

JAMES ZADROGA 9/11 HEALTH AND COMPENSATION ACT  
OF 2010

---

JULY 22, 2010.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

---

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 847]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 847) to amend the Public Health Service Act to extend and improve protections and services to individuals directly impacted by the terrorist attack in New York City on September 11, 2001, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
The Amendment .....	3
Purpose and Summary .....	30
Background and Need for the Legislation .....	30
Hearings .....	34
Committee Consideration .....	35
Committee Votes .....	35
Committee Oversight Findings .....	36
New Budget Authority and Tax Expenditures .....	37
Congressional Budget Office Cost Estimate .....	37
Performance Goals and Objectives .....	50
Constitutional Authority Statement .....	50
Advisory on Earmarks .....	50
Section-by-Section Analysis .....	50

Changes in Existing Law Made by the Bill, as Reported .....	53
Dissenting Views .....	59

## THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “James Zadroga 9/11 Health and Compensation Act of 2010”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.  
Sec. 2. Findings.

#### TITLE I—WORLD TRADE CENTER HEALTH PROGRAM

Sec. 101. World Trade Center Health Program.

##### “TITLE XXX—WORLD TRADE CENTER HEALTH PROGRAM

###### “Subtitle A—Establishment of Program; Advisory and Steering Committees

“Sec. 3001. Establishment of World Trade Center Health Program within NIOSH.  
“Sec. 3002. WTC Health Program Scientific/Technical Advisory Committee.  
“Sec. 3003. WTC Health Program Steering Committees.  
“Sec. 3004. Community education and outreach.  
“Sec. 3005. Uniform data collection.  
“Sec. 3006. Centers of excellence.  
“Sec. 3007. Entitlement authorities.  
“Sec. 3008. Definitions.

###### “Subtitle B—Program of Monitoring, Initial Health Evaluations, and Treatment

###### “PART 1—FOR WTC RESPONDERS

“Sec. 3011. Identification of eligible WTC responders and provision of WTC-related monitoring services.  
“Sec. 3012. Treatment of certified eligible WTC responders for WTC-related health conditions.

###### “PART 2—COMMUNITY PROGRAM

“Sec. 3021. Identification and initial health evaluation of eligible WTC community members.  
“Sec. 3022. Followup monitoring and treatment of certified eligible WTC community members for WTC-related health conditions.  
“Sec. 3023. Followup monitoring and treatment of other individuals with WTC-related health conditions.

###### “PART 3—NATIONAL ARRANGEMENT FOR BENEFITS FOR ELIGIBLE INDIVIDUALS OUTSIDE NEW YORK

“Sec. 3031. National arrangement for benefits for eligible individuals outside New York.

###### “Subtitle C—Research Into Conditions

“Sec. 3041. Research regarding certain health conditions related to September 11 terrorist attacks in New York City.

###### “Subtitle D—Programs of the New York City Department of Health and Mental Hygiene

“Sec. 3051. World Trade Center Health Registry.  
“Sec. 3052. Mental health services.

#### TITLE II—SEPTEMBER 11TH VICTIM COMPENSATION FUND OF 2001

Sec. 201. Definitions.  
Sec. 202. Extended and expanded eligibility for compensation.  
Sec. 203. Requirement to update regulations.  
Sec. 204. Limited liability for certain claims.  
Sec. 205. Funding; attorney fees.

### SEC. 2. FINDINGS.

Congress finds the following:

(1) Thousands of rescue workers who responded to the areas devastated by the terrorist attacks of September 11, local residents, office and area workers, and school children continue to suffer significant medical problems as a result of compromised air quality and the release of other toxins from the attack sites.

(2) In a September 2006 peer-reviewed study conducted by the World Trade Center Medical Monitoring Program, of 9,500 World Trade Center responders, almost 70 percent of World Trade Center responders had a new or worsened respiratory symptom that developed during or after their time working at the World Trade Center; among the responders who were asymptomatic before 9/11, 61 percent developed respiratory symptoms while working at the World Trade Center; close to 60 percent still had a new or worsened respiratory symptom at the time of their examination; one-third had abnormal pulmonary function tests; and severe respiratory conditions including pneumonia were significantly more common in the 6 months after 9/11 than in the prior 6 months.

(3) An April 2006 study documented that, on average, a New York City firefighter who responded to the World Trade Center has experienced a loss of 12 years of lung capacity.

(4) A peer-reviewed study of residents who lived near the World Trade Center titled “The World Trade Center Residents’ Respiratory Health Study: New Onset Respiratory Symptoms and Pulmonary Function”, found that data demonstrated a three-fold increase in new-onset, persistent lower respiratory symptoms in residents near the former World Trade Center as compared to a control population.

(5) Previous research on the health impacts of the devastation caused by the September 11 terrorist attacks has shown relationships between the air quality from Ground Zero and a host of health impacts, including lower pregnancy rates, higher rates of respiratory and lung disorders, and a variety of post-disaster mental health conditions (including posttraumatic stress disorder) in workers and residents near Ground Zero.

(6) A variety of tests conducted by independent scientists have concluded that significant WTC contamination settled in indoor environments surrounding the disaster site. The Environmental Protection Agency’s (EPA) cleanup programs for indoor residential spaces, in 2003 and 2005, though limited, are an acknowledgment that indoor contamination continued after the WTC attacks.

(7) At the request of the Department of Energy, the Davis DELTA Group at the University of California conducted outdoor dust sampling in October 2001 at Varick and Houston Streets (approximately 1.2 miles north of Ground Zero) and found that the contamination from the World Trade Center “outdid even the worst pollution from the Kuwait oil fields fires”. Further, the United States Geological Survey (USGS) reported on November 27, 2001, that dust samples collected from indoor surfaces registered at levels that were “as caustic as liquid drain cleaners”.

(8) According to both the EPA’s own Inspector General’s (EPA IG) report of August 21, 2003 and General Accountability Offices’s (GAO) report of September 2007, no comprehensive program has ever been conducted in order to characterize the full extent of WTC contamination, and therefore the full impact of that contamination—geographic or otherwise—remains unknown.

(9) Such reports found that there has never been a comprehensive program to remediate WTC toxins from indoor spaces. Thus, area residents, workers and students may continue to be exposed to WTC contamination in their homes, workplaces and schools.

(10) Because of the failure to release federally appropriated funds for community care, a lack of sufficient outreach, the fact that many community members are receiving care from physicians outside the current City-funded World Trade Center Environmental Health Center program and thus fall outside data collection efforts, and other factors, the number of community members being treated at the World Trade Center Environmental Health Center underrepresents the total number in the community that have been affected by exposure to Ground Zero toxins.

(11) Research by Columbia University’s Center for Children’s Environmental Health has shown negative health effects on babies born to women living within 2 miles of the World Trade Center in the month following 9/11.

(12) Federal funding allocated for the monitoring of rescue workers’ health is not sufficient to ensure the long-term study of health impacts of September 11.

(13) A significant portion of those who have developed health problems as result of exposures to airborne toxins or other hazards resulting from the September 11, 2001, attacks on the World Trade Center have no health insurance, have lost their health insurance as a result of the attacks, or have inadequate health insurance.

(14) The Federal program to provide medical treatments to those who responded to the September 11 aftermath, and who continue to experience health problems as a result, was finally established more than five years after the attacks, but has no certain long-term funding.

(15) Rescue workers and volunteers seeking workers’ compensation have reported that their applications have been denied, delayed for months, or redirected, instead of receiving assistance in a timely and supportive manner.

(16) A February 2007 report released by the City of New York estimated that approximately 410,000 people were the most heavily exposed to the environmental hazards and trauma of the September 11 terrorist attacks. More than 30 percent of the Fire Department of the City of New York first responders were still experiencing some respiratory symptoms more than five years after the attacks and according to the report, 59 percent of those seen by the WTC Environmental Health Center at Bellevue Hospital (which serves community members) are without insurance and 65 percent have incomes less than \$15,000 per year. The report also found a need to continue and expand mental health services.

(17) Since the 5th anniversary of the attack (September 11, 2006), hundreds of workers a month have been signing up with the monitoring and treatment programs.

(18) In April 2008, the Department of Health and Human Services reported to Congress that in fiscal year 2007 11,359 patients received medical treatment in the existing WTC Responder Medical and Treatment program for WTC-related health problems, and that number of responders who need treatment and the severity of health problems is expected to increase.

(19) The September 11 Victim Compensation Fund of 2001 was established to provide compensation to individuals who were physically injured or killed as a result of the terrorist-related aircraft crashes of September 11, 2001.

(20) The deadline for filing claims for compensation under the Victim Compensation Fund was December 22, 2003.

(21) Some individuals did not know they were eligible to file claims for compensation for injuries or did not know they had suffered physical harm as a result of the terrorist-related aircraft crashes until after the December 22, 2003, deadline.

(22) Further research is needed to evaluate more comprehensively the extent of the health impacts of September 11, including research for emerging health problems such as cancer, which have been predicted.

(23) Research is needed regarding possible treatment for the illnesses and injuries of September 11.

(24) The Federal response to medical and financial issues arising from the September 11 response efforts needs a comprehensive, coordinated long-term response in order to meet the needs of all the individuals who were exposed to the toxins of Ground Zero and are suffering health problems from the disaster.

(25) The failure to extend the appointment of Dr. John Howard as Director of the National Institute for Occupational Safety and Health in July 2008 is not in the interests of the administration of such Institute nor the continued operation of the World Trade Center Medical Monitoring and Treatment Program which he has headed, and the Secretary of Health and Human Services should reconsider extending such appointment.

## **TITLE I—WORLD TRADE CENTER HEALTH PROGRAM**

### **SEC. 101. WORLD TRADE CENTER HEALTH PROGRAM.**

The Public Health Service Act is amended by adding at the end the following new title:

## **“TITLE XXX—WORLD TRADE CENTER HEALTH PROGRAM**

### **“Subtitle A—Establishment of Program; Advisory and Steering Committees**

#### **“SEC. 3001. ESTABLISHMENT OF WORLD TRADE CENTER HEALTH PROGRAM WITHIN NIOSH.**

“(a) IN GENERAL.—There is hereby established within the National Institute for Occupational Safety and Health a program to be known as the ‘World Trade Center Health Program’ (in this title referred to as the ‘WTC program’) to provide—

“(1) medical monitoring and treatment benefits to eligible emergency responders and recovery and clean-up workers (including those who are Federal employees) who responded to the September 11, 2001, terrorist attacks on the World Trade Center; and

“(2) initial health evaluation, monitoring, and treatment benefits to residents and other building occupants and area workers in New York City who were directly impacted and adversely affected by such attacks.

“(b) COMPONENTS OF PROGRAM.—The WTC program includes the following components:

“(1) MEDICAL MONITORING FOR RESPONDERS.—Medical monitoring under section 3011, including clinical examinations and long-term health monitoring and analysis for individuals who were likely to have been exposed to airborne toxins that were released, or to other hazards, as a result of the September 11, 2001, terrorist attacks on the World Trade Center.

“(2) INITIAL HEALTH EVALUATION FOR COMMUNITY MEMBERS.—An initial health evaluation under section 3021, including an evaluation to determine eligibility for followup monitoring and treatment.

“(3) FOLLOW-UP MONITORING AND TREATMENT FOR WTC-RELATED CONDITIONS FOR RESPONDERS AND COMMUNITY MEMBERS.—Provision under sections 3012, 3022, and 3023 of follow-up monitoring and treatment and payment, subject to the provisions of subsection (d), for all medically necessary health and mental health care expenses (including necessary prescription drugs) of individuals with a WTC-related health condition.

“(4) OUTREACH.—Establishment under section 3004 of an outreach program to potentially eligible individuals concerning the benefits under this title.

“(5) UNIFORM DATA COLLECTION.—Collection under section 3005 of health and mental health data on individuals receiving monitoring or treatment benefits, using a uniform system of data collection.

“(6) RESEARCH ON WTC CONDITIONS.—Establishment under subtitle C of a research program on health conditions resulting from the September 11, 2001, terrorist attacks on the World Trade Center.

“(c) NO COST-SHARING.—Monitoring and treatment benefits and initial health evaluation benefits are provided under subtitle B without any deductibles, copayments, or other cost-sharing to an eligible WTC responder or any eligible WTC community member.

“(d) PAYOR.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the cost of monitoring and treatment benefits and initial health evaluation benefits provided under subtitle B shall be paid for by the WTC program.

“(2) WORKERS’ COMPENSATION PAYMENT.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), payment for treatment under subtitle B of a WTC-related condition in an individual that is work-related shall be reduced or recouped to the extent that the Secretary determines that payment has been made, or can reasonably be expected to be made, under a workers’ compensation law or plan of the United States or a State, or other work-related injury or illness benefit plan of the employer of such individual, for such treatment. The provisions of clauses (iii), (iv), (v), and (vi) of paragraph (2)(B) of section 1862(b) of the Social Security Act (42 U.S.C. 1395y(b)(2)) and paragraph (3) of such section shall apply to the recoupment under this paragraph of a payment to the WTC program with respect to a workers’ compensation law or plan, or other work-related injury or illness plan of the employer involved, and such individual in the same manner as such provisions apply to the reimbursement of a payment under section 1862(b)(2) of such Act to the Secretary, with respect to such a law or plan and an individual entitled to benefits under title XVIII of such Act.

“(B) EXCEPTION.—If the WTC Program Administrator certifies that the City of New York has contributed the matching contribution required under section 3006(a)(3) for a 12-month period (specified by the WTC Program Administrator), subparagraph (A) shall not apply for that 12-month period with respect to a workers’ compensation law or plan, including line of duty compensation, to which the City is obligated to make payments.

“(3) HEALTH INSURANCE COVERAGE.—

“(A) IN GENERAL.—In the case of an individual who has a WTC-related condition that is not work-related and has health coverage for such condition through any public or private health plan, the provisions of section 1862(b) of the Social Security Act (42 U.S.C. 1395y(b)) shall apply to such a health plan and such individual in the same manner as they apply to a group health plan and an individual entitled to benefits under title XVIII of such Act pursuant to section 226(a). Any costs for items and services covered under such plan that are not reimbursed by such health plan, due to the application of deductibles, copayments, coinsurance, other cost-sharing, or otherwise, are reimbursable under this title to the extent that they are covered under the WTC program.

“(B) RECOVERY BY INDIVIDUAL PROVIDERS.—Nothing in subparagraph (A) shall be construed as requiring an entity providing monitoring and treatment under this title to seek reimbursement under a health plan with which the entity has no contract for reimbursement.

“(4) WORK-RELATED DESCRIBED.—For the purposes of this subsection, a WTC-related condition shall be treated as a condition that is work-related if—

“(A) the condition is diagnosed in an eligible WTC responder, or in an individual who qualifies as an eligible WTC community member on the basis of being a rescue, recovery, or clean-up worker; or

“(B) with respect to the condition the individual has filed and had established a claim under a workers’ compensation law or plan of the United States or a State, or other work-related injury or illness benefit plan of the employer of such individual.

“(e) QUALITY ASSURANCE AND MONITORING OF CLINICAL EXPENDITURES.—

“(1) QUALITY ASSURANCE.—The WTC Program Administrator working with the Clinical Centers of Excellence shall develop and implement a quality assurance program for the medical monitoring and treatment delivered by such Centers of Excellence and any other participating health care providers. Such program shall include—

“(A) adherence to medical monitoring and treatment protocols;

“(B) appropriate diagnostic and treatment referrals for participants;

“(C) prompt communication of test results to participants; and

“(D) such other elements as the Administrator specifies in consultation with the Clinical Centers of Excellence.

“(2) FRAUD PREVENTION.—The WTC Program Administrator shall develop and implement a program to review the program’s health care expenditures to detect fraudulent or duplicate billing and payment for inappropriate services. Such program shall be similar to current methods used in connection with the Medicare program under title XVIII of the Social Security Act. This title is a Federal health care program (as defined in section 1128B(f) of such Act) and is a health plan (as defined in section 1128C(c) of such Act) for purposes of applying sections 1128 through 1128E of such Act.

“(f) WTC PROGRAM ADMINISTRATION.—The WTC program shall be administered by the Director of the National Institute for Occupational Safety and Health, or a designee of such Director.

“(g) ANNUAL PROGRAM REPORT.—

“(1) IN GENERAL.—Not later than 6 months after the end of each fiscal year in which the WTC program is in operation, the WTC Program Administrator shall submit an annual report to the Congress on the operations of this title for such fiscal year and for the entire period of operation of the program.

“(2) CONTENTS OF REPORT.—Each annual report under paragraph (1) shall include the following:

“(A) ELIGIBLE INDIVIDUALS.—Information for each clinical program described in paragraph (3)—

“(i) on the number of individuals who applied for certification under subtitle B and the number of such individuals who were so certified;

“(ii) of the individuals who were certified, on the number who received medical monitoring under the program and the number of such individuals who received medical treatment under the program;

“(iii) with respect to individuals so certified who received such treatment, on the WTC-related health conditions for which they were treated; and

“(iv) on the projected number of individuals who will be certified under subtitle B in the succeeding fiscal year.

“(B) MONITORING, INITIAL HEALTH EVALUATION, AND TREATMENT COSTS.—For each clinical program so described—

“(i) information on the costs of monitoring and initial health evaluation and the costs of treatment and on the estimated costs of such monitoring, evaluation, and treatment in the succeeding fiscal year; and

“(ii) an estimate of the cost of medical treatment for WTC-related conditions that have been paid for or reimbursed by workers’ compensation, by public or private health plans, or by the City of New York under section 3012(c)(4).

“(C) ADMINISTRATIVE COSTS.—Information on the cost of administering the program, including costs of program support, data collection and analysis, and research conducted under the program.

“(D) ADMINISTRATIVE EXPERIENCE.—Information on the administrative performance of the program, including—

“(i) the performance of the program in providing timely evaluation of and treatment to eligible individuals; and

“(ii) a list of the Clinical Centers of Excellence and other providers that are participating in the program.

“(E) SCIENTIFIC REPORTS.—A summary of the findings of any new scientific reports or studies on the health effects associated with WTC center exposures, including the findings of research conducted under section 3041(a).

“(F) ADVISORY COMMITTEE RECOMMENDATIONS.—A list of recommendations by the WTC Scientific/Technical Advisory Committee on additional

WTC program eligibility criteria and on additional WTC-related health conditions and the action of the WTC Program Administrator concerning each such recommendation.

“(3) SEPARATE CLINICAL PROGRAMS DESCRIBED.—In paragraph (2), each of the following shall be treated as a separate clinical program of the WTC program:

“(A) FDNY RESPONDERS.—The benefits provided for eligible WTC responders described in section 3006(b)(1)(A).

“(B) OTHER ELIGIBLE WTC RESPONDERS.—The benefits provided for eligible WTC responders not described in subparagraph (A).

“(C) ELIGIBLE WTC COMMUNITY MEMBERS.—The benefits provided for eligible WTC community members in section 3006(b)(1)(C).

“(h) NOTIFICATION TO CONGRESS WHEN REACH 80 PERCENT OF ELIGIBILITY NUMERICAL LIMITS.—The WTC Program Administrator shall promptly notify the Congress—

“(1) when the number of certifications for eligible WTC responders subject to the limit established under section 3011(a)(5) has reached 80 percent of such limit; and

“(2) when the number of certifications for eligible WTC community members subject to the limit established under section 3021(a)(5) has reached 80 percent of such limit.

“(i) GAO REPORT.—Not later than 3 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Congress a report on the costs of the monitoring and treatment programs provided under this title.

“(j) NYC RECOMMENDATIONS.—The City of New York may make recommendations to the WTC Program Administrator on ways to improve the monitoring and treatment programs under this title for both eligible WTC responders and eligible WTC community members.

**“SEC. 3002. WTC HEALTH PROGRAM SCIENTIFIC/TECHNICAL ADVISORY COMMITTEE.**

“(a) ESTABLISHMENT.—The WTC Program Administrator shall establish an advisory committee to be known as the WTC Health Program Scientific/Technical Advisory Committee (in this section referred to as the ‘Advisory Committee’) to review scientific and medical evidence and to make recommendations to the Administrator on additional WTC program eligibility criteria and on additional WTC-related health conditions.

“(b) COMPOSITION.—The WTC Program Administrator shall appoint the members of the Advisory Committee and shall include at least—

“(1) 4 occupational physicians, at least two of whom have experience treating WTC rescue and recovery workers;

“(2) 1 physician with expertise in pulmonary medicine;

“(3) 2 environmental medicine or environmental health specialists;

“(4) 2 representatives of eligible WTC responders;

“(5) 2 representatives of WTC community members;

“(6) an industrial hygienist;

“(7) a toxicologist;

“(8) an epidemiologist; and

“(9) a mental health professional.

“(c) MEETINGS.—The Advisory Committee shall meet at such frequency as may be required to carry out its duties.

“(d) REPORTS.—The WTC Program Administrator shall provide for publication of recommendations of the Advisory Committee on the public website established for the WTC program.

“(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary, not to exceed \$100,000, for each fiscal year beginning with fiscal year 2009.

“(f) DURATION.—Notwithstanding any other provision of law, the Advisory Committee shall continue in operation during the period in which the WTC program is in operation.

“(g) APPLICATION OF FACIA.—Except as otherwise specifically provided, the Advisory Committee shall be subject to the Federal Advisory Committee Act.

**“SEC. 3003. WTC HEALTH PROGRAM STEERING COMMITTEES.**

“(a) ESTABLISHMENT.—The WTC Program Administrator shall establish two steering committees (each in this section referred to as a ‘Steering Committee’) as follows:

“(1) WTC RESPONDERS STEERING COMMITTEE.—One steering committee, to be known as the WTC Responders Steering Committee, for the purpose of facilitating the coordination of medical monitoring and treatment programs for the eligible WTC responders under part 1 of subtitle B.



“(2) WTC COMMUNITY PROGRAM STEERING COMMITTEE.—One steering committee, to be known as the WTC Community Program Steering Committee, for the purpose of facilitating the coordination of initial health evaluations, monitoring, and treatment programs for eligible WTC community members under part 2 of subtitle B.

“(b) MEMBERSHIP.—

“(1) INITIAL MEMBERSHIP OF WTC RESPONDERS STEERING COMMITTEE.—The WTC Responders Steering Committee shall initially be composed of members of the WTC Monitoring and Treatment Program Steering Committee (as in existence on the day before the date of the enactment of this title). In addition, the committee membership shall include—

“(A) a representative of the Police Commissioner of the City of New York;

“(B) a representative of the Department of Health of the City of New York;

“(C) a representative of another agency of the City of New York, selected by the Mayor of New York City, which had a large number of non-uniformed City workers who responded to the WTC disaster; and

“(D) three representatives of eligible WTC responders;

in order that eligible WTC responders constitute half the members of the Steering Committee.

“(2) INITIAL MEMBERSHIP OF WTC COMMUNITY PROGRAM STEERING COMMITTEE.—

“(A) IN GENERAL.—The WTC Community Program Steering Committee shall initially be composed of members of the WTC Environmental Health Center Community Advisory Committee (as in existence on the day before the date of the enactment of this title) and shall initially have, as voting members, the following:

“(i) 11 representatives of the affected populations of residents, students, area workers, and other community members.

“(ii) The Medical Director of the WTC Environmental Health Center.

“(iii) The Executive Director of the WTC Environmental Health Center.

“(iv) Three physicians, one each representing the three WTC Environmental Health Center treatment sites of Bellevue Hospital Center, Gouverneur Healthcare Services, and Elmhurst Hospital Center.

“(v) Five specialists with WTC related expertise or experience in treating non-responder WTC diseases, such as a pediatrician, an epidemiologist, a psychiatrist or psychologist, an environmental/occupational specialists or a social worker from a WTC Environmental Health Center treatment site, or other relevant specialists.

“(vi) A representative of the Department of Health and Mental Hygiene of the City of New York.

“(B) APPOINTMENTS.—

“(i) WTC EHC COMMUNITY ADVISORY COMMITTEE.—The WTC Environmental Health Center Community Advisory Committee as in existence on the date of the enactment of this title shall nominate members for positions described in subparagraph (A)(i).

“(ii) NYC HEALTH AND HOSPITALS CORPORATION.—The New York City Health and Hospitals Corporation shall nominate members for positions described in clauses (iv) and (v) of subparagraph (A).

“(iii) TIMING.—Nominations under clauses (i) and (ii) shall be recommended to the WTC Program Administrator not later than 60 days after the date of the enactment of this title.

“(iv) APPOINTMENT.—The WTC Program Administrator shall appoint members of the WTC Community Program Steering Committee not later than 90 days after the date of the enactment of this title.

“(v) GENERAL REPRESENTATIVES.—Of the members appointed under subparagraph (A)(i)—

“(I) the representation shall reflect the broad and diverse WTC-affected populations and constituencies and the diversity of impacted neighborhoods, including residents, hard-to-reach populations, students, area workers, school parents, community-based organizations, Community Boards, WTC Environmental Health Center patients, labor unions, and labor advocacy organizations; and

“(II) no one individual organization can have more than one representative.

“(3) **ADDITIONAL APPOINTMENTS.**—Each Steering Committee may appoint, if approved by a majority of voting members of the Committee, additional members to the Committee.

“(4) **VACANCIES.**—A vacancy in a Steering Committee shall be filled by the Steering Committee, subject to the approval of the WTC Program Administrator, so long as—

“(A) in the case of the WTC Responders Steering Committee, the composition of the Committee includes representatives of eligible WTC responders and representatives of each Clinical Center of Excellence and each Coordinating Center of Excellence that serves eligible WTC responders and such composition has eligible WTC responders constituting half of the membership of the Steering Committee; or

“(B) in the case of the WTC Community Program Steering Committee, the composition of the Committee includes representatives of eligible WTC community members and representatives of each Clinical Center of Excellence and each Coordinating Center of Excellence that serves eligible WTC community members and the nominating process is consistent with paragraph (2)(B).

“(5) **CO-CHAIRS OF WTC COMMUNITY PROGRAM STEERING COMMITTEE.**—The WTC Community Program Steering Committee shall have two Co-Chairs as follows:

“(A) **COMMUNITY/LABOR CO-CHAIR.**—A Community/Labor Co-Chair who shall be chosen by the community and labor-based members of the Steering Committee.

“(B) **ENVIRONMENTAL HEALTH CLINIC CO-CHAIR.**—A WTC Environmental Health Clinic Co-Chair who shall be chosen by the WTC Environmental Health Center members on the Steering Committee.

“(c) **RELATION TO FACA.**—Each Steering Committee shall not be subject to the Federal Advisory Committee Act.

“(d) **MEETINGS.**—Each Steering Committee shall meet at such frequency necessary to carry out its duties, but not less than 4 times each calendar year and at least two such meetings each year shall be a joint meeting with the voting membership of the other Steering Committee for the purpose of exchanging information regarding the WTC program.

“(e) **DURATION.**—Notwithstanding any other provision of law, each Steering Committee shall continue in operation during the period in which the WTC program is in operation.

**“SEC. 3004. COMMUNITY EDUCATION AND OUTREACH.**

“(a) **IN GENERAL.**—The WTC Program Administrator shall institute a program that provides education and outreach on the existence and availability of services under the WTC program. The outreach and education program—

“(1) shall include—

“(A) the establishment of a public website with information about the WTC program;

“(B) meetings with potentially eligible populations;

“(C) development and dissemination of outreach materials informing people about the program; and

“(D) the establishment of phone information services; and

“(2) shall be conducted in a manner intended—

“(A) to reach all affected populations; and

“(B) to include materials for culturally and linguistically diverse populations.

“(b) **PARTNERSHIPS.**—To the greatest extent possible, in carrying out this section, the WTC Program Administrator shall enter into partnerships with local governments and organizations with experience performing outreach to the affected populations, including community and labor-based organizations.

**“SEC. 3005. UNIFORM DATA COLLECTION.**

“(a) **IN GENERAL.**—The WTC Program Administrator shall provide for the uniform collection of data (and analysis of data and regular reports to the Administrator) on the utilization of monitoring and treatment benefits provided to eligible WTC responders and eligible WTC community members, the prevalence of WTC-related health conditions, and the identification of new WTC-related medical conditions. Such data shall be collected for all individuals provided monitoring or treatment benefits under subtitle B and regardless of their place of residence or Clinical Center of Excellence through which the benefits are provided.

“(b) **COORDINATING THROUGH CENTERS OF EXCELLENCE.**—Each Clinical Center of Excellence shall collect data described in subsection (a) and report such data to the

corresponding Coordinating Center of Excellence for analysis by such Coordinating Center of Excellence.

“(c) **PRIVACY.**—The data collection and analysis under this section shall be conducted in a manner that protects the confidentiality of individually identifiable health information consistent with applicable legal requirements.

**“SEC. 3006. CENTERS OF EXCELLENCE.**

“(a) **IN GENERAL.**—

“(1) **CONTRACTS WITH CLINICAL CENTERS OF EXCELLENCE.**—The WTC Program Administrator shall enter into contracts with Clinical Centers of Excellence specified in subsection (b)(1)—

“(A) for the provision of monitoring and treatment benefits and initial health evaluation benefits under subtitle B;

“(B) for the provision of outreach activities to individuals eligible for such monitoring and treatment benefits, for initial health evaluation benefits, and for follow-up to individuals who are enrolled in the monitoring program;

“(C) for the provision of counseling for benefits under subtitle B, with respect to WTC-related health conditions, for individuals eligible for such benefits;

“(D) for the provision of counseling for benefits for WTC-related health conditions that may be available under Workers’ Compensation or other benefit programs for work-related injuries or illnesses, health insurance, disability insurance, or other insurance plans or through public or private social service agencies and assisting eligible individuals in applying for such benefits;

“(E) for the provision of translational and interpretive services as for program participants who are not English language proficient; and

“(F) for the collection and reporting of data in accordance with section 3005.

“(2) **CONTRACTS WITH COORDINATING CENTERS OF EXCELLENCE.**—The WTC Program Administrator shall enter into contracts with Coordinating Centers of Excellence specified in subsection (b)(2)—

“(A) for receiving, analyzing, and reporting to the WTC Program Administrator on data, in accordance with section 3005, that has been collected and reported to such Coordinating Centers by the corresponding Clinical Centers of Excellence under subsection (d)(3);

“(B) for the development of medical monitoring, initial health evaluation, and treatment protocols, with respect to WTC-related health conditions;

“(C) for coordinating the outreach activities conducted under paragraph (1)(B) by each corresponding Clinical Center of Excellence;

“(D) for establishing criteria for the credentialing of medical providers participating in the nationwide network under section 3031;

“(E) for coordinating and administering the activities of the WTC Health Program Steering Committees established under section 3003(a); and

“(F) for meeting periodically with the corresponding Clinical Centers of Excellence to obtain input on the analysis and reporting of data collected under subparagraph (A) and on the development of medical monitoring, initial health evaluation, and treatment protocols under subparagraph (B).

The medical providers under subparagraph (D) shall be selected by the WTC Program Administrator on the basis of their experience treating or diagnosing the medical conditions included in the list of identified WTC-related conditions for responders and of identified WTC-related conditions for community members.

“(3) **REQUIRED PARTICIPATION BY NEW YORK CITY IN MONITORING AND TREATMENT PROGRAM AND COSTS.**—

“(A) **IN GENERAL.**—In order for New York City, any agency or Department thereof, or the New York City Health and Hospitals Corporation to qualify for a contract for the provision of monitoring and treatment benefits and other services under section 3006, New York City is required to contribute a matching amount of 10 percent of the amount of the covered monitoring and treatment payment (as defined in subparagraph (B)).

“(B) **COVERED MONITORING AND TREATMENT PAYMENT DEFINED.**—For the purposes of this paragraph, the term ‘covered monitoring and treatment payment’ means payment under paragraphs (1) and (2), including under such paragraph as applied under section 3021(b), 3022(a), and 3023, and reimbursement under 3006(c) for items and services furnished by a Clinical Center of Excellence or Coordinating Center of Excellence, and providers

designated by the WTC Program under section 3031, after the application of paragraphs (2) and (3) of section 3001 (d).

“(C) PAYMENT OF NEW YORK CITY SHARE OF MONITORING AND TREATMENT COSTS.—The WTC Program Administrator shall—

“(i) bill the amount specified in subparagraph (A) directly to New York City; and

“(ii) certify periodically, for purposes of section 3001(d)(2), whether or not New York City has paid the amount so billed.

“(D) LIMITATION ON REQUIRED AMOUNT.—In no case is New York City required under this paragraph to contribute more than a total of \$500,000,000 over any 10-year period.

“(b) CENTERS OF EXCELLENCE DEFINED.—

“(1) CLINICAL CENTER OF EXCELLENCE.—In this title, the term ‘Clinical Center of Excellence’ means the following:

“(A) FOR FDNY RESPONDERS.—With respect to an eligible WTC responder who responded to the 9/11 attacks as an employee of the Fire Department of the City of New York and who—

“(i) is an active employee of such Department—

“(I) with respect to monitoring, such Fire Department; and

“(II) with respect to treatment, such Fire Department (or such entity as has entered into a contract with the Fire Department for treatment of such responders) or any other Clinical Center of Excellence described in subparagraph (B), (C), or (D); or

“(ii) is not an active employee of such Department, such Fire Department (or such entity as has entered into a contract with the Fire Department for monitoring or treatment of such responders) or any other or any other Clinical Center of Excellence described in subparagraph (B), (C), or (D).

“(B) OTHER ELIGIBLE WTC RESPONDERS.—With respect to other eligible WTC responders, whether or not they reside in the New York Metropolitan area, the Mt. Sinai coordinated consortium, Queens College, State University of New York at Stony Brook, University of Medicine and Dentistry of New Jersey, and Bellevue Hospital.

“(C) WTC COMMUNITY MEMBERS.—With respect to eligible WTC community members, whether or not they reside in the New York Metropolitan area, the World Trade Center Environmental Health Center at Bellevue Hospital and such hospitals or other facilities, including but not limited to those within the New York City Health and Hospitals Corporation, as are identified by the WTC Program Administrator.

“(D) ALL ELIGIBLE WTC RESPONDERS AND ELIGIBLE WTC COMMUNITY MEMBERS.—With respect to all eligible WTC responders and eligible WTC community members, such other hospitals or other facilities as are identified by the WTC Program Administrator.

The WTC Program Administrator shall limit the number of additional Centers of Excellence identified under subparagraph (D) to ensure that the participating centers have adequate experience in the treatment and diagnosis of identified WTC-related medical conditions.

“(2) COORDINATING CENTER OF EXCELLENCE.—In this title, the term ‘Coordinating Center of Excellence’ means the following:

“(A) FOR FDNY RESPONDERS.—With respect to an eligible WTC responder who responded to the 9/11 attacks as an employee of the Fire Department of the City of New York, such Fire Department.

“(B) OTHER WTC RESPONDERS.—With respect to other eligible WTC responders, the Mt. Sinai coordinated consortium.

“(C) WTC COMMUNITY MEMBERS.—With respect to eligible WTC community members, the World Trade Center Environmental Health Center at Bellevue Hospital.

“(3) CORRESPONDING CENTERS.—In this title, a Clinical Center of Excellence and a Coordinating Center of Excellence shall be treated as ‘corresponding’ to the extent that such Clinical Center and Coordinating Center serve the same population group.

“(c) REIMBURSEMENT FOR NON-TREATMENT, NON-MONITORING PROGRAM COSTS.—A Clinical or Coordinating Center of Excellence with a contract under this section shall be reimbursed for the costs of such Center in carrying out the activities described in subsection (a), other than those described in subsection (a)(1)(A), subject to the provisions of section 3001(d), as follows:

“(1) CLINICAL CENTERS OF EXCELLENCE.—For carrying out subparagraphs (B) through (F) of subsection (a)(1)—

“(A) CLINICAL CENTER FOR FDNY RESPONDERS IN NEW YORK.—The Clinical Center of Excellence for FDNY Responders in New York specified in subsection (b)(1)(A) shall be reimbursed—

“(i) in the first year of the contract under this section, \$600 per certified eligible WTC responder in the medical treatment program, and \$300 per certified eligible WTC responder in the monitoring program; and

“(ii) in each subsequent contract year, subject to paragraph (3), at the rates specified in this subparagraph for the previous contract year adjusted by the WTC Program Administrator to reflect the rate of medical care inflation during the previous contract year.

“(B) CLINICAL CENTERS SERVING OTHER ELIGIBLE WTC RESPONDERS IN NEW YORK.—A Clinical Center of Excellence for other WTC responders in New York specified in subsection (b)(1)(B) shall be reimbursed the amounts specified in subparagraph (A).

“(C) CLINICAL CENTERS SERVING WTC COMMUNITY MEMBERS.—A Clinical Center of Excellence for eligible WTC community members in New York specified in subsection (b)(1)(C) shall be reimbursed—

“(i) in the first year of the contract under this section, for each certified eligible WTC community member in a medical treatment program enrolled at a non-hospital-based facility, \$600, and for each certified eligible WTC community member in a medical treatment program enrolled at a hospital-based facility, \$300; and

“(ii) in each subsequent contract year, subject to paragraph (3), at the rates specified in this subparagraph for the previous contract year adjusted by the WTC Program Administrator to reflect the rate of medical care inflation during the previous contract year.

“(D) OTHER CLINICAL CENTERS.—A Clinical Center of Excellence or other providers not described in a previous subparagraph shall be reimbursed at a rate set by the WTC Program Administrator.

“(E) REIMBURSEMENT RULES.—The reimbursement provided under subparagraphs (A), (B) and (C) shall be made for each certified eligible WTC responder and for each WTC community member in the WTC program per year that the member receives such services, regardless of the volume or cost of services required.

“(2) COORDINATING CENTERS OF EXCELLENCE.—A Coordinating Centers of Excellence specified in section (a)(2) shall be reimbursed for the provision of services set forth in this section at such levels as are established by the WTC Program Administrator.

“(3) REVIEW OF RATES.—

“(A) INITIAL REVIEW.—Before the end of the third contract year of the WTC program, the WTC Program Administrator shall conduct a review to determine whether the reimbursement rates set forth in this subsection provide fair and appropriate reimbursement for such program services. Based on such review, the Administrator may, by rule beginning with the fourth contract year, may modify such rates, taking into account a reasonable and fair rate for the services being provided.

“(B) SUBSEQUENT REVIEWS.—After the fourth contract year, the WTC Program Administrator shall conduct periodic reviews to determine whether the reimbursement rates in effect under this subsection provide fair and appropriate reimbursement for such program services. Based upon such a review, the Administrator may by rule modify such rates, taking into account a reasonable and fair rate for the services being provided.

“(C) GAO REVIEW.—The Comptroller General of the United States shall review the WTC Program Administrator's determinations regarding fair and appropriate reimbursement for program services under this paragraph.

“(d) REQUIREMENTS.—The WTC Program Administrator shall not enter into a contract with a Clinical Center of Excellence under subsection (a)(1) unless—

“(1) the Center establishes a formal mechanism for consulting with and receiving input from representatives of eligible populations receiving monitoring and treatment benefits under subtitle B from such Center;

“(2) the Center provides for the coordination of monitoring and treatment benefits under subtitle B with routine medical care provided for the treatment of conditions other than WTC-related health conditions;

“(3) the Center collects and reports to the corresponding Coordinating Center of Excellence data in accordance with section 3005;

“(4) the Center has in place safeguards against fraud that are satisfactory to the Administrator;

“(5) the Center agrees to treat or refer for treatment all individuals who are eligible WTC responders or eligible WTC community members with respect to such Center who present themselves for treatment of a WTC-related health condition;

“(6) the Center has in place safeguards to ensure the confidentiality of an individual’s individually identifiable health information, including requiring that such information not be disclosed to the individual’s employer without the authorization of the individual;

“(7) the Center provides assurances that the amounts paid under subsection (c)(1) are used only for costs incurred in carrying out the activities described in subsection (a), other than those described in subsection (a)(1)(A); and

“(8) the Center agrees to meet all the other applicable requirements of this title, including regulations implementing such requirements.

**“SEC. 3007. ENTITLEMENT AUTHORITIES.**

“Subject to subsections (b)(4)(C) and (c)(5) of section 3012, subtitle B constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment for monitoring, initial health evaluations, and treatment in accordance with such subtitle and section 3006(c) constitutes such budget authority and represents the obligation of the Federal Government to provide for the payment described in such section.

**“SEC. 3008. DEFINITIONS.**

“In this title:

“(1) The term ‘aggravating’ means, with respect to a health condition, a health condition that existed on September 11, 2001, and that, as a result of exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks on the World Trade Center requires medical treatment that is (or will be) in addition to, more frequent than, or of longer duration than the medical treatment that would have been required for such condition in the absence of such exposure.

“(2) The terms ‘certified eligible WTC responder’ and ‘certified eligible WTC community member’ mean an individual who has been certified as an eligible WTC responder under section 3011(a)(4) or an eligible WTC community member under section 3021(a)(4), respectively.

“(3) The terms ‘Clinical Center of Excellence’ and ‘Coordinating Center of Excellence’ have the meanings given such terms in section 3006(b).

“(4) The term ‘current consortium arrangements’ means the arrangements as in effect on the date of the enactment of this title between the National Institute for Occupational Safety and Health and the Mt. Sinai-coordinated consortium and the Fire Department of the City of New York.

“(5) The terms ‘eligible WTC responder’ and ‘eligible WTC community member’ are defined in sections 3011(a) and 3021(a), respectively.

“(6) The term ‘initial health evaluation’ includes, with respect to an individual, a medical and exposure history, a physical examination, and additional medical testing as needed to evaluate whether the individual has a WTC-related health condition and is eligible for treatment under the WTC program.

“(7) The term ‘list of identified WTC-related health conditions’ means—

“(A) for eligible WTC responders, the identified WTC-related health condition for eligible WTC responders under section 3012(a)(3) or 3012(a)(4); or

“(B) for eligible WTC community members, the identified WTC-related health condition for WTC community members under section 3022(b)(1) or 3022(b)(2).

“(8) The term ‘Mt.-Sinai-coordinated consortium’ means the consortium coordinated by Mt. Sinai hospital in New York City that coordinates the monitoring and treatment under the current consortium arrangements for eligible WTC responders other than with respect to those covered under the arrangement with the Fire Department of the City of New York.

“(9) The term ‘New York City disaster area’ means the area within New York City that is—

“(A) the area of Manhattan that is south of Houston Street; and

“(B) any block in Brooklyn that is wholly or partially contained within a 1.5-mile radius of the former World Trade Center site.

“(10) The term ‘New York metropolitan area’ means an area, specified by the WTC Program Administrator, within which eligible WTC responders and eligible WTC community members who reside in such area are reasonably able to access monitoring and treatment benefits and initial health evaluation benefits under this title through a Clinical Centers of Excellence described in subparagraphs (A), (B), or (C) of section 3006(b)(1).

“(11) Any reference to ‘September 11, 2001’ shall be deemed a reference to the period on such date subsequent to the terrorist attacks on the World Trade Center on such date.

“(12) The term ‘September 11, 2001, terrorist attacks on the World Trade Center’ means the terrorist attacks that occurred on September 11, 2001, in New York City and includes the aftermath of such attacks.

“(13) The term ‘WTC Health Program Steering Committee’ means such a Steering Committee established under section 3003.

“(14) The term ‘WTC Program Administrator’ means the individual responsible under section 3001(f) for the administration of the WTC program.

“(15) The term ‘WTC-related health condition’ is defined in section 3012(a).

“(16) The term ‘WTC Scientific/Technical Advisory Committee’ means such Committee established under section 3002.

## **“Subtitle B—Program of Monitoring, Initial Health Evaluations, and Treatment**

### **“PART 1—FOR WTC RESPONDERS**

#### **“SEC. 3011. IDENTIFICATION OF ELIGIBLE WTC RESPONDERS AND PROVISION OF WTC-RELATED MONITORING SERVICES.**

##### **“(a) ELIGIBLE WTC RESPONDER DEFINED.—**

“(1) IN GENERAL.—For purposes of this title, the term ‘eligible WTC responder’ means any of the following individuals, subject to paragraph (5):

“(A) CURRENTLY IDENTIFIED RESPONDER.—An individual who has been identified as eligible for medical monitoring under the current consortium arrangements (as defined in section 3008(4)).

“(B) RESPONDER WHO MEETS CURRENT ELIGIBILITY CRITERIA.—An individual who meets the current eligibility criteria described in paragraph (2).

“(C) RESPONDER WHO MEETS MODIFIED ELIGIBILITY CRITERIA.—An individual who—

“(i) performed rescue, recovery, demolition, debris cleanup, or other related services in the New York City disaster area in response to the September 11, 2001, terrorist attacks on the World Trade Center, regardless of whether such services were performed by a State or Federal employee or member of the National Guard or otherwise; and

“(ii) meets such eligibility criteria relating to exposure to airborne toxins, other hazards, or adverse conditions resulting from the September 11, 2001, terrorist attacks on the World Trade Center as the WTC Program Administrator, after consultation with the WTC Responders Steering Committee and the WTC Scientific/Technical Advisory Committee, determines appropriate.

The WTC Program Administrator shall not modify such eligibility criteria on or after the date that the number of certifications for eligible responders has reached 80 percent of the limit described in paragraph (5) or on or after the date that the number of certifications for eligible community members has reached 80 percent of the limit described in section 3021(a)(5).

“(2) CURRENT ELIGIBILITY CRITERIA.—The eligibility criteria described in this paragraph for an individual is that the individual is described in either of the following categories:

##### **“(A) FIRE FIGHTERS AND RELATED PERSONNEL.—The individual—**

“(i) was a member of the Fire Department of the City of New York (whether fire or emergency personnel, active or retired) who participated at least one day in the rescue and recovery effort at any of the former World Trade sites (including Ground Zero, Staten Island land fill, and the NYC Chief Medical Examiner’s office) for any time during the period beginning on September 11, 2001, and ending on July 31, 2002; or

“(ii)(I) is a surviving immediate family member of an individual who was a member of the Fire Department of the City of New York (whether fire or emergency personnel, active or retired) and was killed at the World Trade site on September 11, 2001; and

“(II) received any treatment for a WTC-related mental health condition described in section 3012(a)(1)(B) on or before September 1, 2008.

##### **“(B) LAW ENFORCEMENT OFFICERS AND WTC RESCUE, RECOVERY, AND CLEAN-UP WORKERS.—The individual—**

“(i) worked or volunteered on-site in rescue, recovery, debris-clean-up or related support services in lower Manhattan (south of Canal St.), the Staten Island Landfill, or the barge loading piers, for at least 4 hours during the period beginning on September 11, 2001, and ending on September 14, 2001, for at least 24 hours during the period beginning on September 11, 2001, and ending on September 30, 2001, or for at least 80 hours during the period beginning on September 11, 2001, and ending on July 31, 2002;

“(ii)(I) was a member of the Police Department of the City of New York (whether active or retired) or a member of the Port Authority Police of the Port Authority of New York and New Jersey (whether active or retired) who participated on-site in rescue, recovery, debris clean-up, or related services in lower Manhattan (south of Canal St.), including Ground Zero, the Staten Island Landfill or the barge loading piers, for at least 4 hours during the period beginning September 11, 2001, and ending on September 14, 2001;

“(II) participated on-site in rescue, recovery, debris clean-up, or related services in at Ground Zero, the Staten Island Landfill or the barge loading piers, for at least one day during the period beginning on September 11, 2001, and ending on July 31, 2002;

“(III) participated on-site in rescue, recovery, debris clean-up, or related services in lower Manhattan (south of Canal St.) for at least 24 hours during the period beginning on September 11, 2001, and ending on September 30, 2001; or

“(IV) participated on-site in rescue, recovery, debris clean-up, or related services in lower Manhattan (south of Canal St.) for at least 80 hours during the period beginning on September 11, 2001, and ending on July 31, 2002;

“(iii) was an employee of the Office of the Chief Medical Examiner of the City of New York involved in the examination and handling of human remains from the World Trade Center attacks, or other morgue worker who performed similar post-September 11 functions for such Office staff, during the period beginning on September 11, 2001 and ending on July 31, 2002;

“(iv) was a worker in the Port Authority Trans-Hudson Corporation tunnel for at least 24 hours during the period beginning on February 1, 2002, and ending on July 1, 2002; or

“(v) was a vehicle-maintenance worker who was exposed to debris from the former World Trade Center while retrieving, driving, cleaning, repairing, and maintaining vehicles contaminated by airborne toxins from the September 11, 2001, terrorist attacks on the World Trade Center during a duration and period described in subparagraph (A).

“(3) APPLICATION PROCESS.—The WTC Program Administrator in consultation with the Coordinating Centers of Excellence shall establish a process for individuals, other than eligible WTC responders described in paragraph (1)(A), to apply to be determined to be eligible WTC responders. Under such process—

“(A) there shall be no fee charged to the applicant for making an application for such determination;

“(B) the Administrator shall make a determination on such an application not later than 60 days after the date of filing the application; and

“(C) an individual who is determined not to be an eligible WTC responder shall have an opportunity to appeal such determination before an administrative law judge in a manner established under such process.

“(4) CERTIFICATION.—

“(A) IN GENERAL.—In the case of an individual who is described in paragraph (1)(A) or who is determined under paragraph (3) (consistent with paragraph (5)) to be an eligible WTC responder, the WTC Program Administrator shall provide an appropriate certification of such fact and of eligibility for monitoring and treatment benefits under this part. The Administrator shall make determinations of eligibility relating to an applicant's compliance with this title, including the verification of information submitted in support of the application, and shall not deny such a certification to an individual unless the Administrator determines that—

“(i) based on the application submitted, the individual does not meet the eligibility criteria; or

“(ii) the numerical limitation on eligible WTC responders set forth in paragraph (5) has been met.

“(B) TIMING.—



“(i) CURRENTLY IDENTIFIED RESPONDERS.—In the case of an individual who is described in paragraph (1)(A), the WTC Program Administrator shall provide the certification under subparagraph (A) not later than 60 days after the date of the enactment of this title.

“(ii) OTHER RESPONDERS.—In the case of another individual who is determined under paragraph (3) and consistent with paragraph (5) to be an eligible WTC responder, the WTC Program Administrator shall provide the certification under subparagraph (A) at the time of the determination.

“(5) NUMERICAL LIMITATION ON ELIGIBLE WTC RESPONDERS.—

“(A) IN GENERAL.—The total number of individuals not described in subparagraph (C) who may qualify as eligible WTC responders for purposes of this title, and be certified as eligible WTC responders under paragraph (4), shall not exceed 15,000, subject to adjustment under paragraph (6), of which no more than 2,500 may be individuals certified based on modified eligibility criteria established under paragraph (1)(C). In applying the previous sentence, any individual who at any time so qualifies as an eligible WTC responder shall be counted against such numerical limitation.

“(B) PROCESS.—In implementing subparagraph (A), the WTC Program Administrator shall—

“(i) limit the number of certifications provided under paragraph (4) in accordance with such subparagraph; and

“(ii) provide priority in such certifications in the order in which individuals apply for a determination under paragraph (3).

“(C) CURRENTLY IDENTIFIED RESPONDERS NOT COUNTED.—Individuals described in this subparagraph are individuals who are described in paragraph (1)(A).

“(6) POTENTIAL ADJUSTMENT IN NUMERICAL LIMITATIONS DEPENDENT UPON ACTUAL SPENDING RELATIVE TO ESTIMATED SPENDING.—

“(A) INITIAL CALCULATION FOR FISCAL YEARS 2009 THROUGH 2011.—If the WTC Program Administrator determines as of December 1, 2011, that the WTC expenditure-to-CBO-estimate percentage (as defined in subparagraph (D)(iii)) for fiscal years 2009 through 2011 does not exceed 90 percent, then, effective January 1, 2012, the WTC Program Administrator may increase the numerical limitation under paragraph (5)(A), the numerical limitation under section 3021(a)(5), or both, by a number of percentage points not to exceed the number of percentage points specified in subparagraph (C) for such period of fiscal years.

“(B) SUBSEQUENT CALCULATION FOR FISCAL YEARS 2009 THROUGH 2015.—If the Secretary determines as of December 1, 2015, that the WTC expenditure-to-CBO-estimate percentages for fiscal years 2009 through 2015 and for fiscal years 2012 through 2015 do not exceed 90 percent, then, effective January 1, 2015, the WTC Program Administrator may increase the numerical limitation under paragraph (5)(A), the numerical limitation under section 3021(a)(5), or both, as in effect after the application of subparagraph (A), by a number of percentage points not to exceed twice the lesser of—

“(i) the number of percentage points specified in subparagraph (C) for fiscal years 2009 through 2012, or

“(ii) the number of percentage points specified in subparagraph (C) for fiscal years 2012 through 2015.

“(C) MAXIMUM PERCENTAGE INCREASE IN NUMERICAL LIMITATIONS FOR PERIOD OF FISCAL YEARS.—The number of percentage points specified in this clause for a period of fiscal years is—

“(i) 100 percentage points, multiplied by

“(ii) one minus a fraction the numerator of which is the net Federal WTC spending for such period, and the denominator of which is the CBO WTC spending estimate under this title for such period.

“(D) DEFINITIONS.—For purposes of this paragraph:

“(i) NET FEDERAL SPENDING.—The term ‘net Federal WTC spending’ means, with respect to a period of fiscal years, the net Federal spending under this title for such fiscal years.

“(ii) CBO WTC SPENDING ESTIMATE UNDER THIS TITLE.—The term ‘CBO WTC medical spending estimate under this title’ means, with respect to—

“(I) fiscal years 2009 through 2011, \$900,000,000;

“(II) fiscal years 2012 through 2015, \$1,890,000,000; and

“(III) fiscal years 2009 through 2015, the sum of the amounts specified in subclauses (I) and (II).

“(iii) WTC EXPENDITURE-TO-CBO-ESTIMATE PERCENTAGE.—The term ‘WTC expenditure-to-estimate percentage’ means, with respect to a period of fiscal years, the ratio (expressed as a percentage) of—

“(I) the net Federal WTC spending for such period, to

“(II) the CBO WTC spending estimate under this title for such period.

“(b) MONITORING BENEFITS.—

“(1) IN GENERAL.—In the case of an eligible WTC responder under section 3011(a)(4) (other than one described in subsection (a)(2)(A)(ii)), the WTC program shall provide for monitoring benefits that include medical monitoring consistent with protocols approved by the WTC Program Administrator and including clinical examinations and long-term health monitoring and analysis. In the case of an eligible WTC responder who is an active member of the Fire Department of the City of New York, the responder shall receive such benefits as part of the individual’s periodic company medical exams.

“(2) PROVISION OF MONITORING BENEFITS.—The monitoring benefits under paragraph (1) shall be provided through the Clinical Center of Excellence for the type of individual involved or, in the case of an individual residing outside the New York metropolitan area, under an arrangement under section 3031.

**“SEC. 3012. TREATMENT OF CERTIFIED ELIGIBLE WTC RESPONDERS FOR WTC-RELATED HEALTH CONDITIONS.**

“(a) WTC-RELATED HEALTH CONDITION DEFINED.—

“(1) IN GENERAL.—For purposes of this title, the term ‘WTC-related health condition’ means—

“(A) an illness or health condition for which exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks on the World Trade Center, based on an examination by a medical professional with experience in treating or diagnosing the medical conditions included in the applicable list of identified WTC-related conditions, is substantially likely to be a significant factor in aggravating, contributing to, or causing the illness or health condition, as determined under paragraph (2); or

“(B) a mental health condition for which such attacks, based on an examination by a medical professional with experience in treating or diagnosing the medical conditions included in the applicable list of identified WTC-related conditions, is substantially likely to be a significant factor in aggravating, contributing to, or causing the condition, as determined under paragraph (2).

In the case of an eligible WTC responder described in section 3011(a)(2)(A)(ii), such term only includes the mental health condition described in subparagraph (B).

“(2) DETERMINATION.—The determination of whether the September 11, 2001, terrorist attacks on the World Trade Center were substantially likely to be a significant factor in aggravating, contributing to, or causing an individual’s illness or health condition shall be made based on an assessment of the following:

“(A) The individual’s exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the terrorist attacks. Such exposure shall be—

“(i) evaluated and characterized through the use of a standardized, population appropriate questionnaire approved by the Director of the National Institute for Occupational Safety and Health; and

“(ii) assessed and documented by a medical professional with experience in treating or diagnosing medical conditions included on the list of identified WTC-related conditions.

“(B) The type of symptoms and temporal sequence of symptoms. Such symptoms shall be—

“(i) assessed through the use of a standardized, population appropriate medical questionnaire approved by Director of the National Institute for Occupational Safety and Health and a medical examination; and

“(ii) diagnosed and documented by a medical professional described in subparagraph (A)(ii).

“(3) LIST OF IDENTIFIED WTC-RELATED HEALTH CONDITIONS FOR CERTIFIED ELIGIBLE WTC RESPONDERS.—For purposes of this title, the term ‘identified WTC-related health condition for eligible WTC responders’ means any of the following health conditions:

“(A) AERODIGESTIVE DISORDERS.—

“(i) Interstitial lung diseases.

“(ii) Chronic respiratory disorder-fumes/vapors.

- “(iii) Asthma.
- “(iv) Reactive airways dysfunction syndrome (RADS).
- “(v) WTC-exacerbated chronic obstructive pulmonary disease (COPD).
- “(vi) Chronic cough syndrome.
- “(vii) Upper airway hyperreactivity.
- “(viii) Chronic rhinosinusitis.
- “(ix) Chronic nasopharyngitis.
- “(x) Chronic laryngitis.
- “(xi) Gastro-esophageal reflux disorder (GERD).
- “(xii) Sleep apnea exacerbated by or related to a condition described in a previous clause.

“(B) MENTAL HEALTH CONDITIONS.—

- “(i) Post traumatic stress disorder (PTSD).
- “(ii) Major depressive disorder.
- “(iii) Panic disorder.
- “(iv) Generalized anxiety disorder.
- “(v) Anxiety disorder (not otherwise specified).
- “(vi) Depression (not otherwise specified).
- “(vii) Acute stress disorder.
- “(viii) Dysthymic disorder.
- “(ix) Adjustment disorder.
- “(x) Substance abuse.
- “(xi) V codes (treatments not specifically related to psychiatric disorders, such as marital problems, parenting problems etc.), secondary to another identified WTC-related health condition for WTC eligible responders.

“(C) MUSCULOSKELETAL DISORDERS.—

- “(i) Low back pain.
- “(ii) Carpal tunnel syndrome (CTS).
- “(iii) Other musculoskeletal disorders.

“(4) ADDITION OF IDENTIFIED WTC-RELATED HEALTH CONDITIONS FOR ELIGIBLE WTC RESPONDERS.—

“(A) IN GENERAL.—The WTC Program Administrator may promulgate regulations to add an illness or health condition not described in paragraph (3) to be added to the list of identified WTC-related conditions for eligible WTC responders. In promulgating such regulations, the Secretary shall provide for notice and opportunity for a public hearing and at least 90 days of public comment. In promulgating such regulations, the WTC Program Administrator shall take into account the findings and recommendations of Clinical Centers of Excellence published in peer reviewed journals in the determination of whether an additional illness or health condition, such as cancer, should be added to the list of identified WTC-related health conditions for eligible WTC responders.

“(B) PETITIONS.—Any person (including the WTC Health Program Scientific/Technical Advisory Committee) may petition the WTC Program Administrator to propose regulations described in subparagraph (A). Unless clearly frivolous, or initiated by such Committee, any such petition shall be referred to such Committee for its recommendations. Following—

- “(i) receipt of any recommendation of the Committee; or
- “(ii) 180 days after the date of the referral to the Committee,

whichever occurs first, the WTC Program Administrator shall conduct a rulemaking proceeding on the matters proposed in the petition or publish in the Federal Register a statement of reasons for not conducting such proceeding.

“(C) EFFECTIVENESS.—Any addition under subparagraph (A) of an illness or health condition shall apply only with respect to applications for benefits under this title which are filed after the effective date of such regulation.

“(D) ROLE OF ADVISORY COMMITTEE.—Except with respect to a regulation recommended by the WTC Health Program Scientific/Technical Advisory Committee, the WTC Program Administrator may not propose a regulation under this paragraph, unless the Administrator has first provided to the Committee a copy of the proposed regulation, requested recommendations and comments by the Committee, and afforded the Committee at least 90 days to make such recommendations.

“(b) COVERAGE OF TREATMENT FOR WTC-RELATED HEALTH CONDITIONS.—

“(1) DETERMINATION BASED ON AN IDENTIFIED WTC-RELATED HEALTH CONDITION FOR CERTIFIED ELIGIBLE WTC RESPONDERS.—

“(A) IN GENERAL.—If a physician at a Clinical Center of Excellence that is providing monitoring benefits under section 3011 for a certified eligible

WTC responder determines that the responder has an identified WTC-related health condition, and the physician makes a clinical determination that exposure to airborne toxins, other hazards, or adverse conditions resulting from the 9/11 terrorist attacks is substantially likely to be a significant factor in aggravating, contributing to, or causing the condition—

“(i) the physician shall promptly transmit such determination to the WTC Program Administrator and provide the Administrator with the medical facts supporting such determination; and

“(ii) on and after the date of such transmittal and subject to subparagraph (B), the WTC program shall provide for payment under subsection (c) for medically necessary treatment for such condition.

“(B) REVIEW; CERTIFICATION; APPEALS.—

“(i) REVIEW.—A Federal employee designated by the WTC Program Administrator shall review determinations made under subparagraph (A) of a WTC-related health condition.

“(ii) CERTIFICATION.—The Administrator shall provide a certification of such condition based upon reviews conducted under clause (i). Such a certification shall be provided unless the Administrator determines that the responder’s condition is not an identified WTC-related health condition or that exposure to airborne toxins, other hazards, or adverse conditions resulting from the 9/11 terrorist attacks is not substantially likely to be a significant factor in significantly aggravating, contributing to, or causing the condition.

“(iii) APPEAL PROCESS.—The Administrator shall provide a process for the appeal of determinations under clause (ii) before an administrative law judge.

“(2) DETERMINATION BASED ON OTHER WTC-RELATED HEALTH CONDITION.—

“(A) IN GENERAL.—If a physician at a Clinical Center of Excellence determines pursuant to subsection (a) that the certified eligible WTC responder has a WTC-related health condition that is not an identified WTC-related health condition for eligible WTC responders—

“(i) the physician shall promptly transmit such determination to the WTC Program Administrator and provide the Administrator with the facts supporting such determination; and

“(ii) the Administrator shall make a determination under subparagraph (B) with respect to such physician’s determination.

“(B) REVIEW; CERTIFICATION.—

“(i) USE OF PHYSICIAN PANEL.—With respect to each determination relating to a WTC-related health condition transmitted under subparagraph (A)(i), the WTC Program Administrator shall provide for the review of the condition to be made by a physician panel with appropriate expertise appointed by the WTC Program Administrator. Such a panel shall make recommendations to the Administrator on the evidence supporting such determination.

“(ii) REVIEW OF RECOMMENDATIONS OF PANEL; CERTIFICATION.—The Administrator, based on such recommendations shall determine, within 60 days after the date of the transmittal under subparagraph (A)(i), whether or not the condition is a WTC-related health condition and, if it is, provide for a certification under paragraph (1)(B)(ii) of coverage of such condition. The Administrator shall provide a process for the appeal of determinations that the responder’s condition is not a WTC-related health condition before an administrative law judge.

“(3) REQUIREMENT OF MEDICAL NECESSITY.—

“(A) IN GENERAL.—In providing treatment for a WTC-health condition, a physician shall provide treatment that is medically necessary and in accordance with medical protocols established under subsection (d).

“(B) MEDICALLY NECESSARY STANDARD.—For the purpose of this title, health care services shall be treated as medically necessary for an individual if a physician, exercising prudent clinical judgment, would consider the services to be medically necessary for the individual for the purpose of evaluating, diagnosing, or treating an illness, injury, disease or its symptoms, and that are—

“(i) in accordance with the generally accepted standards of medical practice;

“(ii) clinically appropriate, in terms of type, frequency, extent, site, and duration, and considered effective for the individual’s illness, injury, or disease; and

“(iii) not primarily for the convenience of the patient or physician, or another physician, and not more costly than an alternative service or

sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the individual's illness, injury, or disease.

“(C) DETERMINATION OF MEDICAL NECESSITY.—

“(i) REVIEW OF MEDICAL NECESSITY.—As part of the reimbursement payment process under subsection (c), the WTC Program Administrator shall review claims for reimbursement for the provision of medical treatment to determine if such treatment is medically necessary.

“(ii) WITHHOLDING OF PAYMENT FOR MEDICALLY UNNECESSARY TREATMENT.—The Administrator may withhold such payment for treatment that the Administrator determines is not medically necessary.

“(iii) REVIEW OF DETERMINATIONS OF MEDICAL NECESSITY.—The Administrator shall provide a process for providers to appeal a determination under clause (ii) that medical treatment is not medically necessary. Such appeals shall be reviewed through the use of a physician panel with appropriate expertise.

“(4) SCOPE OF TREATMENT COVERED.—

“(A) IN GENERAL.—The scope of treatment covered under such paragraphs includes services of physicians and other health care providers, diagnostic and laboratory tests, prescription drugs, inpatient and outpatient hospital services, and other medically necessary treatment.

“(B) PHARMACEUTICAL COVERAGE.—With respect to ensuring coverage of medically necessary outpatient prescription drugs, such drugs shall be provided, under arrangements made by the WTC Program Administrator, directly through participating Clinical Centers of Excellence or through one or more outside vendors.

“(C) TRANSPORTATION EXPENSES.—To the extent provided in advance in appropriations Acts, the WTC Program Administrator may provide for necessary and reasonable transportation and expenses incident to the securing of medically necessary treatment involving travel of more than 250 miles and for which payment is made under this section in the same manner in which individuals may be furnished necessary and reasonable transportation and expenses incident to services involving travel of more than 250 miles under regulations implementing section 3629(c) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of Public Law 106–398; 42 U.S.C. 7384t(c)).

“(5) PROVISION OF TREATMENT PENDING CERTIFICATION.—In the case of a certified eligible WTC responder who has been determined by an examining physician under subsection (b)(1) to have an identified WTC-related health condition, but for whom a certification of the determination has not yet been made by the WTC Program Administrator, medical treatment may be provided under this subsection, subject to paragraph (6), until the Administrator makes a decision on such certification. Medical treatment provided under this paragraph shall be considered to be medical treatment for which payment may be made under subsection (c).

“(6) PRIOR APPROVAL PROCESS FOR NON-CERTIFIED NON-EMERGENCY INPATIENT HOSPITAL SERVICES.—Non-emergency inpatient hospital services for a WTC-related health condition identified by an examining physician under paragraph (b)(1) that is not certified under paragraph (1)(B)(ii) is not covered unless the services have been determined to be medically necessary and approved through a process established by the WTC Program Administrator. Such process shall provide for a decision on a request for such services within 15 days of the date of receipt of the request. The WTC Administrator shall provide a process for the appeal of a decision that the services are not medically necessary.

“(c) PAYMENT FOR INITIAL HEALTH EVALUATION, MEDICAL MONITORING, AND TREATMENT OF WTC-RELATED HEALTH CONDITIONS.—

“(1) MEDICAL TREATMENT.—

“(A) USE OF FECA PAYMENT RATES.—Subject to subparagraph (B), the WTC Program Administrator shall reimburse costs for medically necessary treatment under this title for WTC-related health conditions according to the payment rates that would apply to the provision of such treatment and services by the facility under the Federal Employees Compensation Act.

“(B) PHARMACEUTICALS.—

“(i) IN GENERAL.—The WTC Program Administrator shall establish a program for paying for the medically necessary outpatient prescription pharmaceuticals prescribed under this title for WTC-related conditions through one or more contracts with outside vendors.

“(ii) COMPETITIVE BIDDING.—Under such program the Administrator shall—

“(I) select one or more appropriate vendors through a Federal competitive bid process; and

“(II) select the lowest bidder (or bidders) meeting the requirements for providing pharmaceutical benefits for participants in the WTC program.

“(iii) TREATMENT OF FDNY PARTICIPANTS.—Under such program the Administrator may enter select a separate vendor to provide pharmaceutical benefits to certified eligible WTC responders for whom the Clinical Center of Excellence is described in section 3006(b)(1)(A) if such an arrangement is deemed necessary and beneficial to the program by the WTC Program Administrator.

“(C) OTHER TREATMENT.—For treatment not covered under a preceding subparagraph, the WTC Program Administrator shall designate a reimbursement rate for each such service.

“(2) MEDICAL MONITORING AND INITIAL HEALTH EVALUATION.—The WTC Program Administrator shall reimburse the costs of medical monitoring and the costs of an initial health evaluation provided under this title at a rate set by the Administrator.

“(3) ADMINISTRATIVE ARRANGEMENT AUTHORITY.—The WTC Program Administrator may enter into arrangements with other government agencies, insurance companies, or other third-party administrators to provide for timely and accurate processing of claims under this section.

“(4) CLAIMS PROCESSING SUBJECT TO APPROPRIATIONS.—The payment by the WTC Program Administrator for the processing of claims under this title is limited to the amounts provided in advance in appropriations Acts.

“(d) MEDICAL TREATMENT PROTOCOLS.—

“(1) DEVELOPMENT.—The Coordinating Centers of Excellence shall develop medical treatment protocols for the treatment of certified eligible WTC responders and certified eligible WTC community members for identified WTC-related health conditions.

“(2) APPROVAL.—The WTC Program Administrator shall approve the medical treatment protocols, in consultation with the WTC Health Program Steering Committees.

## “PART 2—COMMUNITY PROGRAM

### “SEC. 3021. IDENTIFICATION AND INITIAL HEALTH EVALUATION OF ELIGIBLE WTC COMMUNITY MEMBERS.

“(a) ELIGIBLE WTC COMMUNITY MEMBER DEFINED.—

“(1) IN GENERAL.—In this title, the term ‘eligible WTC community member’ means, subject to paragraphs (3) and (5), an individual who claims symptoms of a WTC-related health condition and is described in any of the following subparagraphs:

“(A) CURRENTLY IDENTIFIED COMMUNITY MEMBER.—An individual, including an eligible WTC responder, who has been identified as eligible for medical treatment or monitoring by the WTC Environmental Health Center as of the date of enactment of this title.

“(B) COMMUNITY MEMBER WHO MEETS CURRENT ELIGIBILITY CRITERIA.—An individual who is not an eligible WTC responder and meets any of the current eligibility criteria described in a subparagraph of paragraph (2).

“(C) COMMUNITY MEMBER WHO MEETS MODIFIED ELIGIBILITY CRITERIA.—An individual who is not an eligible WTC responder and meets such eligibility criteria relating to exposure to airborne toxins, other hazards, or adverse conditions resulting from the September 11, 2001, terrorist attacks on the World Trade Center as the WTC Administrator determines eligible, after consultation with the WTC Community Program Steering Committee, Coordinating Centers of Excellence described in section 3006(b)(1)(C), and the WTC Scientific/Technical Advisory Committee.

The Administrator shall not modify such criteria under subparagraph (C) on or after the date that the number of certifications for eligible community members has reached 80 percent of the limit described in paragraph (5) or on or after the date that the number of certifications for eligible responders has reached 80 percent of the limit described in section 3021(a)(5).

“(2) CURRENT ELIGIBILITY CRITERIA.—The eligibility criteria described in this paragraph for an individual are that the individual is described in any of the following subparagraphs:

“(A) A person who was present in the New York City disaster area in the dust or dust cloud on September 11, 2001.

“(B) A person who worked, resided or attended school, child care or adult day care in the New York City disaster area for—

“(i) at least four days during the 4-month period beginning on September 11, 2001, and ending on January 10, 2002; or

“(ii) at least 30 days during the period beginning on September 11, 2001, and ending on July 31, 2002.

“(C) Any person who worked as a clean-up worker or performed maintenance work in the New York City disaster area during the 4-month period described in subparagraph (B)(i) and had extensive exposure to WTC dust as a result of such work.

“(D) A person who was deemed eligible to receive a grant from the Lower Manhattan Development Corporation Residential Grant Program, who possessed a lease for a residence or purchased a residence in the New York City disaster area, and who resided in such residence during the period beginning on September 11, 2001, and ending on May 31, 2003.

“(E) A person whose place of employment—

“(i) at any time during the period beginning on September 11, 2001, and ending on May 31, 2003, was in the New York City disaster area; and

“(ii) was deemed eligible to receive a grant from the Lower Manhattan Development Corporation WTC Small Firms Attraction and Retention Act program or other government incentive program designed to revitalize the Lower Manhattan economy after the September 11, 2001, terrorist attacks on the World Trade Center.

“(3) APPLICATION PROCESS.—The WTC Program Administrator in consultation with the Coordinating Centers of Excellence shall establish a process for individuals, other than individuals described in paragraph (1)(A), to be determined eligible WTC community member. Under such process—

“(A) there shall be no fee charged to the applicant for making an application for such determination;

“(B) the Administrator shall make a determination on such an application not later than 60 days after the date of filing the application; and

“(C) an individual who is determined not to be an eligible WTC community member shall have an opportunity to appeal such determination before an administrative law judge in a manner established under such process.

“(4) CERTIFICATION.—

“(A) IN GENERAL.—In the case of an individual who is described in paragraph (1)(A) or who is determined under paragraph (3) (consistent with paragraph (5)) to be an eligible WTC community member, the WTC Program Administrator shall provide an appropriate certification of such fact and of eligibility for followup monitoring and treatment benefits under this part. The Administrator shall make determinations of eligibility relating to an applicant’s compliance with this title, including the verification of information submitted in support of the application and shall not deny such a certification to an individual unless the Administrator determines that—

“(i) based on the application submitted, the individual does not meet the eligibility criteria; or

“(ii) the numerical limitation on certification of eligible WTC community members set forth in paragraph (5) has been met.

“(B) TIMING.—

“(i) CURRENTLY IDENTIFIED COMMUNITY MEMBERS.—In the case of an individual who is described in paragraph (1)(A), the WTC Program Administrator shall provide the certification under subparagraph (A) not later than 60 days after the date of the enactment of this title.

“(ii) OTHER MEMBERS.—In the case of another individual who is determined under paragraph (3) and consistent with paragraph (5) to be an eligible WTC community member, the WTC Program Administrator shall provide the certification under subparagraph (A) at the time of such determination.

“(5) NUMERICAL LIMITATION ON CERTIFICATION OF ELIGIBLE WTC COMMUNITY MEMBERS.—

“(A) IN GENERAL.—The total number of individuals not described in subparagraph (C) who may be certified as eligible WTC community members under paragraph (4) shall not exceed 15,000. In applying the previous sentence, any individual who at any time so qualifies as an eligible WTC community member shall be counted against such numerical limitation.

“(B) PROCESS.—In implementing subparagraph (A), the WTC Program Administrator shall—

“(i) limit the number of certifications provided under paragraph (4) in accordance with such subparagraph; and

“(ii) provide priority in such certifications in the order in which individuals apply for a determination under paragraph (4).

“(C) INDIVIDUALS CURRENTLY RECEIVING TREATMENT NOT COUNTED.—Individuals described in this subparagraph are individuals who—

“(i) are described in paragraph (1)(A); or

“(ii) before the date of the enactment of this title, have received monitoring or treatment at the World Trade Center Environmental Health Center at Bellevue Hospital Center, Gouverneur Health Care Services, or Elmhurst Hospital Center.

The New York City Health and Hospitals Corporation shall, not later than 6 months after the date of enactment of this title, enter into arrangements with the Mt. Sinai Data and Clinical Coordination Center for the reporting of medical data concerning eligible WTC responders described in paragraph (1)(A), as determined by the WTC Program Administrator and consistent with applicable Federal and State laws and regulations relating to confidentiality of individually identifiable health information.

“(D) REPORT TO CONGRESS IF NUMERICAL LIMITATION TO BE REACHED.—If the WTC Program Administrator determines that the number of individuals subject to the numerical limitation of subparagraph (A) is likely to exceed such numerical limitation, the Administrator shall submit to Congress a report on such determination. Such report shall include an estimate of the number of such individuals in excess of such numerical limitation and of the additional expenditures that would result under this title if such numerical limitation were removed.

“(b) INITIAL HEALTH EVALUATION TO DETERMINE ELIGIBILITY FOR FOLLOWUP MONITORING OR TREATMENT.—

“(1) IN GENERAL.—In the case of a certified eligible WTC community member, the WTC program shall provide for an initial health evaluation to determine if the member has a WTC-related health condition and is eligible for followup monitoring and treatment benefits under the WTC program. Initial health evaluation protocols shall be approved by the WTC Program Administrator, in consultation with the World Trade Center Environmental Health Center at Bellevue Hospital and the WTC Community Program Steering Committee.

“(2) INITIAL HEALTH EVALUATION PROVIDERS.—The initial health evaluation described in paragraph (1) shall be provided through a Clinical Center of Excellence with respect to the individual involved.

“(3) LIMITATION ON INITIAL HEALTH EVALUATION BENEFITS.—Benefits for initial health evaluation under this part for an eligible WTC community member shall consist only of a single medical initial health evaluation consistent with initial health evaluation protocols described in paragraph (1). Nothing in this paragraph shall be construed as preventing such an individual from seeking additional medical initial health evaluations at the expense of the individual.

**“SEC. 3022. FOLLOWUP MONITORING AND TREATMENT OF CERTIFIED ELIGIBLE WTC COMMUNITY MEMBERS FOR WTC-RELATED HEALTH CONDITIONS.**

“(a) IN GENERAL.—Subject to subsection (b), the provisions of sections 3011 and 3012 shall apply to followup monitoring and treatment of WTC-related health conditions for certified eligible WTC community members in the same manner as such provisions apply to the monitoring and treatment of identified WTC-related health conditions for certified eligible WTC responders, except that such monitoring shall only be available to those certified as eligible for treatment under this title. Under section 3006(a)(3), the City of New York is required to contribute a share of the costs of such treatment.

“(b) LIST OF IDENTIFIED WTC-RELATED HEALTH CONDITIONS FOR WTC COMMUNITY MEMBERS.—

“(1) IDENTIFIED WTC-RELATED HEALTH CONDITIONS FOR WTC COMMUNITY MEMBERS.—For purposes of this title, the term ‘identified WTC-related health conditions for WTC community members’ means any of the following health conditions:

“(A) AERODIGESTIVE DISORDERS.—

“(i) Interstitial lung diseases.

“(ii) Chronic respiratory disorder—fumes/vapors.

“(iii) Asthma.

“(iv) Reactive airways dysfunction syndrome (RADS).

“(v) WTC-exacerbated chronic obstructive pulmonary disease (COPD).

“(vi) Chronic cough syndrome.

“(vii) Upper airway hyperreactivity.

“(viii) Chronic rhinosinusitis.



- “(ix) Chronic nasopharyngitis.
- “(x) Chronic laryngitis.
- “(xi) Gastro-esophageal reflux disorder (GERD).
- “(xii) Sleep apnea exacerbated by or related to a condition described in a previous clause.

“(B) MENTAL HEALTH CONDITIONS.—

- “(i) Post traumatic stress disorder (PTSD).
- “(ii) Major depressive disorder.
- “(iii) Panic disorder.
- “(iv) Generalized anxiety disorder.
- “(v) Anxiety disorder (not otherwise specified).
- “(vi) Depression (not otherwise specified).
- “(vii) Acute stress disorder.
- “(viii) Dysthymic disorder.
- “(ix) Adjustment disorder.
- “(x) Substance abuse.
- “(xi) V codes (treatments not specifically related to psychiatric disorders, such as marital problems, parenting problems etc.), secondary to another identified WTC-related health condition for WTC community members.

“(2) ADDITIONS TO IDENTIFIED WTC-RELATED HEALTH CONDITIONS FOR WTC COMMUNITY MEMBERS.—The provisions of paragraph (4) of section 3012(a) shall apply with respect to an addition to the list of identified WTC-related conditions for eligible WTC community members under paragraph (1) in the same manner as such provisions apply to an addition to the list of identified WTC-related conditions for eligible WTC responders under section 3012(a)(3).

**“SEC. 3023. FOLLOWUP MONITORING AND TREATMENT OF OTHER INDIVIDUALS WITH WTC-RELATED HEALTH CONDITIONS.**

“(a) IN GENERAL.—Subject to subsection (c), the provisions of section 3022 shall apply to the followup monitoring and treatment of WTC-related health conditions for eligible WTC community members in the case of individuals described in subsection (b) in the same manner as such provisions apply to the followup monitoring and treatment of WTC-related health conditions for WTC community members. Under section 3006(a)(3), the City of New York is required to contribute a share of the costs of such monitoring and treatment.

“(b) INDIVIDUALS DESCRIBED.—An individual described in this subsection is an individual who, regardless of location of residence—

- “(1) is not a eligible WTC responder or an eligible WTC community member; and

- “(2) is diagnosed at a Clinical Center of Excellence (with respect to an eligible WTC community member) with an identified WTC-related health condition for WTC community members.

“(c) LIMITATION.—

- “(1) IN GENERAL.—The WTC Program Administrator shall limit benefits for any fiscal year under subsection (a) in a manner so that payments under this section for such fiscal year do not exceed the amount specified in paragraph (2) for such fiscal year.

- “(2) LIMITATION.—The amount specified in this paragraph for—

- “(A) fiscal year 2009 is \$20,000,000; or
- “(B) a succeeding fiscal year is the amount specified in this paragraph for the previous fiscal year increased by the annual percentage increase in the medical care component of the consumer price index for all urban consumers.

**“PART 3—NATIONAL ARRANGEMENT FOR BENEFITS FOR ELIGIBLE INDIVIDUALS OUTSIDE NEW YORK**

**“SEC. 3031. NATIONAL ARRANGEMENT FOR BENEFITS FOR ELIGIBLE INDIVIDUALS OUTSIDE NEW YORK.**

“(a) IN GENERAL.—In order to ensure reasonable access to benefits under this subtitle for individuals who are eligible WTC responders or eligible WTC community members and who reside in any State, as defined in section 2(f), outside the New York metropolitan area, the WTC Program Administrator shall establish a nationwide network of health care providers to provide monitoring and treatment benefits and initial health evaluations near such individuals’ areas of residence in such States. Nothing in this subsection shall be construed as preventing such individuals

from being provided such monitoring and treatment benefits or initial health evaluation through any Clinical Center of Excellence.

“(b) NETWORK REQUIREMENTS.—Any health care provider participating in the network under subsection (a) shall—

“(1) meet criteria for credentialing established by the Coordinating Centers of Excellence;

“(2) follow the monitoring, initial health evaluation, and treatment protocols developed under section 3006(a)(2)(B);

“(3) collect and report data in accordance with section 3005; and

“(4) meet such fraud, quality assurance, and other requirements as the WTC Program Administrator establishes.

## **“Subtitle C—Research Into Conditions**

### **“SEC. 3041. RESEARCH REGARDING CERTAIN HEALTH CONDITIONS RELATED TO SEPTEMBER 11 TERRORIST ATTACKS IN NEW YORK CITY.**

“(a) IN GENERAL.—With respect to individuals, including eligible WTC responders and eligible WTC community members, receiving monitoring or treatment under subtitle B, the WTC Program Administrator shall conduct or support—

“(1) research on physical and mental health conditions that may be related to the September 11, 2001, terrorist attacks;

“(2) research on diagnosing WTC-related health conditions of such individuals, in the case of conditions for which there has been diagnostic uncertainty; and

“(3) research on treating WTC-related health conditions of such individuals, in the case of conditions for which there has been treatment uncertainty.

The Administrator may provide such support through continuation and expansion of research that was initiated before the date of the enactment of this title and through the World Trade Center Health Registry (referred to in section 3051), through a Clinical Center of Excellence, or through a Coordinating Center of Excellence.

“(b) TYPES OF RESEARCH.—The research under subsection (a)(1) shall include epidemiologic and other research studies on WTC-related conditions or emerging conditions—

“(1) among WTC responders and community members under treatment; and

“(2) in sampled populations outside the New York City disaster area in Manhattan as far north as 14th Street and in Brooklyn, along with control populations, to identify potential for long-term adverse health effects in less exposed populations.

“(c) CONSULTATION.—The WTC Program Administrator shall carry out this section in consultation with the WTC Health Program Steering Committees and the WTC Scientific/Technical Advisory Committee.

“(d) APPLICATION OF PRIVACY AND HUMAN SUBJECT PROTECTIONS.—The privacy and human subject protections applicable to research conducted under this section shall not be less than such protections applicable to research otherwise conducted by the National Institutes of Health.

“(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated \$15,000,000 for each fiscal year, in addition to any other authorizations of appropriations that are available for such purpose.

## **“Subtitle D—Programs of the New York City Department of Health and Mental Hygiene**

### **“SEC. 3051. WORLD TRADE CENTER HEALTH REGISTRY.**

“(a) PROGRAM EXTENSION.—For the purpose of ensuring on-going data collection for victims of the September 11, 2001, terrorist attacks on the World Trade Center, the WTC Program Administrator, shall extend and expand the arrangements in effect as of January 1, 2008, with the New York City Department of Health and Mental Hygiene that provide for the World Trade Center Health Registry.

“(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$7,000,000 for each fiscal year to carry out this section.

### **“SEC. 3052. MENTAL HEALTH SERVICES.**

“(a) IN GENERAL.—The WTC Program Administrator may make grants to the New York City Department of Health and Mental Hygiene to provide mental health serv-

ices to address mental health needs relating to the September 11, 2001, terrorist attacks on the World Trade Center.

“(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$8,500,000 for each fiscal year to carry out this section.”.

## **TITLE II—SEPTEMBER 11TH VICTIM COMPENSATION FUND OF 2001**

### **SEC. 201. DEFINITIONS.**

Section 402 of the Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) is amended—

(1) in paragraph (6) by inserting “, or debris removal, including under the World Trade Center Health Program established under section 3001 of the Public Health Service Act” after “September 11, 2001”;

(2) by inserting after paragraph (6) the following new paragraphs and redesignating subsequent paragraphs accordingly:

“(7) CONTRACTOR AND SUBCONTRACTOR.—The term ‘contractor and subcontractor’ means any contractor or subcontractor (at any tier of a subcontracting relationship), including any general contractor, construction manager, prime contractor, consultant, or any parent, subsidiary, associated or allied company, affiliated company, corporation, firm, organization, or joint venture thereof that participated in debris removal at any 9/11 crash site. Such term shall not include any entity, including the Port Authority of New York and New Jersey, with a property interest in the World Trade Center, on September 11, 2001, whether fee simple, leasehold or easement, direct or indirect.

“(8) DEBRIS REMOVAL.—The term ‘debris removal’ means rescue and recovery efforts, removal of debris, cleanup, remediation, and response during the immediate aftermath of the terrorist-related aircraft crashes of September 11, 2001, with respect to a 9/11 crash site.”;

(3) by inserting after paragraph (10), as so redesignated, the following new paragraph and redesignating the subsequent paragraphs accordingly:

“(11) IMMEDIATE AFTERMATH.—The term ‘immediate aftermath’ means any period beginning with the terrorist-related aircraft crashes of September 11, 2001, and ending on August 30, 2002.”; and

(4) by adding at the end the following new paragraph:

“(14) 9/11 CRASH SITE.—The term ‘9/11 crash site’ means—

“(A) the World Trade Center site, Pentagon site, and Shanksville, Pennsylvania site;

“(B) the buildings or portions of buildings that were destroyed as a result of the terrorist-related aircraft crashes of September 11, 2001;

“(C) any area contiguous to a site of such crashes that the Special Master determines was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses (including the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured individuals); and

“(D) any area related to, or along, routes of debris removal, such as barges and Fresh Kills.”.

### **SEC. 202. EXTENDED AND EXPANDED ELIGIBILITY FOR COMPENSATION.**

(a) INFORMATION ON LOSSES RESULTING FROM DEBRIS REMOVAL INCLUDED IN CONTENTS OF CLAIM FORM.—Section 405(a)(2)(B) of the Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) is amended—

(1) in clause (i), by inserting “, or debris removal during the immediate aftermath” after “September 11, 2001”;

(2) in clause (ii), by inserting “or debris removal during the immediate aftermath” after “crashes”; and

(3) in clause (iii), by inserting “or debris removal during the immediate aftermath” after “crashes”.

(b) EXTENSION OF DEADLINE FOR CLAIMS UNDER SEPTEMBER 11TH VICTIM COMPENSATION FUND OF 2001.—Section 405(a)(3) of such Act is amended to read as follows:

“(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) and ending on December 22, 2031.”.

(c) REQUIREMENTS FOR FILING CLAIMS DURING EXTENDED FILING PERIOD.—Section 405(c)(3) of such Act is amended—

(1) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively; and

(2) by inserting before subparagraph (B), as so redesignated, the following new subparagraph:

“(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.—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(a).”.

(d) CLARIFYING APPLICABILITY TO ALL 9/11 CRASH SITES.—Section 405(c)(2)(A)(i) of such Act is amended by striking “or the site of the aircraft crash at Shanksville, Pennsylvania” and inserting “the site of the aircraft crash at Shanksville, Pennsylvania, or any other 9/11 crash site”.

(e) INCLUSION OF PHYSICAL HARM RESULTING FROM DEBRIS REMOVAL.—Section 405(c) of such Act is amended in paragraph (2)(A)(ii), by inserting “or debris removal” after “air crash”.

(f) LIMITATIONS ON CIVIL ACTIONS.—

(1) APPLICATION TO DAMAGES RELATED TO DEBRIS REMOVAL.—Clause (i) of section 405(c)(3)(C) of such Act, as redesignated by subsection (c), is amended by inserting “, or for damages arising from or related to debris removal” after “September 11, 2001”.

(2) PENDING ACTIONS.—Clause (ii) of such section, as so redesignated, is amended to read as follows:

“(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).”

(3) **AUTHORITY TO REINSTITUTE CERTAIN LAWSUITS.**—Such section, as so redesignated, is further amended by adding at the end the following new clause:

“(iii) **AUTHORITY TO REINSTITUTE CERTAIN LAWSUITS.**—In the case of a claimant who was a party to a civil action described in clause (i), who withdrew from such action pursuant to clause (ii), and who is subsequently determined to not be an eligible individual for purposes of this subsection, such claimant may reinstitute such action without prejudice during the 90-day period beginning after the date of such ineligibility determination.”

**SEC. 203. REQUIREMENT TO UPDATE REGULATIONS.**

Section 407 of the Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) is amended—

(1) by striking “Not later than” and inserting “(a) **IN GENERAL.**—Not later than”; and

(2) by adding at the end the following new subsection:

“(b) **UPDATED REGULATIONS.**—Not later than 90 days after the date of the enactment of the James Zadroga 9/11 Health and Compensation Act of 2010, the Special Master shall update the regulations promulgated under subsection (a) to the extent necessary to comply with the provisions of title II of such Act.”

**SEC. 204. LIMITED LIABILITY FOR CERTAIN CLAIMS.**

Section 408(a) of the Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) is amended by adding at the end the following new paragraphs:

“(4) **LIABILITY FOR CERTAIN CLAIMS.**—Notwithstanding any other provision of law, liability for all claims and actions (including claims or actions that have been previously resolved, that are currently pending, and that may be filed through December 22, 2031) for compensatory damages, contribution or indemnity, or any other form or type of relief, arising from or related to debris removal, against the City of New York, any entity (including the Port Authority of New York and New Jersey) with a property interest in the World Trade Center on September 11, 2001 (whether fee simple, leasehold or easement, or direct or indirect) and any contractors and subcontractors, shall not be in an amount that exceeds the sum of the following, as may be applicable:

“(A) The amount of funds of the WTC Captive Insurance Company, including the cumulative interest.

“(B) The amount of all available insurance identified in schedule 2 of the WTC Captive Insurance Company insurance policy.

“(C) As it relates to the limitation of liability of the City of New York, the amount that is the greater of the City of New York’s insurance coverage or \$350,000,000. In determining the amount of the City’s insurance coverage for purposes of the previous sentence, any amount described in clauses (i) and (ii) shall not be included.

“(D) As it relates to the limitation of liability of any entity, including the Port Authority of New York and New Jersey, with a property interest in the World Trade Center on September 11, 2001 (whether fee simple, leasehold or easement, or direct or indirect), the amount of all available liability insurance coverage maintained by any such entity.

“(E) As it relates to the limitation of liability of any individual contractor or subcontractor, the amount of all available liability insurance coverage maintained by such contractor or subcontractor on September 11, 2001.

“(5) **PRIORITY OF CLAIMS PAYMENTS.**—Payments to plaintiffs who obtain a settlement or judgment with respect to a claim or action to which paragraph (4)(A) applies, shall be paid solely from the following funds in the following order, as may be applicable:

“(A) The funds described in clause (i) or (ii) of paragraph (4)(A).

“(B) If there are no funds available as described in clause (i) or (ii) of paragraph (4)(A), the funds described in clause (iii) of such paragraph.

“(C) If there are no funds available as described in clause (i), (ii), or (iii) of paragraph (4)(A), the funds described in clause (iv) of such paragraph.

“(D) If there are no funds available as described in clause (i), (ii), (iii), or (iv) of paragraph (4)(A), the funds described in clause (v) of such paragraph.

“(6) **DECLARATORY JUDGMENT ACTIONS AND DIRECT ACTION.**—Any party to a claim or action to which paragraph (4)(A) applies may, with respect to such claim or action, either file an action for a declaratory judgment for insurance coverage or bring a direct action against the insurance company involved.”

**SEC. 205. FUNDING; ATTORNEY FEES.**

Section 406 of the Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) is amended—

(1) in subsection (a), by striking “Not later than” and inserting “Subject to subsection (d), not later than”;

(2) in subsection (b), by striking “This title” and inserting “Subject to subsection (d), this title”; and

(3) by adding at the end the following new subsections:

“(d) **LIMITATION.**—The total payment of amounts for compensation under this title, with respect to claims filed on or after the date on which the regulations are updated under section 407(b), shall not exceed \$8,400,000,000.

“(e) **ATTORNEY FEES.**—

“(1) **IN GENERAL.**—Notwithstanding any contract, and except as provided in paragraph (2), 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) **EXCEPTION.**—With respect to a claim made on behalf of an individual for whom a lawsuit was filed in the Southern District of New York prior to January 1, 2009, in the event that the representative believes in good faith that the fee limit set by paragraph (1) will not provide adequate compensation for services rendered in connection with such claim because of the substantial amount of legal work provided on behalf of the claimant (including work performed before the enactment of this legislation), application for greater compensation may be made to the Special Master. Upon such application, the Special Master may, in his or her discretion, award as reasonable compensation for services rendered an amount greater than that allowed for in paragraph (1). Such fee award will be final, binding, and non-appealable.”.

**PURPOSE AND SUMMARY**

H.R. 847 establishes the World Trade Center Health Program to provide medical monitoring and treatment benefits to emergency responders, recovery and cleanup workers, area residents, and others who were directly impacted by the attacks of September 11, 2001. The bill also reopens the September 11 Victim Compensation Fund of 2001 to provide compensation to anyone who was injured in the aftermath of the attacks, including persons who were injured during debris removal at the September 11 crash sites. The bill extends the deadline for making claims under the fund, and it provides certain liability protections for the City of New York and other entities that engaged in recovery efforts and debris removal following the September 11 attacks.

**BACKGROUND AND NEED FOR THE LEGISLATION****SEPTEMBER 11, 2001 AND ITS AFTERMATH**

On September 11, 2001, terrorists flew two hijacked commercial jets into the World Trade Center towers in New York City. Almost 3,000 people were killed in the collapse of the towers, including hundreds of first responders, police officers, and firefighters. Beyond this immediate loss of life, thousands of other persons are now suffering debilitating and even deadly illnesses due to their proximity to the World Trade Center site in the aftermath of the attacks.

It is now well documented that the collapse of the World Trade Center towers and the adjacent buildings released numerous hazardous substances into the environment. These substances included hundreds of tons of asbestos, nearly half a million pounds of lead, and large amounts of glass fibers, various heavy metals, dioxin, benzene, polychlorinated biphenyls (PCBs) and other potentially

deadly chemicals and materials.<sup>1</sup> These substances formed a large cloud of toxic dust and smoke, which blanketed parts of New York City and New Jersey and spread into many of the surrounding office buildings, schools, and residences. All together, the collapse of the towers dispersed about one million tons of dust on the area around Lower Manhattan.

Many of those who worked and lived in this area are now experiencing serious and life-threatening illnesses due to their exposure to “World Trade Center dust.” Evidence accumulated since the collapse of the World Trade Center buildings indicates that the air in Lower Manhattan was hazardous, notwithstanding safety assurances from the Environmental Protection Agency (EPA), and that exposure to World Trade Center dust has caused adverse health effects in thousands of responders, recovery workers, and others at or near Ground Zero in the immediate aftermath of the September 11 attacks.<sup>2</sup> Such effects include pulmonary fibrosis, sarcoidosis, interstitial lung disease, chronic sinusitis, severe asthma and other conditions resulting in significant loss of lung function.<sup>3</sup> There is also growing evidence that exposure to World Trade Center dust is resulting in other serious diseases, including respiratory tract cancer, lymphoma, and a range of blood cell cancers.<sup>4</sup> Medical monitoring has been put in place for thousands of workers at the World Trade Center site to track cancer rates among this population into the future.

Such illnesses have caused major financial strains on those who, exposed to the toxins during the aftermath of the September 11 attacks, are no longer able to work, and face the high price of health care without assistance. While some of the above diseases 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, resulting in incapacitation, and an inability to perform job duties or everyday activities. Many others suffer from recurrent episodes of lung infections leading to frequent hospitalizations.

<sup>1</sup> See “World Trade Center USGS Bulk Chemistry Results,” U.S. Geological Survey, Open-File Report 01-0429, available at: [pubs.usgs.gov/of/2001/ofr-01-0429/chem1/index.html](http://pubs.usgs.gov/of/2001/ofr-01-0429/chem1/index.html); “Characterization of the Dust/Smoke Aerosol that Settled East of the World Trade Center (WTC) in Lower Manhattan after the Collapse of the WTC 11 September 2001,” 110 *Environmental Health Perspectives* 7 (July 2002), available at: [www.ehponline.org/members/2002/110p703-714lioy/lioy-full.html](http://www.ehponline.org/members/2002/110p703-714lioy/lioy-full.html); 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>2</sup> See *Id.*; Megan Nordgrén, Eric Goldstein, and Mark Izeman, *The Environmental Impacts of the World Trade Center Attacks*, Natural Resources Defense Council, at 3 (2002); Office of the Inspector General, Federal Emergency Management Agency, FEMA’s Delivery of Individual Assistance Program, at 25 (Dec. 18, 2002).

<sup>3</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); 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>4</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 Izicki, 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), abstract available at: <http://www.chestjournal.org/content/131/5/1414.abstract>; 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>.

## THE SEPTEMBER 11 VICTIM COMPENSATION FUND OF 2001

In the immediate aftermath of the September 11 terrorist attacks, Congress created the September 11 Victim Compensation Fund (VCF), a unique program designed to compensate people for losses sustained as a result of the attacks on the World Trade Center and other 9/11 crash sites. The VCF provided aid to the families of September 11 victims and to individuals who suffered personal injury. In return for accepting VCF funds, recipients relinquished their right to sue the airlines, whose liability was limited to the value of their insurance. Victims or their personal representatives were offered the choice to seek no-fault compensation through the VCF or to bring a civil tort action against an airline or other parties. For those who chose to enter the fund, the VCF required that applications be filed before December 22, 2003.

The special master of the VCF, Kenneth Feinberg, was given wide latitude to determine eligibility and the amount of compensation to be paid individuals on a case-by-case basis. Over a 33-month period, the VCF distributed over \$7 billion to the surviving family members of 2,880 of those who were killed on September 11 and to 2,680 of those who were injured in the attacks or the immediate rescue efforts. Families of the deceased were paid in amounts ranging from \$800,000 to \$6.5 million. People who had sustained physical injuries were paid amounts ranging from \$500 for a broken finger to \$7.1 million for severe burns over 85% of the victim's body. Awards were reduced to offset other forms of compensation such as workers compensation, pension awards and life insurance.

The VCF provided an attractive alternative to the uncertainty and delay of litigation, and the program was widely considered to be a success. Most families of deceased victims chose to participate in the VCF, and 97% of those who submitted claims received compensation through the program.

While the VCF did an excellent job in handling claims involving people who died or had an immediate and easily diagnosable ailment (such as a broken leg), the fund was not as suitable for dealing with other kinds of injuries. The Fund's regulations, for example, limited compensation to workers who were injured in the "immediate aftermath" of the attacks, which was defined as the 96-hour time period immediately following the attacks. This timeframe was sufficient to deal with workers who suffered immediate injuries. However, it left no recourse for individuals with late-onset injuries or for those who arrived after September 15, 2001 to assist in recovery and cleanup efforts and are now suffering injuries as a result of those efforts.

Additionally, some injured persons either did not know they were eligible to file claims or were unaware of ailments that had yet to manifest prior to expiration of the deadline. Such persons include thousands of first responders, construction workers, local residents and other individuals who are now developing a range of diseases because of their exposure to World Trade Center toxins. Many of these individuals are now developing career-ending injuries, such as pulmonary and respiratory ailments, but are not eligible to receive assistance because their symptoms developed after the VCF filing deadline had passed.



## THE JAMES ZADROGA 9/11 HEALTH AND COMPENSATION ACT OF 2010

The James Zadroga 9/11 Health and Compensation Act of 2010 addresses the above concerns by establishing a program to provide health care to those injured during recovery and cleanup efforts at September 11 crash sites and by reopening the September 11 Victim Compensation Fund to provide compensation for such injured individuals.

Specifically, title I of the bill amends the Public Health Service Act to establish the World Trade Center Health Program within the National Institute for Occupational Safety and Health. This program will provide medical monitoring and treatment benefits to eligible emergency responders and recovery and cleanup workers who worked at the World Trade Center crash site. It will also provide initial health evaluation, monitoring, and treatment benefits to residents and other building occupants and area workers who were directly impacted and adversely affected by the September 11 attacks. The program will ensure that every person at risk of illness from exposure to World Trade Center toxins can obtain medical monitoring and that all those who are injured or sick as a result of such exposure can obtain treatment.

Title II of the bill reopens the VCF to provide compensation for economic damages and losses to persons injured during recovery efforts and debris removal, including workers and area residents injured by toxins released during the collapse of the World Trade Center towers. To this end, the bill redefines a number of terms in the original VCF legislation so as to expand coverage to persons exposed to World Trade Center toxins. The bill expands coverage to all injuries occurring during recovery efforts and debris removal, including injuries occurring near the World Trade Center site and along the routes used to remove debris from that site. The bill defines “debris removal” comprehensively, so as to include the wide range of activities performed at the World Trade Center site and debris-removal routes, including, but not limited to, the assessment of damaged structures and the debris pile, the development of temporary stabilization procedures and mechanisms, demolition of unsafe structures, and removal of the debris pile. The bill also defines the term “immediate aftermath” as any period beginning with the terrorist-related aircraft crashes of September 11, 2001 and ending on August 30, 2002.

The bill reopens the VCF until December 22, 2031, allowing individuals who did not previously file a claim, or who became ill after the original December 22, 2003 deadline, to be compensated for economic damages and losses stemming from their injuries. The purpose behind reopening the fund for over 20 years is to protect to the greatest extent possible those persons who were exposed to World Trade Center toxins during recovery and cleanup efforts but whose resulting injuries are latent and will manifest over the next two decades.

While extending protection to injured individuals, the bill also provides protection from liability to certain entities that participated in recovery efforts and debris removal. The bill provides that their liability for all claims and actions arising from, or related to, recovery efforts and debris removal (including claims and actions previously resolved, currently pending, or filed through December

22, 2031) is limited to the amount of funds held by the World Trade Center Captive Insurance Company, the amount of available insurance coverage identified by the Captive Insurance Company, and the amount of insurance coverage held by certain other entities.

The bill provides that the liability of the City of New York is limited to the City's insurance coverage or \$350,000,000, whichever is greater. It further provides that the liability of the Port Authority of New York and New Jersey, and any other entity with a property interest in the World Trade Center on September 11, 2001, is limited to the amount of all available insurance coverage maintained by any such entity. The bill also limits liability of any individual contractor or subcontractor that participated in recovery efforts and debris removal to the amount of available liability insurance maintained by such contractor or subcontractor.

The bill establishes a priority of funds from which plaintiffs may satisfy judgments or settlements obtained in civil claims or actions related to recovery and cleanup efforts. The priority requires exhaustion of amounts held by the Captive Insurance Company and identified insurance policies, followed by exhaustion of the amount for which the City of New York is liable, followed by exhaustion of the available insurance coverage maintained by the Port Authority and other entities with a property interest in the World Trade Center on September 11, 2001, followed by exhaustion of the available insurance coverage maintained by individual contractors and subcontractors.

As amended in Committee, the bill caps the total amount of new compensation that could be awarded by the VCF to \$8.4 billion. The bill also caps the amount of such compensation that could be used to pay attorney's fees at 10 percent, except that the Special Master is given the discretion to raise this percentage for certain cases filed in the Southern District of New York prior to January 1, 2009. This discretion is provided to the Special Master to address cases where the 10 percent cap on attorney's fees may not provide adequate compensation for services rendered in connection with a claim because of the substantial amount of legal work expended on that claim during the period after which the initial period for filing claims under the VCF expired.

The bill also requires the Special Master to update regulations consistent with revisions to the Victim Compensation Fund under this bill.

#### HEARINGS

The Committee's Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and Subcommittee on the Constitution, Civil Rights, and Civil Liberties held a joint hearing on H.R. 847 on March 31, 2009. Testimony was received from Kenneth R. Feinberg, former Special Master, Victim Compensation Fund; Barbara Burnette, former Detective, New York City Police Department; James Melius, MD., Administrator, New York State Laborers' Health and Safety Trust Fund; Christine LaSala, Chief Executive Officer, World Trade Center Captive Insurance Fund; Michael A. Cardozo, Corporation Counsel, City of New York; Theodore H. Frank, American Enterprise Institute; and Richard Wood, President, Plaza Construction Corporation. Addi-

tional materials were submitted by the Associated Builders and Contractors (ABC) and Christine C. Quinn, Speaker, New York City Council.

#### COMMITTEE CONSIDERATION

On July 29, 2009, the Committee met in open session and ordered the bill H.R. 847 favorably reported with an amendment, by a rollcall vote of 22 to 9, 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 the following rollcall vote occurred during the Committee's consideration of H.R. 847:

1. An amendment by Mr. Smith to: (a) reduce the life of the Victim Compensation Fund from 22 to 5 years; (b) reduce the cap on the Fund from \$8.4 billion to \$5.5 billion; and (c) strike several provisions intended to expand eligibility under the VCF to first responders, recovery workers, and others injured as a result of exposure to World Trade Center toxins during recovery efforts and debris removal. Defeated 9 to 21.

#### ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman .....		X	
Mr. Berman .....			
Mr. Boucher .....			
Mr. Nadler .....		X	
Mr. Scott .....		X	
Mr. Watt .....		X	
Ms. Lofgren .....		X	
Ms. Jackson Lee .....		X	
Ms. Waters .....			
Mr. Delahunt .....			
Mr. Wexler .....		X	
Mr. Cohen .....		X	
Mr. Johnson .....		X	
Mr. Pierluisi .....		X	
Mr. Quigley .....		X	
Mr. Gutierrez .....			
Mr. Sherman .....		X	
Ms. Baldwin .....		X	
Mr. Gonzalez .....		X	
Mr. Weiner .....		X	
Mr. Schiff .....		X	
Ms. Sánchez .....		X	
Ms. Wasserman Schultz .....			
Mr. Maffei .....		X	
Mr. Smith, Ranking Member .....	X		
Mr. Sensenbrenner, Jr. ....	X		
Mr. Coble .....	X		
Mr. Gallegly .....			
Mr. Goodlatte .....			
Mr. Lungren .....		X	
Mr. Issa .....	X		
Mr. Forbes .....	X		
Mr. King .....	X		
Mr. Franks .....	X		
Mr. Gohmert .....	X		
Mr. Jordan .....	X		
Mr. Poe .....		X	

## ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Chaffetz .....			
Mr. Rooney .....		X	
Mr. Harper .....			
Total .....	9	21	

2. Motion to order the bill favorably reported as amended. Approved 22–9.

## ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman .....	X		
Mr. Berman .....			
Mr. Boucher .....			
Mr. Nadler .....	X		
Mr. Scott .....	X		
Mr. Watt .....	X		
Ms. Lofgren .....	X		
Ms. Jackson Lee .....	X		
Ms. Waters .....			
Mr. Delahunt .....			
Mr. Wexler .....	X		
Mr. Cohen .....	X		
Mr. Johnson .....	X		
Mr. Pierluisi .....	X		
Mr. Quigley .....	X		
Mr. Gutierrez .....			
Mr. Sherman .....	X		
Ms. Baldwin .....	X		
Mr. Gonzalez .....	X		
Mr. Weiner .....	X		
Mr. Schiff .....	X		
Ms. Sánchez .....	X		
Ms. Wasserman Schultz .....	X		
Mr. Maffei .....	X		
Mr. Smith, Ranking Member .....		X	
Mr. Sensenbrenner, Jr. ....		X	
Mr. Coble .....		X	
Mr. Gallegly .....			
Mr. Goodlatte .....			
Mr. Lungren .....	X		
Mr. Issa .....		X	
Mr. Forbes .....		X	
Mr. King .....		X	
Mr. Franks .....		X	
Mr. Gohmert .....			
Mr. Jordan .....		X	
Mr. Poe .....	X		
Mr. Chaffetz .....		X	
Mr. Rooney .....	X		
Mr. Harper .....			
Total .....	22	9	

## 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 Rep-

representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the House of Representatives, the Committee adopts the estimate prepared by the Director of the Congressional Budget Office printed below.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 847, 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, June 25, 2010.*

Hon. JOHN CONYERS, Jr., *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. 847, the "James Zadroga 9/11 Health and Compensation Act of 2010." As you requested, CBO has completed an estimate that reflects Title I of the bill as ordered reported by the Committee on Energy and Commerce and Title II as ordered reported by the Committee on the Judiciary.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Stephanie Cameron (Title I), who can be reached at 226-9010, and Leigh Angres (Title II), who can be reached at 226-2700.

Sincerely,

DOUGLAS W. ELMENDORF,  
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.  
Ranking Member

Identical letter sent to the Honorable Henry A. Waxman.

*H.R. 847—James Zadroga 9/11 Health and Compensation Act of 2010.*

Title I as ordered reported by the House Committee on Energy and Commerce on May 25, 2010, and

Title II as ordered reported by the House Committee on the Judiciary on July 29, 2009.

SUMMARY

H.R. 847 would establish the World Trade Center (WTC) Health Program and extend and expand eligibility for compensation under

the September 11th Victim Compensation Fund (VCF) of 2001. Specifically, H.R. 847 would provide:

- Health care benefits for eligible emergency personnel who responded to the September 11, 2001, terrorist attacks (the terrorist attacks) in New York City, the Pentagon, and Shanksville, Pennsylvania, and for workers who participated in recovery and cleanup following the attacks (collectively referred to as responders in this estimate);
- Health care benefits for eligible residents and others present in the area of New York City near the World Trade Center (defined as survivors under the bill); and
- Monetary compensation to individuals eligible under the bill to submit claims for death and physical injury claims resulting from the attacks.

CBO estimates that enacting H.R. 847 would increase direct spending by \$7.2 billion over the 2011–2015 period and \$10.5 billion over the 2011–2020 period. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending.

In addition, we estimate that, subject to appropriation of the necessary amounts, administering the VCF awards process would cost \$514 million over the next 10 years. However, assuming appropriation actions consistent with title I of the bill, CBO estimates a \$688 million reduction in discretionary outlays over the 2011–2020 period because some spending that is currently funded by annual appropriations would become direct spending under the bill. On balance, CBO estimates that discretionary spending would decrease by \$174 million over 10 years.

H.R. 847 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

H.R. 847 would impose a private-sector mandate as defined in UMRA. The bill would impose a mandate on individuals seeking compensatory damages or other relief arising from or related to debris removal from sites of the terrorist attacks by limiting the liability of entities from which individuals might win compensation. CBO cannot determine whether the aggregate cost of complying with that mandate would exceed the threshold established by UMRA for private-sector mandates in 2011 (\$141 million in 2010, adjusted annually for inflation).

#### ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 847 is shown in the following table. The costs of this legislation fall within budget functions 550 (health), 570 (Medicare), and 750 (administration of justice).

#### BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 847 will be enacted by the end of fiscal year 2010. H.R. 847 would provide health benefits and compensation to those who qualify based on a combination of factors, including where they were exposed to hazardous conditions following the terrorist attacks, and their current and expected future health conditions. CBO's estimate is based on an analysis of the size of the potentially affected populations, the prevalence of

certain health conditions in those populations, the propensity to seek health services or compensation from the program, and the monetary damages previously awarded by the VCF through 2004.

Under H.R. 847, spending for the WTC Health Program and VCF awards would increase direct spending, while the administrative costs associated with the VCF would be subject to future appropriations. Expenditures related to the WTC Health Program would be subject to annual spending caps totaling about \$4.6 billion through 2020, when the program would sunset. Award payments under the VCF would be subject to a lifetime spending cap of \$8.4 billion through 2032, when the program would cease operation.

---

**ESTIMATED BUDGETARY EFFECTS OF H.R. 847, THE JAMES ZADROGA 9/11 HEALTH AND COMPENSATION ACT OF 2010**

---

By Fiscal Year, in Millions of Dollars													
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011-2015	2011-2020	
CHANGES IN DIRECT SPENDING													
Title I: World Trade Center Health Program													
WTC Health Program													
Estimated Budget Authority	70	318	349	380	424	469	521	578	639	706	1,541	4,454	
Estimated Outlays	63	306	345	376	418	464	515	571	632	698	1,508	4,388	
Medicare and Medicaid													
Estimated Budget Authority	0	-5	-10	-10	-10	-20	-20	-30	-40	-40	-35	-185	
Estimated Outlays	0	-5	-10	-10	-10	-20	-20	-30	-40	-40	-35	-185	
Subtotal, Title I													
Estimated Budget Authority	70	313	339	370	414	449	501	548	599	666	1,506	4,269	
Estimated Outlays	63	301	335	366	408	444	495	541	592	658	1,473	4,203	
Title II: September 11th Victim Compensation Fund													
Estimated Budget Authority	500	1,000	3,500	500	200	150	150	100	100	100	5,700	6,300	
Estimated Outlays	450	950	3,250	800	230	155	150	105	100	100	5,680	6,290	
Total Changes in Direct Spending: Titles I and II													
Estimated Budget Authority	570	1,313	3,839	870	614	599	651	648	699	766	7,206	10,569	
Estimated Outlays	513	1,251	3,585	1,166	638	599	645	646	692	763	7,153	10,498	
CHANGES IN SPENDING SUBJECT TO APPROPRIATION													
Administration of the September 11th Victim Compensation Fund													
Estimated Authorization Level	75	100	200	100	10	10	5	5	5	5	485	515	
Estimated Outlays	56	94	175	125	33	10	6	5	5	5	483	514	
Appropriation for NIOSH World Trade Center Health Program													
Estimated Authorization Level	-71	-72	-73	-74	-75	-77	-78	-80	-81	-83	-365	-764	
Estimated Outlays	-26	-60	-69	-71	-73	-75	-76	-78	-79	-81	-299	-688	
Total Changes in Discretionary Spending													
Estimated Authorization Level	4	28	127	26	-65	-67	-73	-75	-76	-78	120	-249	
Estimated Outlays	30	34	106	54	-40	-65	-70	-73	-74	-76	184	-174	

Note: NIOSH = National Institute of Occupational Safety and Health.

---

On June 10, 2010, a Federal district court judge approved a settlement between firefighters, police, contractors, and others who

worked at the World Trade Center site, and New York City and its contractors for claims of injuries associated with their rescue and cleanup work. To become final, the settlement requires the participation of 95 percent of the plaintiffs, who have yet to agree to the terms. Should that settlement become final, CBO expects that the number and value of compensation awards provided through the VCF would be lower than presented in this cost estimate for H.R. 847.

#### *Eligible Population*

CBO's analysis focused on two populations—responders and survivors. The responder population includes those who were involved in the rescue, recovery, and cleanup efforts following the terrorist attacks in 2001. Survivors include commuters, residents, “passers-by,” and students who were in the New York City (NYC) disaster area around the time of the attacks and in the months following. Under H.R. 847, CBO estimates that roughly 650,000 individuals from the NYC disaster area—approximately 75,000 responders and 575,000 survivors—would meet the exposure requirements specified in the legislation, along with potentially another 10,000 responders from the Pentagon and Shanksville, Pennsylvania, sites. Although many of those individuals may have or develop health conditions related to the terrorist attacks, CBO estimates that only a portion would participate in the WTC Health Program and apply for an award under the VCF. Overall, CBO expects that of the total population that meets the exposure requirements, slightly less than 15 percent would enroll in the WTC Health Program by 2020 and slightly more than 5 percent would receive awards from the VCF. Those estimated participation rates reflect people's willingness to enroll in government programs as well as additional requirements that would have to be met to receive a VCF award.

**Geographic and Time-Period Requirements.** Title I specifies that individuals must have been present in the following locations following the terrorist attacks to be eligible for the new health program: NYC disaster area, the Pentagon site, and the Shanksville, Pennsylvania, site. Title II would give discretion to the VCF Special Master (appointed by the U.S. Attorney General to administer the fund) to define the geographic area for awards from that fund; for this estimate, CBO assumes that the geographic areas of exposure specified in title I would also be used as the criteria for compensation payments under title II. Title I defines the NYC disaster area as the part of Manhattan that is south of Houston Street and any block in Brooklyn that is wholly or partially contained within a 1.5-mile radius of the former World Trade Center site. H.R. 847 would also base eligibility on the amount of time an individual spent in the specified region. Based on those requirements, CBO estimates that about 75,000 responders and 575,000 survivors from the NYC disaster area would meet the geographic-eligibility and time-period requirements specified in H.R. 847, as well as potentially another 10,000 responders from the Pentagon and Shanksville, Pennsylvania, sites.

Those estimates are based on information collected by certain hospitals (known as the Centers of Excellence) in the NYC area that are treating responders, New York City's Department of Health and Mental Hygiene, the U.S. Department of Health and



Human Services, Research Triangle International, and New York State Laborers' Tri-Fund. In particular, CBO's analysis relies heavily on the WTC Health Registry which was developed by New York City's Department of Health and Mental Hygiene and the U.S. Department of Health and Human Services (HHS) to document and evaluate the short- and long-term physical and mental health issues associated with the terrorist attacks and recovery efforts. The Registry established eligibility criteria that considered an individual's residence, location at the time of attacks, and intensity and duration of exposure to hazardous conditions. About 71,000 individuals enrolled voluntarily in this Registry before it closed in November 2004.

**Diseases.** The bill would require a determination that the terrorist attacks were substantially likely to be a significant factor in aggravating, contributing to, or causing the condition or illness prior to receiving treatment through the WTC Health Program. Title I would specify certain physical and mental health conditions deemed WTC-related for both responders and survivors. Title II would give discretion to the Special Master to determine what physical conditions would be eligible for an award; for this estimate, CBO assumes that the diseases specified in title I would also be used as criteria for compensation payments.

In general, individuals whose health conditions developed or were aggravated as a result of the terrorist attacks cannot easily be distinguished from individuals whose conditions would have developed or worsened in the absence of those attacks. Therefore, CBO considered the entire population that may develop and seek treatment for eligible physical and mental health conditions that might be associated with the aftermath of the terrorist attacks. The existence of a causal relationship between the attacks and specific diseases generally would be difficult to establish or disprove.

CBO analyzed more than a dozen studies on the incidence and prevalence of the WTC-related health conditions in both responders and survivors. We also analyzed data collected in the Morbidity and Mortality Weekly Report (MMWR) and population level data collected by the Medical Expenditure Panel Survey (MEPS). The MEPS collects annual data pertaining to the use of health care services, sources of payment for those services, and health insurance coverage. Based on those analyses, CBO estimates that about 280,000 of the individuals (about 40 percent) who meet the exposure criteria defined in the legislation have or will develop a health condition that meets the criteria set in the bill.

Responders who meet the geographic-eligibility criteria and survivors who both meet the geographic-eligibility criteria and develop a qualifying physical or mental health condition, as defined in the bill, would be eligible to enroll in the WTC Health Program. CBO estimates that about 50,000 responders and 230,000 survivors would develop at least one qualifying physical or mental health condition. That estimate reflects the prevalence of the eligible conditions among the general population as well as the increase in prevalence attributable to the attacks themselves.

Eligibility for an award under the VCF would differ from that for the WTC Health Program. The VCF would only compensate individuals with physical health conditions who have received treat-

ment. CBO estimates that about 100,000 responders and survivors would meet those criteria.

*Direct Spending*

CBO estimates that enacting H.R. 847 would increase direct spending by \$10.5 billion over the 2011–2020 period. About \$4.2 billion of that amount would result from spending for health care benefits provided under title I. The remaining \$6.3 billion would be spent on compensation payments provided under title II.

**Title I: Health Care Benefits.** Under current law, the National Institute of Occupational Safety and Health (NIOSH) provides funding to several programs that offer medical monitoring and treatment to responders and survivors with conditions associated with the September 11, 2001, terrorist attacks under the umbrella of the WTC Medical Monitoring and Treatment Program. Those programs treat or have enrolled approximately 60,000 individuals: about 40,000 in the Mt. Sinai Coordinated Consortium Responder Health Program and the National Responder Program; about 16,000 in the Fire Department City of New York Responder Health Program; and about 4,600 survivors in the WTC Environmental Health Center Program. Funding for those programs is subject to annual appropriation. For 2010, \$70 million was appropriated to NIOSH through the Centers for Disease Control and Prevention (CDC) to support those programs.

H.R. 847 would establish the WTC Health Program within HHS to replace and expand the NIOSH programs. The WTC Health Program would provide monitoring and treatment benefits for qualifying health conditions to individuals who were engaged in emergency response, recovery, and cleanup operations related to the terrorist attacks. It also would provide monitoring and treatment benefits to certain residents and others with a qualifying health condition who were working, visiting, or residing near the WTC during the year following the attacks. H.R. 847 would replace annual appropriations for the NIOSH programs with mandatory funding for the WTC Health Program. (An estimated reduction in authorized discretionary spending is discussed below under “Spending Subject to Appropriation.”)

CBO estimates that, if unconstrained, the WTC Health Program would cost between \$5 billion and \$6 billion over the 2011–2020 period. In contrast, the cap on Federal spending specified in H.R. 847 is about \$4.6 billion over that same period. Taking that spending cap into consideration, CBO estimates that gross spending would total \$4.4 billion over the 2011–2020 period. The WTC Health Program also would result in some savings for Medicare and Medicaid, yielding a net increase in direct spending of \$4.2 billion over the 2011–2020 period, as shown in the table on page 3. CBO also estimates that New York City would contribute \$0.5 billion to the WTC Health Program over the 2011–2020 period.

*Program Participation.* The WTC Health Program would cover individuals enrolled in the existing programs as of the date of enactment and would allow up to an additional 25,000 responders and 25,000 survivors to enroll in the program. H.R. 847 defines exposure and health criteria for an eligible WTC responder and an eligible WTC survivor. The program’s administrator would be al-

lowed to expand those eligibility criteria until 80 percent of the numerical limitation is reached.

CBO estimates that about 65,000 of the approximately 85,000 responders at the various sites who would meet the exposure criteria would enroll in the WTC Health Program and that about 20 percent of those enrollees would receive treatment through the program in a given year. We estimate that about 250,000 individuals, or roughly 40 percent of the approximately 575,000 survivors who would meet those criteria, would also meet the health condition criteria specified in title I of H.R. 847. CBO expects that less than 10 percent of those individuals would enroll in the WTC Health Program by 2020. In part, this estimate reflects the expectation that most individuals will continue to receive care from providers who are not affiliated with a Center of Excellence or the WTC Health Program. CBO further expects that, in a given year, slightly less than half of the enrolled survivors would receive treatment through the WTC Health Program.

**Survivor and Responder Health Benefits.** H.R. 847 would provide for health benefits, including monitoring and medically necessary follow-up treatment for enrolled responders. Survivors would receive an initial health evaluation to determine program eligibility. Once eligibility is determined, H.R. 847 would provide for monitoring and medically necessary follow-up treatment for survivors. Monitoring, initial health evaluations, and medically necessary follow-up would only be covered when provided by Centers of Excellence or by providers who participate in the nationwide network established by the WTC program administrator. The WTC Health Program would also provide funding for coordination and administrative expenses for the Centers of Excellence. CBO estimates that the cost of the health benefits program (including initial health evaluations, monitoring, treatment, and administration) would total up to \$4.5 billion over the 2011–2020 period. That amount comprises about \$4.2 billion for monitoring and medically necessary treatment and \$0.3 billion for administrative costs.

The WTC Health Program would pay for the monitoring and medically necessary treatment costs associated with a qualifying health condition that are not covered by a patient's primary insurer, including deductibles, copayments, coinsurance, and other cost-sharing requirements. (As a practical matter, the WTC Health Program would be the primary insurer for individuals covered by Medicare.) H.R. 847 specifies a series of WTC-related health conditions; however, H.R. 847 would authorize the administrator to approve conditions and illnesses not specified in the legislation but deemed to be a WTC-related health condition for treatment. The administrator could also add illnesses and conditions to the list of WTC-related health conditions through the rulemaking process, which might include requesting a recommendation of the Advisory Panel. In addition, for an individual, a condition not on the list would be deemed to be WTC-related if a physician determines that it was likely to have been caused or aggravated by exposure to the terrorist attacks.

CBO estimated the cost of treatment for WTC-related health conditions using data from MEPS, Medicare, and the Federal Employees Compensation Act (FECA) program. CBO analyzed MEPS data to estimate the national average cost of treating qualifying condi-

tions. Those costs were then adjusted to reflect the relative costs in New York City—spending per Medicare enrollee is about 20 percent higher in New York City than the national average—and to account for differences between payment rates in the FECA program and those underlying our estimate of national average cost. Those costs were then projected based on CBO’s estimates of growth in per capita health spending. The administrator would be required to establish a program for necessary outpatient prescription pharmaceuticals prescribed under this title through contracts with one or more vendors. Separately, CBO estimated the cost of outpatient prescription drugs and assumed that those payment amounts would be comparable to prices paid in the private market.

The WTC Health Program would be the secondary payer for survivors with private insurance or Medicaid coverage and for responders receiving benefits from a non-NYC worker’s compensation or other work-related injury or illness benefit plan. For those individuals, the program would pay the difference between FECA payment rates and the amounts paid by the primary insurer; the individual would have no out-of-pocket obligation.<sup>1</sup> CBO estimates that primary insurers would cover about 60 percent of the cost of treating WTC-related health conditions for those individuals, with the WTC Health Program paying the rest.

CBO estimates that Federal spending for Medicaid would be reduced by about \$30 million over the 2011–2020 period. Those savings would occur largely because, in some cases, providers would bill the WTC Health Program instead of Medicaid to avoid the administrative cost of dealing with two payers.

The WTC Health Program would reduce Medicare spending because it would replace Medicare as the primary payer for individuals enrolled in Medicare. CBO estimates that Medicare savings would total about \$155 million over the 2011–2020 period.

CBO estimates that costs incurred to administer health evaluations, monitor, and provide treatment would total up to \$0.3 billion over the 2011–2020 period. H.R. 847 would direct the administrator to enter into contracts with Clinical Centers of Excellence to provide monitoring and treatment benefits and initial health evaluations, counseling, outreach, translational and interpretive services, and to collect and report on utilization, incidence, and prevalence data.

*Other Health Benefits and Program Funding.* H.R. 847 would provide funding for:

- Mental health benefits for surviving family members of responders who died at the WTC site on September 11, 2001;
- Creation of a scientific committee and technical advisory committee;
- Education and outreach;
- Uniform data collection;
- Research pertaining to conditions related to the September 11, 2001, terrorist attacks; and

<sup>1</sup>For responders employed by New York City, all WTC-related conditions would be considered work-related. The legislation would relieve the city’s worker’s compensation program or other work-related injury or illness benefit plan of the obligation to pay for those conditions in return for the city’s participation in the financing of the WTC Health Program.

- Maintaining ongoing data collection through the WTC health registry.

The bill specifies a maximum amount for each of those activities. CBO estimates that the costs of those activities would total up to \$0.5 billion over the 2011–2020 period. In addition, H.R. 847 would provide funding for training and technical assistance, transportation expenses, and claims processing. CBO estimates that the costs of those activities would total an additional \$0.2 billion over the 2011–2020 period. Thus, the total cost of other activities would total up to \$0.7 billion over the 2011–2020 period.

*World Trade Center Health Program Fund.* H.R. 847 would establish the WTC Health Program Fund to pay for the benefits included under title I. New York City and the Federal Government would contribute to the fund based on percentages and amounts provided in the legislation.

The legislation would authorize implementation of the WTC Health Program only if New York City enters into a contract with the WTC program administrator in which the city agrees to pay 10 percent of program costs. This estimate assumes that the city would enter into that contract and that the city would reimburse the WTC Health Program within six to nine months. (Alternatively, if the city would not enter into a contract with the administrator, CBO expects that no payments would be made from the WTC Health Program Fund, resulting in no increase in direct spending over the 2011–2020 period.)

The Federal Government would be required to contribute the lesser of 90 percent of the program expenditures or an annual amount specified in the legislation. That cap on Federal spending would rise from \$71 million in 2011 to \$743 million in 2020 and would total about \$4.6 billion over the 2011–2020 period.

In the absence of a cap, CBO estimates that the Federal share of annual expenditures for the WTC Health Program would probably be about 1 percent to 5 percent higher than the annual caps. However, CBO's cost estimate targets the midpoint of a distribution of likely spending outcomes. Establishing a cap on annual spending truncates that distribution of likely outcomes by eliminating the potential for spending above the cap. Therefore, the middle of the truncated range of likely spending outcomes would be slightly below the cap. As a result, CBO estimates that Federal spending would total about \$4.4 billion over the 2011–2020 period.

H.R. 847 would require New York City to cover 10 percent of the expenditures for carrying out title I. If the city pays its share, the WTC Health Program would assume responsibility for treatment costs for responders that would under current law be the responsibility of the city's worker's compensation or other work-related injury or illness benefit plan. Late payments from the city would accrue interest on the unpaid amount. For the purpose of our estimate, we assume that New York City would make payments on time. If the city fails to pay pursuant to its contract with the administrator and interest accrues on the unpaid amount, the Federal expenditures would reach the cap more quickly.

CBO estimates that the city of New York would contribute about \$0.5 billion over the 2011–2020 period.

**Title II: Compensation Payments.** Title II would reopen the September 11, 2001, Victim Compensation Fund, which provided compensation to any individual (or relatives of a deceased individual) who was physically injured or killed as a result of the terrorist attacks. The VCF, which terminated operations in 2004, was established by the Air Transportation Safety and System Stabilization Act (Public Law 107–42) as an administrative alternative to litigation. That act created a Special Master, who determined the compensation levels based on specified eligibility criteria and subsequent regulations. Through 2004, the VCF made 2,880 death and 2,680 injury awards, totaling more than \$7 billion (about \$6 billion was for death awards). Public Law 107–42 did not cap the number or amount of awards that could be issued by the Special Master.

H.R. 847 would establish broader eligibility rules for compensation than those established for the VCF under Public Law 107–42. Under the bill, total payments would be capped at \$8.4 billion through 2032. CBO estimates that compensation payments would total \$6.3 billion over the 2011–2020 period, with about 90 percent (\$5.7 billion) of those payments made in the first five years following enactment. Most of the awards would be for physical injuries associated with the attacks or with debris removal and response activities following the attacks. CBO estimates that the VCF would make additional payments totalling about \$300 million after 2020.

CBO's estimate of those payments is based on a number of assumptions and projections regarding eligibility, average award amounts, and attorneys' fees.

*Changes in Eligibility.* Title II would make many more individuals who were involved in the rescue, recovery, and cleanup efforts potentially eligible for compensation. Based on information provided by the previous Special Master of the VCF, CBO assumes that the VCF would be administered in the same manner as it was previously but would reflect new regulations written after the bill's enactment. Those regulations would reflect the following changes made by the bill:

- *Time Present at Site:* Eligibility would be determined in part based on the time an individual was present or near the sites of the terrorist attacks. Specifically, the bill would require that an eligible individual must have been at those sites some time during the period beginning on September 11, 2001, and ending on August 30, 2002. Prior to the sunset of the original VCF, the implementing regulations required that an individual had to have been present at those sites during the 12 hours immediately following the attacks, or for responders, 96 hours after the attacks.
- *Geographical Expansion:* Based on regulations promulgated under Public Law 107–42, the Special Master originally defined the crash site as a zone bounded by specific streets very close to the WTC area. H.R. 847 would expand the definition of the crash site to include routes related to debris removal (such as barges and landfills). Although the bill does not specify other changes to the site definition, the Special Master would have discretion to expand the site if it is determined that there was demonstrable risk of physical harm in

adjacent areas. For this estimate, CBO assumes that the new regulations would extend the boundaries to be the same as those defined for eligibility for the health care benefits authorized in title I of the bill.

- *Extended Claims Filing Deadlines:* Generally, the filing deadline under the bill would depend primarily on when the Special Master determines that a claimant realizes that he or she suffered some form of physical harm resulting from the terrorist attacks or associated debris removal. If the Special Master determines that a claimant was aware (or should have been aware) of such an injury by the time the regulations are promulgated, the claimant would have two years to file from that time (roughly by the end of December 2012). For all others, if a claimant realizes such an injury after the new regulations are finalized, the claimant would have two years from when the Special Master determines that the claimant should have been aware of such injury. All claims would have to be filed by December 22, 2031.

*Awards and Average Award Amount.* CBO expects that the bill's expanded eligibility criteria would significantly increase the number of individuals who could seek compensation from the VCF. CBO expects that most of the awards would be for injuries associated with the attacks, and therefore our analysis focused on those claims. Further, the bill would not provide compensation for mental health conditions although it would provide treatment for mental illnesses under title I. Over the next 10 years, CBO estimates that about 35,000 awards would be made, with an average award amount of about \$180,000.

- *Number of Awards:* CBO expects that the number awards would depend largely on the estimated number of responders and survivors who have or will have health conditions or symptoms associated with the terrorist attacks and recovery efforts, and are being treated for such conditions. Under H.R. 847, the VCF would require that all claimants prove they were treated by medical professionals and provide contemporaneous medical records to verify that treatment. CBO estimates that about 100,000 individuals—nearly 25,000 responders and more than 75,000 survivors—would meet that additional eligibility requirement.

CBO estimated the proportion of those individuals who would file a claim by reviewing studies on the propensity of individuals to seek legal remedy for injuries. Although CBO estimates that the overall claim rate would be a bit under 50 percent, we expect that responders would have a much higher filing rate than survivors because of their involvement in the existing treatment programs at the Centers of Excellence and because of the efforts by certain union organizations to publicize the possible health issues associated with the cleanup efforts.

Taking into account the VCF's previous approval rate and the approval rates of other compensation programs, CBO estimates that about 35,000 awards would be made, including payments to nearly 20,000 responders and 15,000 survivors. CBO expects that the number of death claims would be very

small because there is little evidence that many individuals have died from injuries caused by the 2001 terrorist attacks after compensation benefits were first awarded.

- *Average Award Amount:* Under the bill, award amounts would be determined in the same way as they were before the sunset of the original VCF. Awards would comprise two parts—economic and noneconomic loss—adjusted for collateral offsets such as pensions. For injury victims, economic loss would reflect the actual lost income or expenses incurred as a direct result of the injury and future lost income and costs due to those injuries. Noneconomic loss would reflect compensation for pain and suffering due to injuries associated with the attacks. Awards, which would be provided in one payment, would be determined within 120 days of filing the claim and paid within 20 days of such determination.

Based on information provided by administrators of the previous VCF program, CBO estimates that the average injury award would be about \$180,000. (For death claims, the average award would be about \$2 million, the same amount provided under the original VCF.) CBO estimated the average injury award by considering the characteristics of the current population enrolled in WTC Medical Monitoring and Treatment Programs, including average age, extent of disability, estimated income, and employer-provided benefits such as pensions and health insurance. CBO estimates that the average award would be higher for responders—about \$240,000 per claim—because we expect that a greater proportion of responders have more serious injuries. In contrast, we estimate that awards for survivors would average about \$100,000. The award estimates also were adjusted to account for certain health care benefits provided under title I.

*Attorneys' Fees.* This estimate does not include any significant additional costs for attorneys' compensation that the Special Master could award under the bill. The bill would give the Special Master discretion to provide compensation to attorneys for services rendered on cases filed in district court for injuries associated with the terrorist attacks, but CBO expects that this authority would be used sparingly, based on the historical experience of the VCF. Previously, attorneys provided free legal assistance to claimants.

#### *Spending Subject to Appropriation*

CBO estimates that implementing H.R. 847 would decrease discretionary spending by \$174 million over the 2011–2020 period.

**Administering VCF Awards.** Under H.R. 847, additional funding would be required to administer the VCF. The original compensation program was administered by the Department of Justice's (DOJ's) Civil Division. About \$87 million was spent to process about 7,400 claims, and the average administrative cost per claim was about \$11,500. Under the bill, CBO assumes that DOJ would again administer and oversee the program.

Based on information provided by DOJ, CBO estimates that the average cost to process a claim under H.R. 847 would be about \$10,000. CBO expects that the average cost would be lower than under the original program because the administrative infrastruc-



ture already exists and because we assume that certain efficiencies would be achieved with a larger number of claims. In total, CBO estimates that, assuming appropriation of the necessary amounts, administrative costs for the program would total \$483 million over 2011–2015 period and \$514 million over the 2011–2020 period to process an estimated 50,000 claims, including many from individuals who would not qualify for an award. Most of that amount would be for salaries of hundreds of individuals to process millions of documents, operate a claims management system, and manage 20 to 30 claims-assistance sites around the country. Compensation also would be provided for DOJ attorneys, administrative law judges, and support staff.

**NIOSH World Trade Center Health Program.** As discussed above, the enactment of H.R. 847 would replace annual appropriations with mandatory funding for NIOSH through CDC. Under the current-law baseline, CBO projects that discretionary appropriations will continue at the current level of funding adjusted annually for anticipated inflation. Assuming appropriation actions consistent with the bill, CBO estimates that appropriations for NIOSH would be reduced by \$71 million in 2011 and increasing amounts in subsequent years because that baseline spending would be replaced by new direct spending under H.R. 847. We estimate that the reduction in appropriations would total \$764 million over the 2011–2020 period, resulting in a corresponding reduction in outlays of \$688 million over the same 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 the following table.

**CBO Estimate of Pay-As-You-Go Effects for Title I of H.R. 847 as Ordered Reported by the House Committee on Energy and Commerce on May 25, 2010, and Title II of H.R. 847 as Ordered Reported by the House Committee on the Judiciary on July 29, 2009**

	By Fiscal Year, in Millions of Dollars														2010- 2015	2010- 2020
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020					
	NET INCREASE OR DECREASE (-) IN THE DEFICIT															
Statutory Pay-As-You-Go Impact	0	513	1,251	3,585	1,166	638	599	645	646	692	763	7,153	10,498			

#### ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 847 contains no intergovernmental mandates as defined in UMRA. The bill would place conditions on the city of New York for participating in the health program authorized by the bill, but those conditions would not be intergovernmental mandates as defined in UMRA.

## ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 847 would impose a private-sector mandate as defined in UMRA by limiting the liability of New York City, any entity with a property interest in the World Trade Center on September 11, 2001, and any contractors and subcontractors thereof. Liability would be limited to the total amount of available insurance coverage of those entities for compensatory damages or other relief arising from or related to debris removal from sites of the terrorist attacks. By limiting the liability of those entities, the bill would impose a mandate on individuals seeking compensatory damages or other relief. Because of uncertainty about the potential amount of the awards and the ability of the city of New York and other entities whose liability would be limited to pay for any awards in excess of the liability limit, CBO cannot determine the costs the mandate would impose on the affected individuals.

## ESTIMATE PREPARED BY:

Federal Costs: Stephanie Cameron, Leigh Angres, and Chapin White

Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum

Impact on the Private Sector: Sarah Axeen

## ESTIMATE APPROVED BY:

Holly Harvey, Deputy Assistant Director for Budget Analysis

## 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. 847 will establish a program to provide health care monitoring and treatment to persons injured during recovery efforts and debris removal at September 11, 2001 crash sites, and it will reopen the September 11 Victim Compensation Fund to provide compensation for such injured individuals.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 3 of the Constitution.

## ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 847 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.

## SECTION-BY-SECTION ANALYSIS

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

*Sec. 1. Short Title; Table of Contents.* Section 1 sets forth the short title of the bill as the “James Zadroga 9/11 Health and Com-

pensation Act of 2010.” The section also sets forth the table of contents of the bill.

*Sec. 2. Findings.* Section 2 sets forth several findings of Congress.

*Sec. 101. World Trade Center Health Program.* Section 101 amends the Public Health Service Act to establish the World Trade Center Health Program (WTC program) within the National Institute for Occupational Safety and Health to provide medical monitoring and treatment benefits to emergency responders, recovery and cleanup workers, area residents and others who were directly impacted and adversely affected by the attacks of September 11, 2001.

*Sec. 201. Definitions.* Section 201 amends the original Victim Compensation Fund provisions within the Air Transportation Safety and System Stabilization Act as follows:

- amends the definition of “collateral source” by including payments related to debris removal;
- defines “contractor and subcontractor” to mean any entity that participated in debris removal at any September 11 crash site, except for any such entity with a property interest in the World Trade Center on September 11, 2001;
- defines “debris removal” to mean rescue and recovery efforts, removal of debris, cleanup, remediation, and response during the immediate aftermath of the September 11 attacks;
- defines “immediate aftermath” to mean any period beginning with the terrorist-related aircraft crashes of September 11, 2001, and ending on August 30, 2002; and
- defines “9/11 crash site” to mean: (1) the World Trade Center, Pentagon, and Shanksville, Pennsylvania crash sites; (2) the buildings or portions of buildings destroyed as a result of the September 11 aircraft crashes; (3) any areas contiguous to the site of such crashes that the Special Master determines are sufficiently close to the site so that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses; and (4) any area related to, or along, routes of debris removal, such as barges and Fresh Kills.

*Sec. 202. Extended and Expanded Eligibility for Compensation.* Section 202 amends the Air Transportation Safety and System Stabilization Act to generally extend and expand eligibility for compensation under the Victim Compensation Fund.

Subsection (a) requires that the eligibility claim form for compensation benefits be amended to also request information concerning physical harm or death resulting from debris removal related to the September 11 attacks.

Subsection (b) provides new deadlines for claims related to physical harm or death from debris removal at the crash sites that would extend to December 22, 2031.

Subsection (c) establishes timing and proof requirements for claims filed during the extended filing period.

Subsection (d) makes a technical correction to the original Victims Compensation Fund to clarify that claimants may include individuals who were present at other September 11 aircraft crash

sites at the time of, or in the immediate aftermath of, the aircraft crashes.

Subsection (e) amends the eligibility requirements for claimants to include individuals who suffered physical harm resulting from debris removal.

Subsection (f) requires an individual filing a claim for compensation related to debris removal to waive his or her right to file a civil action or be party to such action in any Federal or state court for damages sustained as the result of the September 11 terrorist attacks. Any individual who was a party to such action, withdrew from such action in order to submit a claim for compensation, and was found ineligible for compensation, is permitted to reinstitute the civil action without prejudice during the 90-day period after ineligibility is determined.

*Sec. 203. Requirement to Update Regulations.* Section 203 amends the Air Transportation Safety and System Stabilization Act to require the Special Master to update, within 90 days of enactment, VCF regulations to reflect the changes made by this Act.

*Sec. 204. Limited Liability for Certain Claims.* Section 204 amends the Air Transportation Safety and System Stabilization Act to limit the liability of certain entities for civil claims and actions arising from or related to debris removal, including claims or actions previously resolved, currently pending, and that may be filed through December 22, 2031. Liability for such claims or actions is limited to the amount of funds held by the World Trade Center Captive Insurance Company, the amount of available insurance coverage identified in schedule 2 of the Captive Insurance Company insurance policy, and the amount of insurance coverage held by the City of New York, by entities with a property interest in the World Trade Center on September 11, 2001, and by contractors and subcontractors that participated in debris removal.

Section 204 specifically provides that the individual liability of the City of New York is limited to the City's insurance coverage or \$350,000,000, whichever is greater. The liability of the Port Authority of New York and New Jersey and any other entity with a property interest in the World Trade Center on September 11, 2001 is limited to the amount of all available insurance coverage maintained by any such entity. The liability of any contractor or subcontractor that participated in debris removal is limited to the amount of available liability insurance maintained by such contractor or subcontractor.

Section 204 also establishes a priority of funds from which plaintiffs may satisfy judgments or settlements obtained for civil claims or actions related to debris removal. The priority requires exhaustion of amounts held by the Captive Insurance Company and identified insurance policies, followed by exhaustion of the amount for which the City of New York is liable, followed by exhaustion of the available insurance coverage maintained by the Port Authority and other entities with a property interest in the World Trade Center on September 11, 2001, followed by exhaustion of the available insurance coverage maintained by contractors and subcontractors. In addition, section 204 specifies that any party to a claim or action can file an action for a declaratory judgment for insurance coverage or bring a direct action against the insurance company involved.

*Sec. 205. Funding; Attorney Fees.* Section 205 amends the Air Transportation Safety and System Stabilization Act to cap the total payment of amounts for compensation from the VCF to \$8.4 billion with respect to claims filed on or after the Special Master updates the Fund's regulations. Section 205 would also cap at 10 percent the percentage of compensation that attorneys could receive in fees, except that the Special Master is given the discretion to raise this percentage for certain cases filed in the Southern District of New York prior to January 1, 2009. This discretion is provided to the Special Master to address cases where the 10 percent cap on attorneys' fees may not provide adequate compensation for services rendered in connection with a claim because of the substantial amount of legal work expended on that claim during the period after which the initial period for filing claims under the VCF expired.

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

The bill was referred to this committee for consideration of such provisions of the bill as fall within the jurisdiction of this committee pursuant to clause 2 of rule XII of the Rules of the House of Representatives. 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 italics, existing law in which no change is proposed is shown in roman):

### AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT

## TITLE IV—VICTIM COMPENSATION

\* \* \* \* \*

#### SEC. 402. DEFINITIONS.

In this title, the following definitions apply:

(1) \* \* \*

\* \* \* \* \*

(6) **COLLATERAL SOURCE.**—The term “collateral source” means all collateral sources, including life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to the terrorist-related aircraft crashes of September 11, 2001, *or debris removal, including under the World Trade Center Health Program established under section 3001 of the Public Health Service Act.*

(7) **CONTRACTOR AND SUBCONTRACTOR.**—*The term “contractor and subcontractor” means any contractor or subcontractor (at any tier of a subcontracting relationship), including any general contractor, construction manager, prime contractor, consultant, or any parent, subsidiary, associated or allied company, affiliated company, corporation, firm, organization, or joint venture thereof that participated in debris removal at any 9/11 crash site. Such term shall not include any entity, including the Port*

*Authority of New York and New Jersey, with a property interest in the World Trade Center, on September 11, 2001, whether fee simple, leasehold or easement, direct or indirect.*

(8) *DEBRIS REMOVAL.*—The term “debris removal” means rescue and recovery efforts, removal of debris, cleanup, remediation, and response during the immediate aftermath of the terrorist-related aircraft crashes of September 11, 2001, with respect to a 9/11 crash site.

[(7)] (9) *ECONOMIC LOSS.*—The term “economic loss” means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

[(8)] (10) *ELIGIBLE INDIVIDUAL.*—The term “eligible individual” means an individual determined to be eligible for compensation under section 405(c).

(11) *IMMEDIATE AFTERMATH.*—The term “immediate aftermath” means any period beginning with the terrorist-related aircraft crashes of September 11, 2001, and ending on August 30, 2002.

[(9)] (12) *NONECONOMIC LOSSES.*—The term “noneconomic losses” means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

[(10)] (13) *SPECIAL MASTER.*—The term “Special Master” means the Special Master appointed under section 404(a).

(14) *9/11 CRASH SITE.*—The term “9/11 crash site” means—

(A) *the World Trade Center site, Pentagon site, and Shanksville, Pennsylvania site;*

(B) *the buildings or portions of buildings that were destroyed as a result of the terrorist-related aircraft crashes of September 11, 2001;*

(C) *any area contiguous to a site of such crashes that the Special Master determines was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses (including the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured individuals); and*

(D) *any area related to, or along, routes of debris removal, such as barges and Fresh Kills.*

\* \* \* \* \*

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

(a) **FILING OF CLAIM.**—

(1) \* \* \*

(2) **CLAIM FORM.**—

(A) \* \* \*

(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.—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.]

(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) and ending on December 22, 2031.*

\* \* \* \* \*

(c) ELIGIBILITY.—

(1) \* \* \*

(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), **[or the site of the aircraft crash at Shanksville, Pennsylvania]** *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*;

\* \* \* \* \*

(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.**—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(a).*

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

**[(B)] (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 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.]

(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).*

(iii) *AUTHORITY TO REINSTITUTE CERTAIN LAWSUITS.—In the case of a claimant who was a party to a civil action described in clause (i), who withdrew from such action pursuant to clause (ii), and who is subsequently determined to not be an eligible individual for purposes of this subsection, such claimant may reinstitute such action without prejudice during the 90-day period beginning after the date of such ineligibility determination.*

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

(a) *IN GENERAL.—[Not later than] Subject to 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.—[This title] Subject to subsection (d), this title constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment of amounts for compensation under this title.*

\* \* \* \* \*

(d) *LIMITATION.—The total payment of amounts for compensation under this title, with respect to claims filed on or after the date on which the regulations are updated under section 407(b), shall not exceed \$8,400,000,000.*

(e) *ATTORNEY FEES.—*

*(1) IN GENERAL.—Notwithstanding any contract, and except as provided in paragraph (2), 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) *EXCEPTION.*—With respect to a claim made on behalf of an individual for whom a lawsuit was filed in the Southern District of New York prior to January 1, 2009, in the event that the representative believes in good faith that the fee limit set by paragraph (1) will not provide adequate compensation for services rendered in connection with such claim because of the substantial amount of legal work provided on behalf of the claimant (including work performed before the enactment of this legislation), application for greater compensation may be made to the Special Master. Upon such application, the Special Master may, in his or her discretion, award as reasonable compensation for services rendered an amount greater than that allowed for in paragraph (1). Such fee award will be final, binding, and non-appealable.

**SEC. 407. REGULATIONS.**

**[Not later than]** (a) *IN GENERAL.*—Not later than 90 days after the date of enactment of this Act, the Attorney General, in consultation with the Special Master, shall promulgate regulations to carry out this title, including regulations with respect to—

(1) \* \* \*

\* \* \* \* \*

(b) *UPDATED REGULATIONS.*—Not later than 90 days after the date of the enactment of the James Zadroga 9/11 Health and Compensation Act of 2010, the Special Master shall update the regulations promulgated under subsection (a) to the extent necessary to comply with the provisions of title II of such Act.

**SEC. 408. LIMITATION ON LIABILITY.**

(a) *IN GENERAL.*—

(1) \* \* \*

\* \* \* \* \*

(4) *LIABILITY FOR CERTAIN CLAIMS.*—Notwithstanding any other provision of law, liability for all claims and actions (including claims or actions that have been previously resolved, that are currently pending, and that may be filed through December 22, 2031) for compensatory damages, contribution or indemnity, or any other form or type of relief, arising from or related to debris removal, against the City of New York, any entity (including the Port Authority of New York and New Jersey) with a property interest in the World Trade Center on September 11, 2001 (whether fee simple, leasehold or easement, or direct or indirect) and any contractors and subcontractors, shall not be in an amount that exceeds the sum of the following, as may be applicable:

(A) The amount of funds of the WTC Captive Insurance Company, including the cumulative interest.

(B) The amount of all available insurance identified in schedule 2 of the WTC Captive Insurance Company insurance policy.

(C) As it relates to the limitation of liability of the City of New York, the amount that is the greater of the City of New York's insurance coverage or \$350,000,000. In determining the amount of the City's insurance coverage for pur-

poses of the previous sentence, any amount described in clauses (i) and (ii) shall not be included.

(D) As it relates to the limitation of liability of any entity, including the Port Authority of New York and New Jersey, with a property interest in the World Trade Center on September 11, 2001 (whether fee simple, leasehold or easement, or direct or indirect), the amount of all available liability insurance coverage maintained by any such entity.

(E) As it relates to the limitation of liability of any individual contractor or subcontractor, the amount of all available liability insurance coverage maintained by such contractor or subcontractor on September 11, 2001.

(5) *PRIORITY OF CLAIMS PAYMENTS.*—Payments to plaintiffs who obtain a settlement or judgment with respect to a claim or action to which paragraph (4)(A) applies, shall be paid solely from the following funds in the following order, as may be applicable:

(A) The funds described in clause (i) or (ii) of paragraph (4)(A).

(B) If there are no funds available as described in clause (i) or (ii) of paragraph (4)(A), the funds described in clause (iii) of such paragraph.

(C) If there are no funds available as described in clause (i), (ii), or (iii) of paragraph (4)(A), the funds described in clause (iv) of such paragraph.

(D) If there are no funds available as described in clause (i), (ii), (iii), or (iv) of paragraph (4)(A), the funds described in clause (v) of such paragraph.

(6) *DECLARATORY JUDGMENT ACTIONS AND DIRECT ACTION.*—Any party to a claim or action to which paragraph (4)(A) applies may, with respect to such claim or action, either file an action for a declaratory judgment for insurance coverage or bring a direct action against the insurance company involved.

\* \* \* \* \*

#### DISSENTING VIEWS

*Despite its success, the fund has not set a precedent. Congress has not authorized similar compensation for the thousands of victims of Hurricane Katrina, for those injured by other natural disasters or for the families of those killed in such tragedies. Nor has Congress exhibited such generosity toward U.S. soldiers wounded, or the families of those killed, in Iraq and Afghanistan.*

*The same is true of victims of terrorist attacks that took place before Sept. 11, 2001. The Navy personnel who died in the suicide attack on the USS Cole and the victims of the Oklahoma City bombing received no such public compensation. Even the victims of the first terrorist attack on the World Trade Center, in 1993, were denied. Cold though it may sound, this is as it should be.*

*Bad things happen to good people every day; Congress does not come to their financial rescue with generous, tax-free checks. In our free society, based on notions of limited government and equal protection of the laws, we simply do*

*not expect the government to step in whenever misfortune strikes. This is not out of concern about bankrupting the Treasury. It is because our heritage teaches that we all must take our chances in life.*

—Kenneth R. Feinberg<sup>1</sup>

## INTRODUCTION

Eight years ago, just 11 days after the terrorist attacks of September 11th, Congress passed the Air Transportation Safety and System Stability Act,<sup>2</sup> which created the September 11th Victim Compensation Fund, and President Bush quickly signed it into law. This bipartisan bill was one-of-a-kind legislation, providing generous public compensation to the physically injured and to the families of the dead. The original 9/11 Fund successfully served its purpose by effectively and efficiently providing a short-term, administrative, no-fault alternative to tort litigation to compensate the victims. The Fund paid out over \$7 billion in taxpayer dollars to 5,560 eligible claimants.

The original fund reflected national solidarity towards the victims and expressed a national sense of compassion not only to the victims, but to the rest of the world. It was “an expression of the best in the American character.”<sup>3</sup> The question H.R. 847 raises is whether Congress should pass a new 9/11 Fund, with different terms than the original fund, or whether the original fund should be considered a unique, singular response to an unprecedented tragedy. The answer to that question—at least with regard to H.R. 847 in its current form—is that a new 9/11 Fund should not be enacted.

The approach H.R. 847 takes “does not have the advantages that made the [original 9/11 Fund] successful, and magnifies the disadvantages and fairness problems of the [original 9/11 Fund].”<sup>4</sup> Three of the main problems with H.R. 847 are that (1) it leaves the fund open for 22 years, well beyond what is needed to take care of any latent claims; (2) gives the Special Master virtually unbounded authority, that will not work for a long-term (22 years) compensation program involving a substantially larger set of potential claimants than the original 9/11 Fund with injuries of more ambiguous causation; and (3) the nature of the fund will make it highly susceptible to waste, fraud, and abuse.

In short, while there is a sympathetic and potentially deserving class of claimants and while there is good reason to give the construction contractors that aided after 9/11 in the recovery and cleanup efforts liability protection, the fund that will be created by H.R. 847 is not narrowly and appropriately tailored towards those

<sup>1</sup>Kenneth R. Feinberg, *9/11 Fund: Once Was Enough*, *Wash. Post*, September 11, 2008, at A17. Kenneth R. Feinberg was the Special Master of the September 11th Victim Compensation Fund.

<sup>2</sup>Pub. L. No. 107-42 (2001), 115 Stat. 230 (2001) (codified at 49 U.S.C. § 40101 note).

<sup>3</sup>H.R. 847, the “James Zadroga 9/11 Health and Compensation Act of 2009”: *Joint Hearing Before the Subcomm. on the Constitution and the Subcomm. on Immigration of the House Comm. on the Judiciary*, 111th Cong. (2009) (statement of Kenneth R. Feinberg).

<sup>4</sup>H.R. 847, the “James Zadroga 9/11 Health and Compensation Act of 2009”: *Joint Hearing Before the Subcomm. on the Constitution and the Subcomm. on Immigration of the House Comm. on the Judiciary*, 111th Cong. (2009) (statement of Theodore H. Frank) (“Frank testimony”).

ends. Accordingly, Congress should not create the new 9/11 Fund contained in H.R. 847.

#### BACKGROUND

Title II of H.R. 847 will create a new September 11th Victim Compensation Fund (“VCF”), which will be open until December 22, 2031, to provide compensation for individuals who did not file before, or became ill after, the December 22, 2003 filing deadline for the original fund. In addition, Title II will limit the liability of defendants—including the contractors and subcontractors that aided in the rescue, recovery, and cleanup efforts—for lawsuits previously resolved, currently pending, or filed through December 22, 2031, related to the rescue, recovery, and cleanup efforts at the World Trade Center site.

##### *A. Original Victim Compensation Fund*

Eleven days after the terrorist attacks on September 11, 2001, Congress passed the Air Transportation Safety and Stabilization Act to protect air carriers from tort lawsuits that threatened to cripple air travel in the United States. The Act capped damages against the airlines at their pre-existing liability insurance limits and limited jurisdiction for tort claims to the U.S. District Court for the Southern District of New York. Moreover, the Act established the 9/11 Victim Compensation Fund, through which victims of the attacks could opt to waive all federal and state tort claims and receive administrative relief through a predetermined formula, under the discretion of the Fund’s Special Master.

The VCF limited recovery to a discrete class of victims, determined by time and place. To be eligible for recovery under the Fund, victims had to have been on the flights or at the World Trade Center or Pentagon sites “within 12 hours of the attacks, suffered a physical injury, and been treated by a medical professional within 24 hours of the injury, within 24 hours of rescue, or within 72 hours of injury or rescue for those victims who were unable to realize immediately the extent of their injuries or for whom treatment by a medical professional was not available on September 11.”<sup>5</sup> Those who died in the attacks and rescue workers who were at the site within 96 hours of the attacks were eligible. The VCF thus had a clearly defined class of victims whose death or injuries did not present complex questions of causation.

The VCF granted awards for economic loss based on the victim’s annual income prior to the attack. Awards for non-economic losses for death cases were set at \$250,000 per victim and \$100,000 for a spouse and each dependent child; those who did not believe that these levels provided adequate compensation for non-economic damages could petition for a hearing.<sup>6</sup> The VCF deducted from awards all collateral-source benefits, including “life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to the terrorist-related aircraft crashes of September 11, 2001.”<sup>7</sup>

<sup>5</sup> Lloyd Dixon and Rachel Kaganoff Stern, “Compensation for Losses from the 9/11 Attacks” (The Rand Institute for Civil Justice: 2004) at 121.

<sup>6</sup> See 67 Fed. Reg. 11,239 (Mar. 13, 2002).

<sup>7</sup> Pub. L. No. 107-42 (2001), 115 Stat. 230 (2001) (codified at 49 U.S.C. § 40101 note).

### *B. Current Situation*

Immediately after the terrorist attacks on 9/11, large private contracting firms were asked by the City of New York to immediately begin cleanup efforts at Ground Zero. They did so heroically and in strained circumstances, even though they were unable to secure the liability insurance they would normally obtain before starting a project. They were unable to obtain such insurance because the unprecedented nature of the disaster site (containing some 20 stories of debris) caused insurance markets to be incapable of pricing such an insurance product.

Since then, many people who worked and lived in and around the cleanup site have developed medical problems alleged to have been caused by the toxic particulates in the air around the site and by the alleged negligence of the cleanup companies to ensure that their workers and those in the area were not exposed to such contaminants. The alleged victims of this alleged negligence have filed lawsuits (over 10,000 claimants so far) which now proceed for huge demands of damages. The contractors claim that the vast majority of claimants are not contractor employees, but New York City employees such as firemen. These lawsuits place the solvency of these firms in jeopardy.

Other major entities affected by the 9/11 attacks, including the airlines, the owner of the World Trade Center, and the Port Authority of New York and New Jersey, were protected from excessive liability exposure following the attacks by federal legislation. Unfortunately, the cleanup firms, whose liability issues did not arise until many months after the attacks, were not. While approximately a billion dollars have been appropriated to help pay for the medical expenses of those affected by the contaminants in the areas around the World Trade Center site, the administrative compensation program created to help the immediate victims of 9/11 (the VCF) did not cover those exposed to subsequent site contaminants, and the liability protections passed after 9/11 do not cover the cleanup and recovery firms.

### DISCUSSION

Title II of H.R. 847 creates a new September 11th Victim Compensation Fund to provide compensation to those who were injured by air contaminants as a result of rescue, recovery, and cleanup efforts following 9/11 but were ineligible for compensation under the VCF because their injuries did not manifest themselves by the fund's December 22, 2003 filing deadline. However, the structure of the original 9/11 Fund, which H.R. 847 incorporates, intended for compensating a limited set of claimants in time and place with relatively uncontroversial claims in a non-adversarial setting, will not work for the significantly longer-term fund created by H.R. 847 involving a substantially larger set of claimants with injuries of more ambiguous causation.

Under the original 9/11 Fund, there was, in general, no ambiguity with regard to causation. Someone who was on one of the planes or was killed in the World Trade Center or at the Pentagon clearly was entitled to compensation from the Fund. Accordingly, determining who was eligible for compensation was for the most part a ministerial function, which did not require adjudication.

Moreover, as the number of potential claimants to the original fund was limited to several thousand, the Fund was able to be administered effectively and efficiently with a structure that was relatively thin for a government bureaucracy. However, “[a] longer-term and larger compensation fund could not possibly vest that much discretionary authority in a single individual, and would need to craft ‘rigidly standardized rules’ that the current statutory structure of the Fund would not permit.”<sup>8</sup> Yet, H.R. 847 makes no changes to the original Fund’s structure to account for the long-term nature and increased size and complexity of the new Fund.

Thus, while enacting a new 9/11 Fund is in some ways an attractive proposition, the Fund that will be created by H.R. 847 is highly problematic.

*A. H.R. 847 extends the 9/11 Compensation Fund over 30 years beyond September 11, 2001.*

Under H.R. 847, a claim may be filed at any time during the period that begins on the date the Special Master updates the VCF regulations and ends on December 22, 2031. The Special Master is required to update the regulations within 90 days of enactment of H.R. 847. Thus, under this bill, the Fund will be open from at least 2010 to 2031—a period of over 21 years and over 30 years beyond September 11, 2001.

The sponsors of the legislation want to leave the VCF open for such a long period of time to address potential latent claims. However, according to Kenneth Feinberg, Special Master of the original VCF, “no latent claims need such an extended date.” As the original 9/11 Fund paid over \$1 billion to 2,680 eligible physical injury claimants the majority of whom were suffering from respiratory ailments, former Special Master Feinberg has firsthand knowledge of the types of claims that can be expected for the new Fund.

Based on his experience, Mr. Feinberg has suggested that “Congress could simply reopen the 9/11 Fund to encompass all such claims during a ‘window’ of 5 years during which time all September 11 related respiratory physical injuries could be evaluated and processed.”<sup>9</sup> Moreover, if latent claims present a problem at a later date, victims can sue the contractors and the city assuming the liability cap has not been reached. Or, if a shorter period (e.g., 5 years) does not end up being long enough, Congress could once again consider the issue and reenact the fund. This is an obvious solution as that is exactly the situation that is occurring here: according to the bill’s sponsors the original fund was not open long enough so this legislation would reenact it.

What is more, the bill extends the time period for when an individual’s injuries had to have been sustained from the 96 hours after the 9/11 attacks contained in the original fund to almost a full year after September 11, 2001. That is to say, claimants will be eligible for the Fund if they were present in a covered area between September 11, 2001 and August 30, 2002. Inexplicably, however, the last three months of this nearly additional year of coverage fall after the cleanup of Ground Zero ended on May 30, 2002. Why

<sup>8</sup> Frank testimony at 3.

<sup>9</sup> *Paying With Their Lives: The Status of Compensation for 9/11 Health Effects: Joint Hearing Before the Subcomm. on the Constitution and the Subcomm. on Immigration of the House Comm. on the Judiciary*, 110th Cong. (2008) (statement of Kenneth R. Feinberg).

should taxpayers be providing compensation for injuries that were sustained up to three months after the cleanup ended?

*B. H.R. 847 gives the Special Master unchecked and unreviewable discretionary power that is inappropriate for the compensation fund it creates.*

The compensation fund that will be created by H.R. 847, like the original 9/11 Fund, vests tremendous unchecked and unreviewable discretionary power in the Fund's special master. This may have been acceptable for the original 9/11 Fund, with its limited set of claimants in time and place with relatively uncontroversial claims. But it is inappropriate for the longer-term compensation program created by H.R. 847 involving a substantially larger set of potential claimants with injuries of more ambiguous causation.

The country was tremendously lucky that Special Master Feinberg exercised the discretion he was given under the original fund so ably. The compensation fund that will be created by H.R. 847, however, is greater in scope and is of a significantly longer duration than the original fund. Thus it is highly problematic that H.R. 847 contains very few, if any, constraints on the new Special Master's discretion to disburse compensation to the tens of thousands of potential claimants. This is especially true with regard to medical causation and non-economic damages.

In terms of medical causation, if the Fund is to be anymore than a giveaway of taxpayer money to anyone who is suffering a respiratory problem and was in the appropriate geographic area, the cooperative non-adversarial structure of the original 9/11 Fund will necessarily have to change. This cooperative non-adversarial structure was advantageous in the original fund as there was no dispute as to causation and there were a relatively limited number of claimants. This structure, which H.R. 847 leaves unaltered, however, is not appropriate for the type or scope of claims that will be covered by the new fund or the larger number of claims that can be expected.

With regard to non-economic damages, the discretion given to the Special Master under H.R. 847 is also problematic. Non-economic damages are highly subjective. The original 9/11 Fund had a regulatory limitation on presumed non-economic damages, but the Special Master could exceed that limitation in exceptional cases and "[a] different Special Master could undo those regulatory limitations, and open the Treasury to arbitrary non-economic damages awards to thousands of claimants."<sup>10</sup>

In other words, H.R. 847 simply puts too much discretion in the hands of what will likely be several Special Masters over the duration of the 22-year fund. Although Mr. Feinberg did an exceptional job with the original fund, Congress should not leave to chance that there will be as able a set of Special Masters over the course of the fund created by H.R. 847. Nor should Congress treat this larger, more complex and longer-lasting fund as though it is simply a carbon copy of the original Fund.

---

<sup>10</sup> Frank testimony at 4.



*C. Fund will be susceptible to fraud, waste, error, and abuse*

The original 9/11 Fund was designed for a select group of claimants who, for the most part, were unquestionably the intended recipients and eligible for benefits. In general, this narrow focus allowed for a non-adversarial process, involving a limited number of claimants, without dispute over causation. Indeed, as Special Master Feinberg has noted, “Claimants did not need to present detailed computations or analyses. Instead, they only needed to supply the fund easily obtained data.”<sup>11</sup>

However, the structure of the original fund, “left unchanged in H.R. 847, is inappropriate for either the broader scope of the new Fund or the larger volume of claims the Fund can anticipate.”<sup>12</sup> In order to avoid waste, fraud, and abuse of taxpayer dollars, Ted Frank of the American Enterprise Institute, a witness at the Committee’s hearing on this legislation, explained in his written testimony that:

If the Fund is to be aimed at a specific set of victims of terrorist attack, rather than simply a giveaway of taxpayer money to a geographic area and to trial lawyers, Section 405 will need to be amended to both require the Fund to establish neutral medical criteria for demonstrating causation, and to have a more realistic timeframe for adjudication of potentially controversial claims for compensation. Congress should require the Fund to establish appropriate burdens of proof and permit for independent medical review to ensure that, if taxpayers are to be responsible for compensation for injuries caused in the aftermath of the September 11 attacks, they are responsible for that amount and no more.<sup>13</sup>

For an example of the potential for fraud, waste, and abuse, one need look no further than the namesake of H.R. 847, James Zadroga. Detective Zadroga died from pulmonary disease and respiratory failure allegedly caused by exposure to dust at Ground Zero. The chief New York City medical examiner, however, concluded that, “[i]t is our unequivocal opinion, with certainty beyond doubt, that the foreign material in [Detective Zadroga’s] lungs did not get there as the result of inhaling dust at the World Trade Center or elsewhere.”<sup>14</sup> Although Zadroga’s family disputes the medical examiner’s finding, the simple fact that this controversy exists demonstrates that the non-adversarial structure of the original fund cannot be retained without opening the new Fund up to fraud, waste, and abuse.

As Ted Frank further explained in his written testimony,

The danger here is not simply the occasional false positive of unmerited compensation, but the creation of a compensation structure that will be subject to pervasive fraud. History has shown in the asbestos and silicosis mass tort litigations that claims of lung ailments are especially susceptible to fraud. . . .

<sup>11</sup>Kenneth R. Feinberg, 1 *Final Report of the Special Master of the September 11th Victim Compensation Fund* 7 (2004).

<sup>12</sup>Frank testimony at 5.

<sup>13</sup>Frank testimony at 5–6.

<sup>14</sup>Bill Hutchinson, *Coroner Says Hero James Zadroga Didn’t Die From WTC Dust*, N.Y. Daily News (Oct. 19, 2007).

The only hurdle the bill creates is Section 405(c)(3)(A)(ii)—proof that one contemporaneously sought medical treatment. This may succeed in winnowing out especially meritless claims that have already been brought, but the bar is quite low for future claimants.

Even legitimate medical facilities have a danger of suffering from confirmation bias and exaggerating the scope of pulmonary injuries, given the millions of dollars of federal money at stake. Many of the most sensational reports, including congressional testimony, have come from the Irving J. Selikoff Center for Occupational and Environmental Medicine. . . . But critics have complained that “doctors at the clinic, which has strong historical ties to labor unions, have allowed their advocacy for workers to trump their science by making statements that go beyond what their studies have confirmed”; and they have presented findings in “scientifically questionable ways.”<sup>15</sup>

Moreover, as Mr. Frank explains, a fund like the one created in H.R. 847 will invariably suffer from the *Field of Dreams* problem: “if you build it they will come.”<sup>16</sup> In other words, “[i]f Congress creates a compensation system where geographic proximity and a diagnosis are the only prerequisites for a large government check and an attorney’s contingent fee, attorneys will have every incentive to manufacture such diagnoses, and have done so in the past, often with the cooperation of unions.”<sup>17</sup> In the case of a new 9/11 Fund, this concern is more than hypothetical. “Thousands of lawsuits in the September 11 litigation in [federal] court alleging pulmonary injury have been filed by Napoli, Kaiser & Bern LLP, which was responsible for massive fraud in the fen-phen litigation.”<sup>18</sup>

What will stop this same type of fraud from seeping into the new 9/11 Fund that is to be created by H.R. 847? As Mr. Frank points out, it likely will not be the structure of the Fund as it currently stands:

Given the likely volume of claims and the complexity of the underlying causation and timeliness issues, it will be extraordinarily unlikely that the next Special Master will be able to adequately review claims for merit. Without firm medical criteria and the opportunity of scrutiny of claims on the front end and the promise of criminal penalties for fraud on the back end, the reopening of the VCF will be subject to substantial fraud and abuse.<sup>19</sup>

*D. The manager’s amendment’s \$8.4 billion cap is an invitation to spend \$8.4 billion*

Through the manager’s amendment that was adopted in Committee, expenditures from the fund will be capped at \$8.4 billion. There are several problems with this cap. First, at base, a cap of \$8.4 billion is nothing more than an invitation for the Fund’s Special Master to spend \$8.4 billion. Second, it is unclear where this

<sup>15</sup> Frank testimony at 7 (citations omitted).

<sup>16</sup> *Id.* at 8 (citing Richard A. Nagareda, *Mass Torts in a World of Settlement* 143 (2007)).

<sup>17</sup> *Id.* at 8.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 9.

\$8.4 billion figure came from. The Congressional Budget Office (CBO) scored the first 10 years of the new Fund at \$6.4 billion, but extrapolating CBO's 10-year numbers out for a 22-year long fund comes to no more than \$7.6 billion.<sup>20</sup> Additionally, Special Master Feinberg, who probably has as good a grasp on the scope of these claims as anyone, has indicated that all existing claims could be settled for \$1.5 billion.<sup>21</sup> If \$1.5 billion is anywhere close to being correct, why then is the cap set at \$8.4 billion? It should not be. Third, an \$8.4 billion cap in H.R. 847 does nothing to prevent a future Congress from increasing the cap. For instance, if the Special Master pays out \$8.4 billion in the first 10 years of the Fund, is a future Congress not going to be at least tempted to authorize an increase in the cap? Of course it will. If a future Congress can increase the cap, why then not limit the initial cap to the \$1.5 billion figure suggested for Mr. Feinberg? The bill's sponsors do not explain why they have not chosen that route.

In other words, the \$8.4 billion cap has little real effect. Had the proponents of H.R. 847 really wanted to put safeguards in the legislation to protect taxpayer money, they would have eliminated or capped the amount of highly subjective non-economic damages that could be awarded; limited the duration of the fund; and put in place some concrete rules on medical causation. Simply put, the \$8.4 billion cap will do little, if anything, to protect taxpayers. While the victims and the parties that are being sued in federal court are worthy of protection, so too are taxpayers.

*E. A new Fund may reduce Congress' ability to provide funding for future disasters or terrorist attacks.*

As the nonpartisan Rand Institute for Civil Justice pointed out in 2004, in its report on the original VCF, "precommitments by government programs . . . reduce the ability of government, and society more generally, to allocate resources to meet the most pressing needs after an attack."<sup>22</sup> And the Government Accountability Office, in 2005, also cautioned, in a study of four federal compensation programs, that "the federal role in all four programs has expanded significantly over time . . . As might be expected, as the federal role for those four programs has grown, so have their costs . . . [B]ecause these programs may expand significantly beyond the initial cost estimates, policymakers must carefully consider the cost and precedent-setting implications of establishing any new federal compensation programs, particularly in light of the current federal deficit."<sup>23</sup>

<sup>20</sup>The Congressional Budget Office only calculated the cost of an uncapped fund for the first 10 years the Fund would be opened. However, CBO determined that claims for compensation from the Fund would decrease over time. According to CBO's cost estimate, in year 10 annual payouts from the fund would only be \$100 million. Thus, even assuming \$100 million in payouts per year for the remaining 12 years the Fund will be open, the overall cost only gets to \$7.6 billion. It is likely though that this number would be lower than \$7.6 billion as it does not account for a further annual drop in payouts over the remaining 12 years.

<sup>21</sup>See, e.g., Feinberg testimony at 8–10.

<sup>22</sup>Lloyd Dixon and Rachel Kaganoff Stern, "Compensation for Losses from the 9/11 Attacks" (The Rand Institute for Civil Justice: 2004) at 143.

<sup>23</sup>Government Accountability Office, "Federal Compensation Programs: Perspectives on Four Programs (November 2005) at 4–5 (analyzing the Black Lung Program, the Vaccine Injury Compensation Program, the Radiation Exposure Compensation Program, and the Energy Employees Occupational Illness Compensation Program).

*F. H.R. 847 allows attorneys to collect taxpayer funded fees for work not directly related to recovery from the Victim Compensation Fund.*

Because the 9/11 Fund is a no-fault, administrative scheme that does not involve the kind of risks and expense that would justify significant contingency fees, attorneys' fees should be limited. The entire purpose of the compensation fund is to provide victims with compensation without requiring them to prove complex legal concepts such as negligence, products liability, or other tort theories. Indeed, when Congress was considering the original VCF, the Association of Trial Lawyers of America sent a letter to Congress stating that "ATLA believes that 100% of the compensation from the fund should go directly to these families."<sup>24</sup>

Through the manager's amendment, the bill will include a cap on attorneys' fees; however, the cap is poorly crafted if it is truly intended to maximize victims' recoveries by limiting attorneys to reasonable fees. What is more, the fee cap has an exception that will swallow the rule by allowing attorneys to receive fees for work that is not directly related to a victim's recovery under the VCF. A true fee cap would have given the Special Master the discretion to award less than 10 percent attorneys' fees depending on the facts of the claim and the amount of work the attorney truly put in on that particular claim. Indeed, under the first 9/11 Fund, the Special Master had a non-binding guideline of 5 percent attorneys' fees and many attorneys worked pro bono. It is truly ironic that not giving the Special Master the discretion to award less than 10 percent attorneys' fees is the one area that H.R. 847 puts limits on the Special Master's discretion. Surely, taxpayers who are providing the money for the new Fund would appreciate more meaningful limits on the Special Master's nearly unbounded discretion.

Second, the attorneys' fee cap has an exception that provides that attorneys who have worked on civil litigation for a claimant prior to January 1, 2009, arising out of the cleanup efforts at the Ground Zero, will not be bound by the manager's amendment's 10 percent attorneys' fee cap. Essentially, this means that some attorneys will be compensated for work that is not directly related to filing a claim under the new 9/11 Fund. In other words, attorneys will be, for instance, compensated with taxpayer dollars for having filed motions in federal district court that are wholly unrelated to the no-fault, administrative compensation being provided for under the Fund. Why should taxpayers be paying attorneys for work that is not directly related to a claim under the Fund? The vast majority of the money from the Fund should go to the victims, not to attorneys that they may have hired. When these attorneys took on the civil litigation the manager's amendment intends to compensate them for, they did so at the risk (as is the case with all contingent fee litigation) that they would receive nothing for their work. Why now should Congress offset that risk?

Simply put, the attorneys' fee cap in the manager's amendment to H.R. 847 is really not much of a cap at all. Attorneys representing World Trade Center cleanup-related victims should re-

<sup>24</sup> Letter from Leo V. Boyle, President, Association of Trial Lawyers of America, to Congressional Leaders reprinted in 147 Cong. Rec. H5914 (daily ed. Sept. 21, 2001) (statement of Rep. Delahunt); 147 Cong. Rec. S9599 (daily ed. Sept. 21, 2001) (statement of Mr. Reid).

member the sentiments of the ATLA right after the attacks and not seek fees, or anything more than minimal fees, for their representations of victims before the 9/11 Fund. And Congress should not step in with this so-called attorneys' fees cap and invite attorneys to take money from the victims for work they did in civil litigation.

*G. Other disaster victims do not receive this type of federal compensation.*

There is also the question of why Congress should reopen the 9/11 Fund, providing billions in additional federal compensation to the physical injury victims of the 9/11 attacks, while no such fund exists for the victims of the Oklahoma City bombing, the victims of the U.S. embassy bombings, the victims of the first World Trade Center Attack in 1993, or the victims of the unprecedented disaster associated with Hurricane Katrina. If this entitlement is approved, how does Congress say "no" to the victims of future tragedies, whether as a result of natural disasters or terrorist attacks? Congress must stop and think of the precedent this bill sets for future disasters. As former Special Master Feinberg has written,

Why should Congress, which has already enacted legislation authorizing over \$7 billion in public compensation to the families of those who died on September 11, or who were physically injured as a result of the attacks, now authorize additional millions or even billions in compensation for the remaining September 11 victims, while failing to do anything similar to the other victims of life's misfortunes? It is a fundamental question posed to our elected officials in a free democratic society. Why some victims but not others? On what basis should such distinctions be made? Are some victims more "worthy" than others?<sup>25</sup>

Moreover, it is not just that the VCF compensates the victims of one set of terrorist attacks but not victims of other terrorist attacks on American and foreign soil. It is also that the VCF "compensates the 9/11 victims while most other innocent victims of crime, intentional wrongdoing, or negligence must suffer without remedy unless they are 'lucky' enough to have been injured by someone who can be held liable under the tort system's peculiar, often arbitrary rules and who is also sufficiently insured or secure financially to pay the judgment."<sup>26</sup>

*H. H.R. 847 contains a partially self-defeating provision that allows for the reinstatement of lawsuits if a claimant is ineligible under the VCF.*

Section 202, paragraph 3 of H.R. 847 provides that if a claimant is determined to be ineligible for the compensation fund, he may reinstitute his lawsuit. One of the arguments, however, for re-enacting the Fund is to bring a close to litigation against the City and its contractors. If ineligible claimants can reinstitute their lawsuits, this legislation is providing an avenue for lawsuits to move forward even after the Special Master has determined that they do not have an eligible claim. Moreover, the bill's limitation of liability provisions may not serve to discourage litigation. Those that seek

<sup>25</sup> Feinberg testimony at 7.

<sup>26</sup> Peter Schuck, *Special Dispensation*, Am. Lawyer, June 2004.

compensation in the fund but are denied compensation not only will be able to reinstitute their tort cases in federal court; the liability caps actually may serve to create an approximately \$2 billion incentive to sue in federal court rather than go through the fund. In other words, creation of the Fund may not have the anticipated impact on ending the litigation.

#### REPUBLICAN AMENDMENTS

Republican Members offered two amendments to Title II of H.R. 847 at the Committee markup. Neither of the Republican amendments was adopted:

- **Smith Amendment.** Ranking Member Smith offered an amendment, based on the recommendation of former Special Master Feinberg, to limit reopening of the fund to 5 years on the Fund's original terms. As Special Master Feinberg wrote in his written testimony at a Judiciary Committee hearing on reenacting the 9/11 Fund, "any attempt to reenact and extend the 9/11 Fund should be initiated with the understanding that there would be no changes in the rules and regulations governing the original Fund, that the new law would simply be a 'one line' extension of reaffirmation of the law which established the original 9/11 Fund."<sup>27</sup> According to Special Master Feinberg, "Congress could simply reopen the 9/11 Fund to encompass all such claims during a 'window' of 5 years during which time all September 11 related respiratory injuries could be evaluated and processed."<sup>28</sup> Ranking Member Smith's amendment would have accomplished Special Master Feinberg's recommendation of a "one-line," 5-year extension of the original 9/11 Fund. This amendment would have, in a very simple manner, addressed many of the concerns expressed above with regards to the new Fund that will be created by H.R. 847. Unfortunately, Ranking Member Smith's amendment was not adopted.
- **King Amendment.** Mr. King offered an amendment to remove the exception in the attorneys' fee cap for attorneys who had filed a lawsuit on behalf of a victim in federal court prior to January 1, 2009. This exception swallows the rule. Had Mr. King's amendment been adopted it would have ensured that more of the compensation under the Fund would have gone to the victims and not to any attorneys they may have hired. Given that the VCF is a no-fault, administrative scheme, there is no justification for high attorneys' fees. Nor is there any reason to provide attorneys with compensation under the VCF for work they performed for litigation in federal court—the VCF is wholly a separate system from that litigation. When attorneys took on that representation in that litigation they did so at the risk that they would receive no compensation at all if the plaintiff lost—such is the nature of a contingency fee. Mr. King's amendment was not adopted.

<sup>27</sup> Feinberg testimony at 6.

<sup>28</sup> Feinberg testimony at 5.

## CONCLUSION

Consideration of creating the new Victim Compensation Fund contained in Title II of H.R. 847 raises two questions. First, why should Congress reenact and expand the 9/11 Fund, providing millions in additional public compensation to the physical injury victims of the September 11 attacks, while no such Fund exists at all for the victims of the Oklahoma City bombing, the victims of the African Embassy bombing, the victims of the first World Trade Center attack in 1993 or, for that matter, the victims of the unprecedented disaster associated with Hurricane Katrina? Underlying this question is the issue of whether the federal government, i.e., the taxpayers of the United States, are to become in perpetuity the guarantors of last resort for all the tragedies that beset people over their lives. Members will have to make their own philosophical decision as to this first question.

The second question is whether the 9/11 Fund that will be created by H.R. 847 is written in such a manner that it will safeguard valuable taxpayer dollars while appropriately compensating only the actual victims of the aftermath of the 9/11 attacks. The answer to the second question is much more clear—the Fund that will be created by H.R. 847 is open for much longer than is necessary (at least 21 years); gives far too much discretion to the Special Master considering the long-term nature of the Fund, which will have a larger set of claimants with claims of much more ambiguous causation than under the original Fund; and the size and unstructured nature of the Fund will make it highly susceptible to waste, fraud, and abuse. Simply put, the structure of the original 9/11 Fund will not work for the Fund that will be created by H.R. 847.

There may be a deserving class of claimants who are suffering respiratory and other physical ailments as a result of their work at Ground Zero. And it may be that the original 9/11 Fund should be reopened for a limited period of time in order to compensate those individuals. But the Fund created in H.R. 847 is not the original 9/11 Fund, nor is it being re-opened for a brief window. We are unable to support enactment of this legislation.

LAMAR SMITH.  
F. JAMES SENSENBRENNER, JR.  
BOB GOODLATTE.  
GREGG HARPER.

