventh Annual Status Report and Third Annual Reassessment of Policies and Procedures* (February 2019), <https://go.usa.gov/xygNY> (PDF, 555 KB).

receive awards from the VCF.<sup>15</sup> Of those claims, CBO estimates, 63 percent will be for cancer and 37 percent will be for noncancerous conditions alone. On average, 1,800 claims would be approved annually and the number of awards would gradually increase over the next decade, driven primarily by rising rates of cancer and by higher approval rates for filed claims.

**Award Payments.** To estimate future awards from the VCF, CBO used data on the number and average amounts of awards for different types of claims over the program's history.<sup>16</sup> CBO estimated amounts, on average, since 2017 (as shown in Table 2) and in most cases made an upward adjustment for each type of award over the 2020–2029 period to account for trends observed since 2011.<sup>17</sup> CBO estimates that the average amount for most types would increase by about 0.5 percent annually.

In total, CBO estimates, under H.R. 1327, the VCF would pay claims totaling \$5.8 billion over the 2020–2029 period, to the 18,100 claimants who file after the date of enactment (see Table 4).

**Administrative Costs.** Under current law, the VCF is authorized to spend whatever amounts are necessary to carry out the program. Because the legislation would extend the period of the operation through fiscal year 2090, CBO estimates that H.R. 1327 would increase direct spending to cover continued administrative costs.

In fiscal year 2018, the VCF spent \$28 million to compensate 172 employees, maintain the program's software system, and provide contractor support. Because of a surge in claims late in 2018 and early in 2019, the program is hiring 10 additional employees to process the backlog.

Under H.R. 1327, CBO expects, the VCF will operate with about 180 employees for the next several years as the program processes a significant backlog of claims. Its administrative costs are estimated to range from \$30 million to \$33 million each year.

Uncertainty CBO's cost estimate for H.R. 1327 reflects considerable uncertainty in several areas:

- Identifying the number of people affected by the terrorist attacks on September 11, 2001, and the number of people that will seek treatment and compensation for injury or death;
- Comparing incidence rates in the exposed and unexposed populations for adverse health conditions, especially cancer; and
- Estimating both the number of people who ultimately will be approved for compensation and the amount of their awards.

**Filing a Claim With the Victim Compensation Fund.** One difficulty is projecting the precise rate at which affected people will

<sup>15</sup> That estimate reflects data reported by the VCF about the percentage of WTC Health Program enrollees who register with the VCF (90 percent), the percentage of VCF registrants who file claims (57 percent), and the percentage of filed claims that receive awards (75 percent). CBO estimates that, at each stage, the rate of advancement to the next would rise gradually over the ensuing 10 years as a result of greater awareness among potential claimants about the opportunity to file a claim, increases in the number and severity of illnesses that compel people to seek compensation, and a gradual resolution of documentation problems that impede award approval.

<sup>16</sup> In addition to accounting for differences between compensation for cancer and noncancerous conditions, CBO's analysis accounted for differences in the size of awards for economic and noneconomic compensation and awards for deceased and living claimants.

<sup>17</sup> Notably, CBO estimates that awards for economic losses will decrease from 24 percent of new claims in 2020 to 20 percent in 2029 as claimants age and leave the workforce, reducing their earnings and benefits. As a result, CBO estimates, on average, cancerous and noncancerous awards will be lower over the 2020–2029 period than for earlier claims because a declining share of awards will include compensation for economic losses.

seek treatment from or be monitored by the WTC Health Program. CBO expects that many people who were harmed will instead seek treatment from other providers or forgo treatment of related illnesses and conditions.

Enrollment in the WTC Health Program is not a prerequisite for filing a claim with the VCF, but more than 85 percent of VCF registrants have received certification for their conditions from that program; participation in the WTC Health Program is therefore the primary predictor of VCF claim-filing activity.

If 95 percent of the people who develop health conditions participate in the program, compared with the two-thirds (66 percent) assumed in this estimate, the cost of the legislation would increase by \$2.6 billion over the 2020–2029 period. Conversely, if one-third (33 percent) of that group participates, the legislation’s costs would be \$2.8 billion smaller over that period.

Cancer Incidence. It is not possible to project the degree to which cancer incidence rates will differ among people in the exposed and unexposed populations. There also is significant uncertainty about latency periods between exposure and incidence for many forms of cancer.

If average incidence rates were 30 percent higher among the exposed population, compared with the 8 percent higher assumed in this estimate, the legislation’s cost would be \$1.1 billion higher over the 2020–2029 period. Conversely, if incidence rates were 1 percent higher, the cost of the legislation would be \$0.3 billion lower over that period.

Combined Uncertainty Scenarios. Using both high-end scenarios described above—95 percent participation in the WTC Health Program and 30 percent higher cancer rates—then CBO estimates the legislation’s cost would increase by \$4.1 billion over the 2020–2029 period.

Using both low-end scenarios described above—33 percent participation in the WTC Health Program and 1 percent higher cancer rates—then CBO estimates the legislation’s costs would be \$3 billion lower over that period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in Table 5.

TABLE 5.—CBO’S ESTIMATE OF PAY-AS-YOU-GO EFFECTS OF H.R. 1327

	By fiscal year, millions of dollars—													
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019–2024	2019–2029	
Net Increase in the Deficit														
Statutory Pay-As-You-Go Effect .....	0	950	1,387	1,947	1,868	633	643	653	663	703	733	6,785	10,180	

Increase in long-term deficits: CBO estimates that enacting the H.R. 1327 would increase on-budget deficits by more than \$5 billion in at least one of the four 10-year periods beginning in 2030.

Mandates: None.

Estimate comparison: On June 11, 2019, the special master of the VCF provided testimony to the Congress indicating that the

VCF would require \$4.616 billion more than the \$7.375 billion currently appropriated for the program to fully pay the cost of all eligible claims under current law.<sup>18</sup> That estimate—totaling \$11.991 billion—assumes that no more claims would be filed after December 18, 2020, the current statutory deadline for filing claims. The VCF has not published an estimate of the costs to pay claims filed beyond that date under a scenario that assumes continuation of the program.

CBO's estimates of the cost to pay claims and the administrative costs of the program are consistent with the VCF's estimate through December 20, 2020. CBO's analysis was based on data provided by VCF, and CBO made similar assumptions about the number and types of claims that would be approved for an award up to that date. CBO's estimate of H.R. 1327 differs from the VCF's because it also includes the estimated costs of continuing to pay claims beyond December 2020, over the entire 2020–2029 period.

Estimate prepared by: Federal costs: Jon Sperl; Mandates: Lilia Ledezma.

Estimate reviewed by: Kim Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis; Theresa Gullo, Assistant Director for Budget Analysis.

### **Duplication of Federal Programs**

No provision of H.R. 1327 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

### **Performance Goals and Objectives**

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1327 would reauthorize the September 11th Victim Compensation Fund until 2090 and fully compensate claimants whose awards were cut because of the Fund's current funding insufficiency.

### **Advisory on Earmarks**

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1327 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

### **Duplication of Federal Programs**

No provision of H.R. 1327 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the

<sup>18</sup> See the testimony of Rupa Bhattacharyya, Special Master, September 11th Victim Compensation Fund, before the Subcommittee on the Constitution, Civil Rights and Civil Liberties of the House Committee on the Judiciary (June 11, 2019), <https://go.usa.gov/xyrzh> (PDF, 288 KB). The estimates in that testimony are based on information in September 11th Victim Compensation Fund, *Seventh Annual Status Report and Third Annual Reassessment of Policies and Procedures* (February 2019), <https://go.usa.gov/xygNY> (PDF, 555 KB).

Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

### **Performance Goals and Objectives**

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1327 would extend authorization of the September 11th Victim Compensation Fund until 2090 and restore awards that were cut because of insufficient funds.

### **Section-by-Section Analysis**

The following discussion describes the bill as reported by the Committee.

*Section 1. Short title.* Section 1 sets forth the bill’s short title as the “Never Forget the Heroes: Permanent Authorization of the September 11th Victim Compensation Fund Act.”

*Section 2. September 11th Victim Compensation Fund of 2001.* Section 2(a) of the bill amends Section 410 of the Air Transportation Safety and System Stabilization Act (“Act”). Section 410 of that Act provides, in relevant part, that there be a fund created in the United States Treasury called the “Victims Compensation Fund” into which is deposited, among other monies, \$4.6 billion to be appropriated out of any money in the Treasury that is not otherwise appropriated for fiscal year 2017, for the purpose of paying claims filed with the September 11th Victim Compensation Fund between the time post-2015 implementing regulations for were updated and 5 years after the date of enactment of the 2015 reauthorization bill (Dec. 18, 2020) and for which the VCF had not post-marked and transmitted a final award determination to the claimant as of December 18, 2015. These are referred to in the Act as “Group B” claims. Section 2(a)(1) of the bill strikes the provision appropriating \$4.6 billion to pay “Group B” claims and replaces it with an appropriation for “such sums as may be necessary for fiscal year 2019 and each fiscal year thereafter through fiscal year 2090, to remain available through such fiscal year.” This provision is intended to ensure that there are sufficient funds available to pay Group B VCF claims for the remainder of the authorization period so as to avoid in the future the kind of funding deficiency that the VCF is currently facing.

Section 2(a)(2) of the bill amends Section 410(e) of the Act, which provides that upon completion of all payments, the (Treasury) Victims Compensation Fund shall be permanently closed. Section 2(a)(2) of the bill strikes “Upon completion of all payments under this title” and replaces it with “On October 1, 2090.” This ensures that the VCF will exist long enough to compensate victims whose 9/11-related diseases have long latency periods and also comports the VCF’s authorization period with that of the WTC Health Program.

Section 2(b) amends Section 405(a)(3)(B) of the Act. Section 405(a)(3)(B) provides the timeframe within which claims may be filed with the September 11th Victim Compensation Fund. Currently, the end date for filing claims is set at 5 years after the date of enactment of the James Zadroga 9/11 Victim Compensation

Fund Reauthorization Act, which would be December 18, 2020. Section 2(b) strikes this end date and replaces it with October 1, 2089, or one year before the 9/11 VCF is set to expire under the bill.

Section 2(c) amends Section 406(d)(2) of the Act. Section 406(d)(2) currently governs Group B claims, among other things by capping the total amount that could be spent on paying Group B claims to the \$4.6 billion that was appropriated for that purpose, including by requiring the Special Master to develop policies and procedures to ensure that total expenditures, including administrative expenses, do not exceed the \$4.6 billion appropriation and to prioritize claimants who are suffering from the most debilitating physical conditions to ensure that such claimants are not unduly burdened by such policies and procedures. It also requires the Special Master to conduct an annual reassessment of agency policies and procedures to ensure the VCF's compliance with these requirements. If, upon reassessment, such policies or procedures do not meet these requirements, the Special Master must take such additional actions or make such modifications as are necessary to comply with these requirements. Section 2(c)(1) of the bill strikes the requirement of an annual reassessment of policies and procedures and replaces it with a requirement of a reassessment for "not less than once every 5 years" after December 18, 2015. Section 2(c)(2) of the bill adds a new subsection D to the end of Section 406(d)(2). New subsection D provides that with respect to Group B claim awards that were subject to reductions because of insufficient funds, the Special Master shall, in the first fiscal year when sufficient funds become available, pay the difference between the amount the claimant was entitled to and the amount the claimant was actually paid. This provision is intended to address the cuts in awards announced by the Special Master in February 2019 due to insufficient funding for the VCF.

Section 2(d) of the bill amends Section 405(b)(7)(A) of the Act. Section 405(b)(7)(A) imposes caps on awards for noneconomic losses for Group B claimants. These caps are \$250,000 for noneconomic losses from any type of cancer and \$90,000 for any noneconomic losses from conditions other than cancer. Section 2(d) of the bill adds a provision allowing the Special Master to exceed these limitations for Group B claims if the Special Master determines that the pain and suffering of the claimant is so excessive as to render the amount of the applicable limitation insufficiently compensatory.

Section 2(e) of the bill amends Section 405(b)(7)(B)(ii) of the Act. Section 405(b)(7)(B)(ii) imposes a limitation on the calculation of economic losses in determining the amount of an award for economic loss. Specifically, it provides that for the purpose of calculating each year of any lost earnings or other employment benefits, the annual gross income of the claimant for each year is capped at \$200,000. Section 2(e) of the bill amends this annual gross income limitation by requiring the Special Master to adjust this \$200,000 annual gross income limitation not more than once every 5 years by the percentage increases in the Consumer Price Index for All Urban Consumers for the October preceding the date of adjustment to the October that precedes 5 years before the date of the adjustment.

### **Changes in Existing Law Made by the Bill, as Reported**

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 1327, as reported, are shown as follows:

#### **CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED**

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

### **AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT**

\* \* \* \* \*

## **TITLE IV—VICTIM COMPENSATION**

\* \* \* \* \*

#### **SEC. 405. DETERMINATION OF ELIGIBILITY FOR COMPENSATION.**

##### **(a) FILING OF CLAIM.—**

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

##### **(2) CLAIM FORM.—**

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

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

(i) information from the claimant concerning the physical harm that the claimant suffered, or in the case of a claim filed on behalf of a decedent information confirming the decedent's death, as a result of the terrorist-related aircraft crashes of September 11, 2001, or debris removal during the immediate aftermath;

(ii) information from the claimant concerning any possible economic and noneconomic losses that the claimant suffered as a result of such crashes or debris removal during the immediate aftermath; and

(iii) information regarding collateral sources of compensation the claimant has received or is entitled to receive as a result of such crashes or debris removal during the immediate aftermath.

##### **(3) LIMITATION.—**

(A) IN GENERAL.—Except as provided by subparagraph (B), no claim may be filed under paragraph (1) after the date that is 2 years after the date on which regulations are promulgated under section 407(a).

(B) EXCEPTION.—A claim may be filed under paragraph (1), in accordance with subsection (c)(3)(A)(i), by an individual (or by a personal representative on behalf of a deceased individual) during the period beginning on the date on which the regulations are updated under section 407(b)(1) and ending on [the date that is 5 years after the date of enactment of the James Zadroga 9/11 Victim Compensation Fund Reauthorization Act] *October 1, 2089*.

(C) SPECIAL MASTER DETERMINATION.—

(i) IN GENERAL.—For claims filed under this title during the period described in subparagraph (B), the Special Master shall establish a system for determining whether, for purposes of this title, the claim is—

- (I) a claim in Group A, as described in clause (ii); or
- (II) a claim in Group B, as described in clause (iii).

(ii) GROUP A CLAIMS.—A claim under this title is a claim in Group A if—

- (I) the claim is filed under this title during the period described in subparagraph (B); and
- (II) on or before the day before the date of enactment of the James Zadroga 9/11 Victim Compensation Fund Reauthorization Act, the Special Master postmarks and transmits a final award determination to the claimant filing such claim.

(iii) GROUP B CLAIMS.—A claim under this title is a claim in Group B if the claim—

- (I) is filed under this title during the period described in subparagraph (B); and
- (II) is not a claim described in clause (ii).

(iv) DEFINITION OF FINAL AWARD DETERMINATION.—For purposes of this subparagraph, the term “final award determination” means a letter from the Special Master indicating the total amount of compensation to which a claimant is entitled for a claim under this title without regard to the limitation under the second sentence of section 406(d)(1), as such section was in effect on the day before the date of enactment of the James Zadroga 9/11 Victim Compensation Fund Reauthorization Act.

(b) REVIEW AND DETERMINATION.—

(1) REVIEW.—The Special Master shall review a claim submitted under subsection (a) and determine—

- (A) whether the claimant is an eligible individual under subsection (c);
- (B) with respect to a claimant determined to be an eligible individual—

- (i) the extent of the harm to the claimant, including any economic and noneconomic losses; and

(ii) subject to paragraph (7), the amount of compensation to which the claimant is entitled based on the harm to the claimant, the facts of the claim, and the individual circumstances of the claimant.

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

(3) DETERMINATION.—Not later than 120 days after that date on which a claim is filed under subsection (a), the Special Master shall complete a review, make a determination, and provide written notice to the claimant, with respect to the matters that were the subject of the claim under review. Such a determination shall be final and not subject to judicial review.

(4) RIGHTS OF CLAIMANT.—A claimant in a review under paragraph (1) shall have—

(A) the right to be represented by an attorney;

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

(C) any other due process rights determined appropriate by the Special Master.

(5) NO PUNITIVE DAMAGES.—The Special Master may not include amounts for punitive damages in any compensation paid under a claim under this title.

(6) COLLATERAL COMPENSATION.—

(A) IN GENERAL.—The Special Master shall reduce the amount of compensation determined under paragraph (1)(B)(ii) by the amount of the collateral source compensation the claimant has received or is entitled to receive as a result of the terrorist-related aircraft crashes of September 11, 2001.

(B) GROUP B CLAIMS.—Notwithstanding any other provision of this title, in the case of a claim in Group B as described in subsection (a)(3)(C)(iii), a claimant filing such claim shall receive an amount of compensation under this title for such claim that is not greater than the amount determined under paragraph (1)(B)(ii) less the amount of any collateral source compensation that such claimant has received or is entitled to receive for such claim as a result of the terrorist-related aircraft crashes of September 11, 2001.

(7) LIMITATIONS FOR GROUP B CLAIMS.—

(A) NONECONOMIC LOSSES.— **【With respect to】**

(i) *IN GENERAL.*—*Except as provided in clause (ii), with respect to a claim in Group B as described in subsection (a)(3)(C)(iii), the total amount of compensation to which a claimant filing such claim is entitled to receive for such claim under this title on account of any noneconomic loss—*

**【(i)】** *(I)* that results from any type of cancer shall not exceed \$250,000; and

**【(ii)】** *(II)* that does not result from any type of cancer shall not exceed \$90,000.

(ii) *EXCEPTION.*—*The Special Master may exceed the applicable limitation under clause (i) for a claim in Group B as described in subsection (a)(3)(C)(iii) if the*

*Special Master determines that the pain and suffering of the claimant is so excessive as to render the amount of the applicable limitation under clause (i) insufficiently compensatory.*

(B) DETERMINATION OF ECONOMIC LOSS.—

(i) IN GENERAL.—Subject to the limitation described in clause (ii) and with respect to a claim in Group B as described in subsection (a)(3)(C)(iii), the Special Master shall, for purposes of calculating the amount of compensation to which a claimant is entitled under this title for such claim on account of any economic loss, determine the loss of earnings or other benefits related to employment by using the applicable methodology described in section 104.43 or 104.45 of title 28, Code of Federal Regulations, as such Code was in effect on the day before the date of enactment of the James Zadroga 9/11 Victim Compensation Fund Reauthorization Act.

(ii) ANNUAL GROSS INCOME LIMITATION.— **[In considering]**

*(I) IN GENERAL.—Subject to subclause (II), in considering annual gross income under clause (i) for the purposes described in such clause, the Special Master shall, for each year of any loss of earnings or other benefits related to employment, limit the annual gross income of the claimant (or decedent in the case of a personal representative) for each such year to an amount that is not greater than \$200,000.*

*(II) ADJUSTMENT.—The Special Master shall adjust the amount of the limitation under subclause (I) not more frequently than once every 5 years to reflect the percentage by which the Consumer Price Index for All Urban Consumers published by the Department of Labor for the month of October immediately preceding the date of adjustment exceeds the Consumer Price Index for All Urban Consumers published by the Department of Labor for the month of October that immediately precedes the date that is 5 years before the date of adjustment.*

(C) GROSS INCOME DEFINED.—For purposes of this paragraph, the term “gross income” has the meaning given such term in section 61 of the Internal Revenue Code of 1986.

(c) ELIGIBILITY.—

(1) IN GENERAL.—A claimant shall be determined to be an eligible individual for purposes of this subsection if the Special Master determines that such claimant—

(A) is an individual described in paragraph (2); and

(B) meets the requirements of paragraph (3).

(2) INDIVIDUALS.—A claimant is an individual described in this paragraph if the claimant is—

(A) an individual who—

(i) was present at the World Trade Center, (New York, New York), the Pentagon (Arlington, Virginia), the site of the aircraft crash at Shanksville, Pennsylvania, or any other 9/11 crash site at the time, or in the immediate aftermath, of the terrorist-related aircraft crashes of September 11, 2001; and

(ii) suffered physical harm or death as a result of such an air crash or debris removal;

(B) an individual who was a member of the flight crew or a passenger on American Airlines flight 11 or 77 or United Airlines flight 93 or 175, except that an individual identified by the Attorney General to have been a participant or conspirator in the terrorist-related aircraft crashes of September 11, 2001, or a representative of such individual shall not be eligible to receive compensation under this title; or

(C) in the case of a decedent who is an individual described in subparagraph (A) or (B), the personal representative of the decedent who files a claim on behalf of the decedent.

(3) REQUIREMENTS.—

(A) REQUIREMENTS FOR FILING CLAIMS DURING EXTENDED FILING PERIOD.—

(i) TIMING REQUIREMENTS FOR FILING CLAIMS.—An individual (or a personal representative on behalf of a deceased individual) may file a claim during the period described in subsection (a)(3)(B) as follows:

(I) In the case that the Special Master determines the individual knew (or reasonably should have known) before the date specified in clause (iii) that the individual suffered a physical harm at a 9/11 crash site as a result of the terrorist-related aircraft crashes of September 11, 2001, or as a result of debris removal, and that the individual knew (or should have known) before such specified date that the individual was eligible to file a claim under this title, the individual may file a claim not later than the date that is 2 years after such specified date.

(II) In the case that the Special Master determines the individual first knew (or reasonably should have known) on or after the date specified in clause (iii) that the individual suffered such a physical harm or that the individual first knew (or should have known) on or after such specified date that the individual was eligible to file a claim under this title, the individual may file a claim not later than the last day of the 2-year period beginning on the date the Special Master determines the individual first knew (or should have known) that the individual both suffered from such harm and was eligible to file a claim under this title.

(ii) OTHER ELIGIBILITY REQUIREMENTS FOR FILING CLAIMS.—Except with respect to claims in Group B as described in subsection (a)(3)(C)(iii), an individual may

file a claim during the period described in subsection (a)(3)(B) only if—

(I) the individual was treated by a medical professional for suffering from a physical harm described in clause (i)(I) within a reasonable time from the date of discovering such harm; and

(II) the individual's physical harm is verified by contemporaneous medical records created by or at the direction of the medical professional who provided the medical care.

(iii) DATE SPECIFIED.—The date specified in this clause is the date on which the regulations are updated under section 407(b)(1).

(iv) GROUP B CLAIMS.—

(I) IN GENERAL.—Subject to subclause (II), an individual filing a claim in Group B as described in subsection (a)(3)(C)(iii) may be eligible for compensation under this title only if the Special Master, with assistance from the WTC Program Administrator as necessary, determines based on the evidence presented that the individual has a WTC-related physical health condition, as defined by section 402 of this Act.

(II) PERSONAL REPRESENTATIVES.—An individual filing a claim in Group B, as described in subsection (a)(3)(C)(iii), who is a personal representative described in paragraph (2)(C) may be eligible for compensation under this title only if the Special Master, with assistance from the WTC Program Administrator as necessary, determines based on the evidence presented that the applicable decedent suffered from a condition that was, or would have been determined to be, a WTC-related physical health condition, as defined by section 402 of this Act.

(B) SINGLE CLAIM.—Not more than one claim may be submitted under this title by an individual or on behalf of a deceased individual.

(C) LIMITATION ON CIVIL ACTION.—

(i) IN GENERAL.—Upon the submission of a claim under this title, the claimant waives the right to file a civil action (or to be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001, or for damages arising from or related to debris removal. The preceding sentence does not apply to a civil action to recover collateral source obligations, or to a civil action against any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act.

(ii) PENDING ACTIONS.—In the case of an individual who is a party to a civil action described in clause (i), such individual may not submit a claim under this title—

(I) during the period described in subsection (a)(3)(A) unless such individual withdraws from such action by the date that is 90 days after the date on which regulations are promulgated under section 407(a); and

(II) during the period described in subsection (a)(3)(B) unless such individual withdraws from such action by the date that is 90 days after the date on which the regulations are updated under section 407(b)(1).

(iii) SETTLED ACTIONS.—In the case of an individual who settled a civil action described in clause (i), such individual may not submit a claim under this title unless such action was commenced after December 22, 2003, and a release of all claims in such action was tendered prior to the date on which the James Zadroga 9/11 Health and Compensation Act of 2010 was enacted.

**SEC. 406. PAYMENTS TO ELIGIBLE INDIVIDUALS.**

(a) IN GENERAL.—Subject to the limitations under subsection (d), not later than 20 days after the date on which a determination is made by the Special Master regarding the amount of compensation due a claimant under this title, the Special Master shall authorize payment to such claimant of the amount determined with respect to the claimant.

(b) PAYMENT AUTHORITY.—For the purpose of providing compensation for claims in Group A as described in section 405(a)(3)(C)(ii), this title constitutes budget authority in advance of appropriations Acts in the amounts provided under subsection (d)(1) and represents the obligation of the Federal Government to provide for the payment of amounts for compensation under this title subject to the limitations under subsection (d).

(c) ADDITIONAL FUNDING.—

(1) IN GENERAL.—The Attorney General is authorized to accept such amounts as may be contributed by individuals, business concerns, or other entities to carry out this title, under such terms and conditions as the Attorney General may impose.

(2) USE OF SEPARATE ACCOUNT.—In making payments under this section, amounts contained in any account containing funds provided under paragraph (1) shall be used prior to using appropriated amounts.

(d) LIMITATIONS.—

(1) GROUP A CLAIMS.—

(A) IN GENERAL.—The total amount of Federal funds paid for compensation under this title, with respect to claims in Group A as described in section 405(a)(3)(C)(ii), shall not exceed \$2,775,000,000.

(B) REMAINDER OF CLAIM AMOUNTS.—In the case of a claim in Group A as described in section 405(a)(3)(C)(ii) and for which the Special Master has ratably reduced the amount of compensation for such claim pursuant to paragraph (2) of this subsection, as this subsection was in effect on the day before the date of enactment of the James Zadroga 9/11 Victim Compensation Fund Reauthorization

Act, the Special Master shall, as soon as practicable after the date of enactment of such Act, authorize payment of the amount of compensation that is equal to the difference between—

- (i) the amount of compensation that the claimant would have been paid under this title for such claim without regard to the limitation under the second sentence of paragraph (1) of this subsection, as this subsection was in effect on the day before the date of enactment of the James Zadroga 9/11 Victim Compensation Fund Reauthorization Act; and
- (ii) the amount of compensation the claimant was paid under this title for such claim prior to the date of enactment of such Act.

(2) GROUP B CLAIMS.—

(A) IN GENERAL.—The total amount of Federal funds paid for compensation under this title, with respect to claims in Group B as described in section 405(a)(3)(C)(iii), shall not exceed the amount of funds deposited into the Victims Compensation Fund under section 410.

(B) PAYMENT SYSTEM.—The Special Master shall establish a system for providing compensation for claims in Group B as described in section 405(a)(3)(C)(iii) in accordance with this subsection and section 405(b)(7).

(C) DEVELOPMENT OF AGENCY POLICIES AND PROCEDURES.—

(i) DEVELOPMENT.—

(I) IN GENERAL.—Not later than 30 days after the date of enactment of the James Zadroga 9/11 Victim Compensation Fund Reauthorization Act, the Special Master shall develop agency policies and procedures that meet the requirements under subclauses (II) and (III) for providing compensation for claims in Group B as described in section 405(a)(3)(C)(iii), including policies and procedures for presumptive award schedules, administrative expenses, and related internal memoranda.

(II) LIMITATION.—The policies and procedures developed under subclause (I) shall ensure that total expenditures, including administrative expenses, in providing compensation for claims in Group B, as described in section 405(a)(3)(C)(iii), do not exceed the amount of funds deposited into the Victims Compensation Fund under section 410.

(III) PRIORITIZATION.—The policies and procedures developed under subclause (I) shall prioritize claims for claimants who are determined by the Special Master as suffering from the most debilitating physical conditions to ensure, for purposes of equity, that such claimants are not unduly burdened by such policies or procedures.

(ii) REASSESSMENT.—Beginning 1 year after the date of enactment of the James Zadroga 9/11 Victim Com-

compensation Fund Reauthorization Act, and [each year thereafter] *not less than once every 5 years thereafter* until the Victims Compensation Fund is permanently closed under section 410(e), the Special Master shall conduct a reassessment of the agency policies and procedures developed under clause (i) to ensure that such policies and procedures continue to satisfy the requirements under subclauses (II) and (III) of such clause. If the Special Master determines, upon reassessment, that such agency policies or procedures do not achieve the requirements of such subclauses, the Special Master shall take additional actions or make such modifications as necessary to achieve such requirements.

**(D) COMPENSATION REDUCED BY SPECIAL MASTER DUE TO INSUFFICIENT FUNDING.—**

*(i) IN GENERAL.—With respect to any claim in Group B as described in section 405(a)(3)(C)(iii) for which, prior to the date of enactment of this subparagraph, the Special Master had advised the claimant that the amount of compensation for such claim has been reduced on the basis of insufficient funding, the Special Master shall, in the first fiscal year following such date of enactment that sufficient funding becomes available under this title, pay to the claimant an amount that is, as determined by the Special Master, equal to the difference between—*

*(I) the amount the claimant would have been paid under this title if sufficient funding was available to the Special Master at the time the Special Master determined the amount due the claimant under this title; and*

*(II) the amount the claimant was paid under this title.*

*(ii) DEFINITIONS.—For purposes of this subparagraph:*

*(I) INSUFFICIENT FUNDING.—The term “insufficient funding” means funding—*

*(aa) that is available to the Special Master under section 410(c), as in effect on the day before the date of enactment of this subparagraph, for purposes of compensating claims in Group B as described in section 405(a)(3)(C)(iii); and*

*(bb) that the Special Master determines is insufficient for purposes of compensating all such claims and complying with subparagraph (A).*

*(II) SUFFICIENT FUNDING.—The term “sufficient funding” means funding—*

*(aa) made available to the Special Master for purposes of compensating claims in Group B as described in section 405(a)(3)(C)(iii) through an Act of Congress that is enacted after the date on which the amount of the*

*claim described in clause (i) has been reduced;  
and*

*(bb) that the Special Master determines is  
sufficient for purposes of compensating all  
claims in such Group B.*

(e) ATTORNEY FEES.—

(1) IN GENERAL.—Notwithstanding any contract, the representative of an individual may not charge, for services rendered in connection with the claim of an individual under this title, more than 10 percent of an award made under this title on such claim.

(2) LIMITATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of an individual who was charged a legal fee in connection with the settlement of a civil action described in section 405(c)(3)(C)(iii), the representative of the individual may not charge any amount for compensation for services rendered in connection with a claim filed under this title.

(B) EXCEPTION.—If the legal fee charged in connection with the settlement of a civil action described in section 405(c)(3)(C)(iii) of an individual is less than 10 percent of the aggregate amount of compensation awarded to such individual through such settlement, the representative of such individual may charge an amount for compensation for services rendered to the extent that such amount charged is not more than—

(i) 10 percent of such aggregate amount through the settlement, minus

(ii) the total amount of all legal fees charged for services rendered in connection with such settlement.

(3) DISCRETION TO LOWER FEE.—In the event that the special master finds that the fee limit set by paragraph (1) or (2) provides excessive compensation for services rendered in connection with such claim, the Special Master may, in the discretion of the Special Master, award as reasonable compensation for services rendered an amount lesser than that permitted for in paragraph (1).

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**SEC. 410. VICTIMS COMPENSATION FUND.**

(a) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the “Victims Compensation Fund”, consisting of amounts deposited into such fund under subsection (b).

(b) DEPOSITS INTO FUND.—There shall be deposited into the Victims Compensation Fund each of the following:

(1) Effective on the day after the date on which all claimants who file a claim in Group A, as described in section 405(a)(3)(C)(ii), have received the full compensation due such claimants under this title for such claim, any amounts remaining from the total amount made available under section 406 to compensate claims in Group A as described in section 405(a)(3)(C)(ii).

(2) The amount appropriated under subsection (c).

(c) APPROPRIATIONS.—There is appropriated, out of any money in the Treasury not otherwise appropriated, **【\$4,600,000,000 for fiscal year 2017, to remain available until expended】** *such sums as may be necessary for fiscal year 2019 and each fiscal year thereafter through fiscal year 2090, to remain available through such fiscal year* , to provide compensation for claims in Group B as described in section 405(a)(3)(C)(iii).

(d) AVAILABILITY OF FUNDS.—Amounts deposited into the Victims Compensation Fund shall be available, without further appropriation, to the Special Master to provide compensation for claims in Group B as described in section 405(a)(3)(C)(iii).

(e) TERMINATION.— **【Upon completion of all payments under this title】** *On October 1, 2090* , the Victims Compensation Fund shall be permanently closed.

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