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The September 11th Victim Compensation Fund (VCF)

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SUMMARY

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The September 11th Victim Compensation Fund (VCF)

The September 11th Victim Compensation Fund (VCF) provides cash benefits to certain persons whose health may have been affected by exposure to debris or toxic substances in the aftermath of the September 11, 2001 terrorist attacks on the Pentagon, the World Trade Center, and the terrorist-related aircraft crash at Shanksville, PA. Congress created the original VCF shortly after the 2001 terrorist attacks to provide compensation to persons injured and the families of persons killed in the attacks and their immediate aftermath. The original VCF closed in 2003.

In 2011, Congress reopened the VCF to provide benefits to persons who responded to the terrorist attack sites, were involved in the cleanup of these sites, or lived in lower Manhattan during the attacks. The reopened VCF was authorized through October 3, 2016. However, the VCF was reauthorized in December 2015 (P.L. 114-113) and July 2019 (P.L. 116-34). All VCF claims must be filed by October 1, 2090.

Since its reopening, the VCF has awarded more than $5.5 billion to more than 23,000 claimants. There is no cap on the total VCF award amount, but there are limits on the amounts of individual awards for economic and noneconomic losses claimants suffered. The 2019 reauthorization legislation provides all necessary appropriations for VCF awards and administrative expenses through the end of FY2092.

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The September 11th Victim Compensation Fund (VCF) provides cash benefits to certain persons whose health may have been affected by the aftermath of the September 11, 2001 terrorist attacks on the Pentagon, the World Trade Center, and the terrorist-related aircraft crash at Shanksville, PA.[1] The VCF was most recently reauthorized on July 29, 2019, with the enactment of the Never Forget the Heroes: James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the September 11th Victim Compensation Fund Act (P.L. 116-34). All VCF claims must be filed by October 1, 2090. There is no cap on total benefits that may be paid.

This report provides an overview of the VCF, including its history, current law, and appropriations. It also provides an Appendix of current VCF program statistics.

History of the VCF

On September 22, 2001, the Air Transportation Safety and System Stabilization Act (ATSSA; P.L. 107-42) was enacted into law. Quickly passed by Congress in the wake of the September 11, 2001 terrorist attacks, this legislation provided various forms of relief to the American airline industry and affirmed Congress's commitment to improving airline safety. Title IV of the ATSSA also established the VCF to compensate persons injured or the representatives of persons killed in the attacks or their immediate aftermath.

The VCF originally closed in 2003 but was reopened and expanded in 2011 to provide compensation to the 2001 terrorist attacks' responders and others, such as certain New York City residents, who may have suffered health effects in the aftermath of the attacks. The VCF was reauthorized in December 2015 and July 2019 and is currently authorized through the end of FY2092 with an October 1, 2090 deadline for VCF claims.

Original VCF (2001)

The original VCF, created by Title IV of the ATSSA, provided cash benefits to two groups of persons who suffered physical injury or death as a result of the terrorist attacks of September 11, 2001:

- persons who were present at the World Trade Center, Pentagon, or aircraft crash site in Shanksville, PA, at the time of or in the immediate aftermath of the aircraft crashes at those sites on September 11, 2001;[2] and
- passengers and crew of any aircraft that crashed on September 11, 2001, as a result of terrorist activity.

The Attorney General appointed a special master to determine the benefit amount for each claimant.[3] The benefit amount payable to each claimant was based on the individual's economic losses (such as loss of future earnings) and noneconomic losses (such as pain and suffering). The VCF statute specifically prohibited any payments for punitive damages. Benefits were reduced by certain collateral source payments, such as life insurance benefits, available to the claimant. There was no cap on the amount of benefits that any one person could receive or on total benefits paid.

[1] The September 11th Victim Compensation Fund (VCF) is codified at 49 U.S.C. §40101 note.

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

[3] Attorney General John Ashcroft appointed Kenneth Feinberg as special master of the VCF on November 26, 2001.

By filing a VCF claim, a person waived his or her right to file a civil action or be a party to such an action in any federal or state court for damages related to the September 11, 2001 terrorist-related aircraft crashes.[4] This provision established the VCF as an alternate and expedited route to compensation for victims while providing some protection against lawsuits for damages that may have been brought by victims against the air carriers; airframe manufacturers; the Port Authority of New York and New Jersey, who owned the World Trade Center; or any other entity.

Congress provided funding for the VCF through an appropriation of "such sums as may be necessary" for benefit payment and administration. The VCF's special master was required to promulgate regulations to govern the program within 90 days of the law's enactment, and all claims had to be filed within two years of the regulations' promulgation, at which time the VCF would close.[5] The original VCF received 7,403 claims and made awards totaling $7.049 billion to 5,560 claimants.[6]

Reopened VCF (2011)

The original VCF closed to new claims in December 2003. However, concerns about injuries and illnesses incurred by persons involved in emergency response, recovery, and debris removal operations at the September 11th aircraft crash sites led Congress to reopen the VCF with the enactment of Title II of the James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act; P.L. 111-347). The reopened VCF extended eligibility for cash benefits to persons who suffered physical injuries or illnesses as a result of rescue, recovery, or debris removal work at or near the September 11th aircraft crash sites during the from September 11, 2001 to May 30, 2002, as well as for certain persons who lived, worked, or were near the World Trade Center on September 11, 2001.

The VCF was initially reopened for new claims through October 3, 2016. Total benefits and administrative costs were limited to $2.775 billion, unlike in the original VCF, which had no cap on total funding for benefits, allowing the special master to award benefits without considering the benefits' total cost. Under the reopened VCF, attorney fees were limited to 10% of the VCF award.[7]

VCF Reauthorizations

2015 Reauthorization

The VCF was first reauthorized on December 18, 2015, which extended the claim period for five years, with the enactment of Title IV of Division O of the Consolidated Appropriations Act, 2016 (Zadroga Reauthorization Act of 2015; P.L. 114-113). Under this reauthorization, claims approved before the reauthorization date were considered Group A claims, which were subject to the same rules as claims under the reopened VCF and to the $2.775 billion cap on total benefit payments. All other claims filed before the December 18, 2020 deadline were considered Group

[4] This provision was amended later in 2001 by Section 201 of the Aviation and Transportation Security Act (P.L. 107-71) to permit civil actions against persons who were knowing participants in any conspiracy to hijack any aircraft or commit any terrorist act.

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

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

[7] There was no cap on attorneys' fees in the original VCF legislation.

B claims subject to additional rules and funding caps established by the reauthorization legislation including a $4.6 billion cap on benefits. The 2015 reauthorization created a total funding cap of $7.375 billion for Groups A and B benefits.

2019 Reauthorization

The VCF was reauthorized again in 2019 with the enactment of the Never Forget the Heroes: James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the September 11th Victim Compensation Fund Act (P.L. 116-34). Under this legislation, the VCF is authorized through the end of FY2092, with an October 1, 2090 deadline for all VCF claim filings.[8] The 2019 reauthorization appropriates "such sums as may be necessary" for VCF benefit payments and administrative expenses for each fiscal year through the end of FY2092.

Overview of the VCF Under Current Law

VCF Eligibility

To be eligible for VCF benefits, a person must have

- died as a passenger or crew member on one of the aircraft hijacked on September 11, 2001;[9]
- died as a direct result of the terrorist-related aircraft crashes or rescue, recovery, or debris removal in the *immediate aftermath* of the September 11, 2001 terrorist attacks; or
- been present at a *September 11th crash site* in the immediate aftermath of the September 11, 2001 terrorist attacks and suffered *physical harm* as a direct result of the crashes or the rescue, recovery, and debris removal efforts.

Physical Harm

To be eligible for the VCF, survivors (individuals who did not die as passengers or crew members of the hijacked aircraft or as a direct result of the September 11th terrorist attacks, including rescue, recovery, and debris removal), must have suffered physical harm as a result of the attacks. Physical harm is demonstrated by the presence of a *World Trade Center (WTC)-related physical health condition* as defined for the purposes of the World Trade Center Health Program (WTCHP).[10]

WTC-Related Physical Health Condition

A WTC-related physical health condition is a physical health condition covered by the WTCHP. These conditions are those provided in statute at Sections 3312(a) and 3322(b) of the Public

[8] Although the title of the legislation refers to a "permanent authorization," the authorization is not permanent but rather expires at the end of FY2092.

[9] Benefits for a deceased person are paid to the deceased's personal representative.

[10] The World Trade Center Health Program (WTCHP) provides medical monitoring and treatment to the September 11, 2001 terrorist attacks' responders and certain New York City residents living near the World Trade Center. The WTCHP is administered by the Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH). For additional information on the WTCHP, see the program website at https://www.cdc.gov/wtc/.

Health Service Act (PHSA)[11] and those added through rulemaking by the WTCHP administrator.[12] Per Section 3312(a) of the PHSA, to be covered by the WTCHP and thus compensable under the VCF, a condition must be on the list of WTCHP-covered conditions and it must be determined that exposure in the aftermath of the September 11, 2001 terrorist attacks "is substantially likely to be a significant factor in aggravating, contributing to, or causing the illness or health condition."[13] In most cases, the VCF requires that a person's condition be WTCHP certified for that condition to be compensable.[14]

The WTCHP provides standardized guidance to determine whether a person's condition was caused by exposure in the aftermath of the September 11, 2001 terrorist attacks.[15] This determination is based on a combination of the amount of time a person was physically present at a site and the specific activities—such as search and rescue, sleeping in a home in Lower Manhattan, or just passing through a site—in which the person engaged. For example, a person who was engaged in search and rescue activities at the WTC site between September 11 and September 14, 2001, must have been present for at least 4 hours for the WTCHP to certify his or her condition and thus compensable by the VCF, whereas a person whose only activity was passing through Lower Manhattan during the same period, and who was not caught in the actual dust cloud resulting from the buildings' collapse, would have to have been in the area for at least 20 hours to be eligible for compensation.[16] The WTCHP evaluates conditions that do not meet the minimum exposure criteria on a case-by-case basis using "professional judgement" and "any relevant medical and/or scientific information."[17]

WTCHP-covered mental health conditions may not be used to establish VCF eligibility, as the VCF does not include any provisions for benefit payments for mental health conditions.

Cancer as a WTC-Related Physical Health Condition

The WTCHP statute does not include any type of cancer in the list of WTC-related health conditions. However, the statute does require the WTCHP administrator to periodically review the available scientific evidence to determine if any type of cancer should be covered by the WTCHP and, by extension, the VCF. If the WTCHP administrator is petitioned to add conditions to the WTC-related health conditions' list, the administrator is required, within 90 days, to either request a recommendation on action from the WTC Scientific/Technical Advisory Committee (STAC) or make a determination on adding the health condition. If the administrator requests a recommendation from the STAC, that recommendation must be made within 90 days of its receipt and the WTCHP administrator must act on that request within an additional 90 days.[18]

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[11] 42 U.S.C. §§300mm-22(a) and 300mm-32(b).

[12] The complete list of WTCHP-covered conditions is provided in regulation at 42 C.F.R. §88.15 and on the WTCHP website at https://www.cdc.gov/wtc/conditions.html.

[13] 42 U.S.C. §300mm-22(a).

[14] In certain limited circumstances, a physician not affiliated with the WTCHP may certify that a person's condition is covered by the WTCHP and thus compensable by the VCF.

[15] World Trade Center Health Program, *Policy and Procedures for Certification of Physician Determinations for Aerodigestive and Cancer Health Conditions*, February 20, 2015, https://www.cdc.gov/wtc/pdfs/policies/WTCHPPPCertPhysDetFINAL20Feb2015-508.pdf. (Hereinafter WTCPH, *Policy and Procedures for Certification of Physician Determinations*.)

[16] WTCPH, *Policy and Procedures for Certification of Physician Determinations*, pp. 4-5.

[17] WTCPH, *Policy and Procedures for Certification of Physician Determinations*, p. 4.

[18] 42 U.S.C. §§300mm-22(a)(6)(B) and (C). Each of these deadlines was increased from 60 days to 90 days by the

On September 7, 2011, Representatives Carolyn B. Maloney, Jerrold Nadler, Peter King, Charles B. Rangel, Nydia M. Velazquez, Michael G. Grimm, and Yvette Clarke and Senators Charles E. Schumer and Kirsten E. Gillibrand filed a petition, in the form of a letter to the WTCHP administrator, requesting that the administrator "conduct an immediate review of new medical evidence showing increased cancer rates among firefighters who served at ground zero" and that the administrator "consider adding coverage for cancer under the Zadroga Act."[19] In response to this petition, the WTC administrator requested that the STAC "review the available information on cancer outcomes associated with the exposures resulting from the September 11, 2001 terrorist attacks, and provide advice on whether to add cancer, or a certain type of cancer, to the List specified in the Zadroga Act."[20]

On September 12, 2012, based on the STAC's recommendations, the WTCHP administrator added more than 60 types of cancer, covering nearly every body system and including any cancers in persons less than 20 years of age and any rare cancers,[21] to the list of WTC-related health conditions, thus making these conditions compensable under the VCF.[22]

In a review of the decision to add cancers to the list of WTC-related health conditions, the Government Accountability Office (GAO) found that the WTCHP administrator used a hazards-based approach to evaluate cancers.[23] This approach evaluated whether exposures in the aftermath of the September 11, 2001 terrorist attacks were associated with types of cancer but did not evaluate the probability of developing cancer based on a given exposure. A GAO-convened scientific panel indicated that the hazards-based approach the WTCHP administrator used was reasonable given data constraints and the fact that there is a certification process to determine if a cancer or other condition on the WTC-related health list meets the statutory requirement of being "substantially likely to be a significant factor in aggravating, contributing to, or causing the illness or health condition."[24] The panel also indicated that this approach could have benefited from an independent peer review process. The WTCHP administrator stated that peer review was not possible given the statutory time constraints to act on the petition and the STAC's recommendation.

One year later, the WTCHP administrator added prostate cancer to the list of WTC-related health conditions.[25] In addition, the WTCHP administrator established minimum latency periods for

Zadroga Reauthorization Act of 2015.

[19] Letter from Reps. Carolyn B. Maloney, Jerrold Nadler, and Peter King, et al. to John Howard, director, National Institute for Occupational Safety and Health, September 7, 2011.

[20] Letter from John Howard, director, National Institute for Occupational Safety and Health, to Elizabeth Ward, chair, WTC Health Program Scientific/Technical Advisory Committee, October 5, 2011.

[21] For the purposes of the WTCHP and VCF, a rare cancer is a cancer that occurs in less than 15 cases per 100,000 persons per year in the United States. This includes, among other cancers, cancers of the brain, male breast, and gallbladder. A complete list of covered rare cancers is provided on the WTCHP website at https://www.cdc.gov/wtc/conditions.html.

[22] Department of Health and Human Services, "World Trade Center Health Program: Addition of Certain Types of Cancer to the List of WTC-Related Health Conditions," 77 *Federal Register* 56158, September 12, 2012.

[23] U.S. Government Accountability Office, *World Trade Center Health Program: Approach Used to Add Cancers to List of Covered Conditions was Reasonable but Could be Improved*, GAO-14-606, July 2014.

[24] 42 U.S.C. §§300mm-22(a).

[25] Department of Health and Human Services, "World Trade Center Health Program: Addition of Prostate Cancer to the List of WTC-Related Health Conditions," 78 *Federal Register* 57514, September 19, 2013.

certain types of cancer[26] and maximum onset periods for certain types of aerodigestive disorders.[27]

VCF Operations

The Civil Division of the Department of Justice administers the VCF. The Attorney General appoints the VCF special master and up to two deputies, who serve at the pleasure of the Attorney General. The VCF special master, currently Rupa Bhattacharyya, decides VCF eligibility and benefits. A claimant dissatisfied with the special master's decision on his or her claim may file an appeal and request a hearing before a VCF-appointed hearing officer. There is no further right of appeal or judicial review of VCF decisions. However, a claimant may amend his or her claim after a decision has been made if the claimant has new material relevant to the claim.

Registration and Claim Deadlines

All claims for VCF benefits must be filed by October 1, 2090. Before filing a claim, a potential claimant must have registered with the VCF by one of the following applicable deadlines:

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

If a claimant has a condition that is later added to the list of WTCHP-covered conditions, then the two-year period begins on the later of the dates when a government entity, such as the WTCHP or a state workers' compensation agency, determines that the condition is related to the September 11th attacks, or when a claimant's condition is added to the WTCHP-covered list of conditions.[28]

VCF Benefits

Under current law, there is no cap on the total VCF benefit amount that may be paid, but there are limits on individual benefit amounts. The special master determines VCF benefits based on the claimant's economic and noneconomic losses. For noneconomic losses, there is a cap of $250,000 for cancer claims and $90,000 for all other claims. For cases in which a WTC-related health condition causes death, the presumed award provided in the VCF regulations for noneconomic loss is $250,000 plus an additional $100,000 for the person's spouse and each dependent.[29] In

[26] World Trade Center Health Program, *Minimum Latency & Types and Categories of Cancer*, Revised, November 5, 2014, https://www.cdc.gov/wtc/pdfs/policies/wtchpminlatcancer2014-11-07-508.pdf. For example, the minimum latency period for mesothelioma is 11 years from exposure and the minimum latency period for most solid cancers is four years from exposure.

[27] World Trade Center Health Program, *Time Intervals for New Onset Aerodigestive Disorders*, Revised, February 18, 2015, https://www.cdc.gov/wtc/pdfs/WTCHP_Time_Intervals_New_Onset_AeroDig_Disorders.pdf. For example, to be compensable certain obstructive airway diseases, such as asthma and chronic cough syndrome, must occur within five years of exposure.

[28] A table of deadlines for each type of medical condition is provided on the VCF website at https://www.vcf.gov/pdf/RegisterChart.pdf.

[29] 28 C.F.R. §104.44.

addition, the special master may exceed the noneconomic loss limits if the Special Master determines that the claim presents "special circumstances."[30]

When calculating economic losses, the special master is permitted to consider only the first $200,000 in annual income when determining losses to past earnings and future earning capacity, which limits the amount of economic losses that can be paid. The special master is required to periodically adjust this amount to account for inflation.[31] VCF benefits are reduced by certain collateral source payments available to claimants, such as life insurance benefits, workers' compensation payments, and government benefits related to the person's injury or death, including Social Security Disability Insurance and the Public Safety Officers' Benefits program.

The 2019 reauthorization provides that any benefit award that the special master had previously reduced due to insufficient funding to pay all VCF awards is to be paid in full.

Exclusivity of Remedy

Congress established the VCF to be an "administrative alternative to litigation for the victims of the [September 11, 2001] terrorist attacks."[32] As such, to receive a VCF award, a person must forfeit his or her right to bring any lawsuit in any state or federal court against any entity, such as the airlines, airframe manufacturers, or building owners, for damages related to the attacks or their aftermath and must withdraw any pending legal claims. However, a person may maintain his or her eligibility for the VCF and bring a lawsuit against "any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act," or bring a lawsuit to recover collateral source obligations such as life insurance benefits owed to the victim.[33]

In addition, the VCF statute grants the United States District Court for the Southern District of New York exclusive jurisdiction over any lawsuits related to the September 11, 2001 terrorist attacks and establishes liability limits for the airlines, airframe manufacturers, airports, City of New York, and any person with property interest in the World Trade Center such as the Port Authority of New York and New Jersey.[34]

The VCF statute caps attorney fees for claimant assistance at 10% of the VCF award amount. The special master has the authority to reduce any attorney fees it deems excessive for services rendered.[35]

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[30] This provision was added as Section 2(d)(3) of the Never Forget the Heroes: James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the September 11th Victim Compensation Fund Act (P.L. 116-34). The term *special circumstances* is not defined in the VCF statute and has not been the subject of amendments to the VCF regulations.

[31] This provision was added as Section 2(e) of Never Forget the Heroes: James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the September 11th Victim Compensation Fund Act (P.L. 116-34). Neither the VCF statute nor regulations provide for a schedule of inflationary adjustments or specify a measure of inflation, such as the Consumer Price Index to be used for these adjustments.

[32] Kenneth R. Feinberg, *Final Report of the Special Master for the September 11th Victim Compensation Fund 2001*, Department of Justice, 2004, p. 3.

[33] Section 405(c)(3)(C) of the Air Transportation Safety and System Stabilization Act [49 U.S.C. §40101 note].

[34] Section 408 of the Air Transportation Safety and System Stabilization Act [49 U.S.C. §40101 note].

[35] Section 406(e) of the Air Transportation Safety and System Stabilization Act [49 U.S.C. §40101 note].

Under provisions of the Justice for United States Victims of State Sponsored Terrorism Act, a person who receives a VCF award is barred from receiving any additional compensation from the United States Victims of State Sponsored Terrorism Fund.[36]

VCF Appropriations

The 2019 VCF reauthorization appropriates "such sums as may be necessary" for FY2019 and each fiscal year through FY2092 for the payment of VCF awards, with all funds to remain available until expended. Thus, funding for the VCF will not require annual appropriations or be subject to the annual appropriations process.

[36] 34 U.S.C. §20144. For additional information on the United States Victims of State Sponsored Terrorism Fund, see CRS In Focus IF10341, *Justice for United States Victims of State Sponsored Terrorism Act: Eligibility and Funding*.

VCF Award Data

Table A-1. September 11th Victim Compensation Fund (VCF) Compensation Awarded by Claimant Category

(from VCF's reopening on October 3, 2011 through August 31, 2019)

Claimant Category	Claims with Award Decision	Amount
Responder—New York	18,213	$4,273,923,287.01
Responder—Pentagon	36	$11,059,484.67
Responder—Shanksville	9	$1,527,699.64
Nonresponder—New York (cleaning or maintenance)	732	$94,006,674.26
Nonresponder—New York (other)	3,551	$888,702,178.73
Resident in New York Crash Site[a]	632	$141,524,390.14
Attended School/Childcare/Adult Care in New York Crash Site	36	$10,774,643.81
Other Person Present in New York Crash Site	215	$58,116,927.22
Nonresponder—Pentagon	16	$3,823,901.41
No Response	410	$75,241,165.43
Total	23,850	$5,558,700,352.32

Source: September 11th Victim Compensation Fund, *VCF Program Statistics,* September 6, 2019, p. 6, https://www.vcf.gov/pdf/VCFProgramStatistics09062019.pdf.

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

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

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