

Department of Justice

§ 104.21

for purposes of compensation by the Fund is the person named by the decedent in the decedent's will as the executor or administrator of the decedent's estate. In the event no will exists, the Special Master may, in his discretion, determine that the Personal Representative for purposes of compensation by the Fund is the first person in the line of succession established by the laws of the decedent's domicile governing intestacy.

(b) *Notice to beneficiaries.* Any purported Personal Representative must, before filing an Eligibility Form, provide written notice of the claim (including a designated portion of the Eligibility Form) to the immediate family of the decedent (including, but not limited to, the decedent's spouse, former spouses, children, other dependents, and parents), to the executor, administrator, and beneficiaries of the decedent's will, and to any other persons who may reasonably be expected to assert an interest in an award or to have a cause of action to recover damages relating to the wrongful death of the decedent. Personal delivery or transmission by certified mail, return receipt requested, shall be deemed sufficient notice under this provision. The claim forms shall require that the purported Personal Representative certify that such notice (or other notice that the Special Master deems appropriate) has been given. In addition, as provided in §104.21(b)(5) of this part, the Special Master may publish a list of individuals who have filed Eligibility Forms and the names of the victims for whom compensation is sought, but shall not publish the content of any such form.

(c) *Objections to Personal Representatives.* Objections to the authority of an individual to file as the Personal Representative of a decedent may be filed with the Special Master by parties who assert a financial interest in the award up to 30 days following the filing by the Personal Representative. If timely filed, such objections shall be treated as evidence of a "dispute" pursuant to paragraph (d) of this section.

(d) *Disputes as to identity.* The Special Master shall not be required to arbitrate, litigate, or otherwise resolve any dispute as to the identity of the Personal Representative. In the event of a

dispute over the appropriate Personal Representative, the Special Master may suspend adjudication of the claim or, if sufficient information is provided, calculate the appropriate award and authorize payment, but place in escrow any payment until the dispute is resolved either by agreement of the disputing parties or by a court of competent jurisdiction. Alternatively, the disputing parties may agree *in writing* to the identity of a Personal Representative to act on their behalf, who may seek and accept payment from the Fund while the disputing parties work to settle their dispute.

§ 104.5 Foreign claims.

In the case of claims brought by or on behalf of foreign citizens, the Special Master may alter the requirements for documentation set forth herein to the extent such materials are unavailable to such foreign claimants.

§ 104.6 Amendments to this part.

Claimants are entitled to have their claims processed in accordance with the provisions of this Part that were in effect at the time that their claims were submitted under §104.21(d). All claims will be processed in accordance with the current provisions of this Part, unless the claimant has notified the Special Master that he or she has elected to have the claim resolved under the regulations that were in effect at the time that the claim was submitted under §104.21(d).

[67 FR 11245, Mar. 13, 2002]

Subpart B—Filing for Compensation; Application for Advance Benefits

§ 104.21 Filing for compensation.

(a) *Compensation form; "filing."* Except for applications for Advance Benefits pursuant to §104.22, no claim may be considered until the claimant has submitted both an "Eligibility Form" and either a "Personal Injury Compensation Form" or a "Death Compensation Form." A claim shall be deemed "filed" for purposes of section 405(b)(3) of the Act (providing that the Special Master shall issue a determination not later than 120 days after the

date on which a claim is filed), and for any time periods in this part, when a Claims Evaluator determines that both the Eligibility Form and either a Personal Injury Compensation Form or a Death Compensation Form are substantially complete. *Provided*, however, that if a claimant files an Eligibility Form requesting Advance Benefits pursuant to §104.22 of this part without filing either a “Personal Injury Compensation Form” or a “Death Compensation Form,” the claim shall be deemed “filed” when the Claims Evaluator determines that the Eligibility Form is substantially complete, but the time period for determination and any time periods in this part shall be stayed or tolled as described in §104.22(g) of this part.

(b) *Eligibility Form.* The Special Master shall develop an Eligibility Form that will require the claimant to provide information necessary for determining the claimant’s eligibility to recover from the Fund.

(1) The Eligibility Form may require that the claimant certify that he or she has dismissed any pending lawsuit seeking damages as a result of the terrorist-related airplane crashes of September 11, 2001 (except for actions seeking collateral source benefits) within 90 days of the effective date of this part pursuant to section 405(c)(3)(B)(ii) of the Act and that there is no pending lawsuit brought by a dependent, spouse, or beneficiary of the victim.

(2) The Special Master may require as part of the notice requirement pursuant to §104.4(b) that the claimant provide copies of a designated portion of the Eligibility Form to the immediate family of the decedent (including, but not limited to, the spouse, former spouses, children, other dependents, and parents), to the executor, administrator, and beneficiaries of the decedent’s will, and to any other persons who may reasonably be expected to assert an interest in an award or to have a cause of action to recover damages relating to the wrongful death of the decedent.

(3) The Eligibility Form may require claimants to provide the following proof:

(i) Proof of death: Death certificate or similar official documentation;

(ii) Proof of presence at site: Documentation sufficient to establish presence at one of the crash sites, which may include, without limitation, a death certificate, records of employment, contemporaneous medical records, contemporaneous records of federal, state, city or local government, an affidavit or declaration of the decedent’s or injured claimant’s employer, or other sworn statement (or unsworn statement complying with 28 U.S.C. 1746) regarding the presence of the victim;

(iii) Proof of death on board aircraft: Death certificate or records of American or United Airlines or other sufficient official documentation;

(iv) Proof of physical harm: Contemporaneous medical records of hospitals, clinics, physicians, licensed medical personnel, or registries maintained by federal, state, or local government, and records of all continuing medical treatment;

(v) Personal Representative: Copies of relevant legal documentation, including court orders; letters testamentary or similar documentation; proof of the purported Personal Representative’s relationship to the decedent; copies of wills, trusts, or other testamentary documents; and information regarding other possible beneficiaries as requested by the Eligibility Form;

(vi) Any other information that the Special Master deems necessary to determine the claimant’s eligibility.

(4) The Special Master may also require waivers, consents, or authorizations from claimants to obtain directly from third parties tax returns, medical information, employment information, or other information that the Special Master deems relevant in determining the claimant’s eligibility or award, and may request an opportunity to review originals of documents submitted in connection with the Fund.

(5) Application for Advance Benefits: The Eligibility Form shall include a section allowing claimants to indicate that they wish to apply for Advance Benefits. Claimants who apply for such Advance Benefits must certify on that Form that they have not yet received

\$450,000 in collateral source compensation if they are bringing a claim on behalf of a deceased victim with a spouse or dependent, \$250,000 in collateral source compensation if they are bringing a claim on behalf of a deceased victim who was single with no dependents, or an amount in excess of their lost wages plus out-of-pocket medical expenses if they are an injured claimant. All such claimants also must state on the Form facts establishing financial hardship that would justify a determination that they are in need of Advance Benefits.

(6) The Special Master may publish a list of individuals who have filed Eligibility Forms and the names of the victims for whom compensation is sought, but shall not publish the content of any such form.

(c) *Personal Injury Compensation Form and Death Compensation Form.* The Special Master shall develop a Personal Injury Compensation Form that each injured claimant must submit. The Special Master shall also develop a Death Compensation Form that each Personal Representative must submit. These forms shall require the claimant to provide certain information that the Special Master deems necessary to determining the amount of any award, including information concerning income, collateral sources, benefits, and other financial information, and shall require the claimant to state the factual basis for the amount of compensation sought. It shall also allow the claimant to submit certain other information that may be relevant, but not necessary, to the determination of the amount of any award.

(1) Claimants shall, at a minimum, submit all tax returns that were filed for the years 1998, 1999, and 2000. The Special Master may, at his discretion, require that claimants submit copies of tax returns or other records for any other period of years he deems appropriate for determination of an award. The Special Master may also require waivers, consents, or authorizations from claimants to obtain directly from third parties medical information, employment information, or other information that the Special Master deems relevant to determining the amount of any award.

(2) Claimants may attach to the “Personal Injury Compensation Form” or “Death Compensation Form” any additional statements, documents or analyses by physicians, experts, advisors, or any other person or entity that the claimant believes may be relevant to a determination of compensation.

(d) *Submission of a claim.* Section 405(c)(3)(B) of the Act provides that upon the submission of a claim under the Fund, 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, except for civil actions to recover collateral source obligations and civil actions against any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act. A claim shall be deemed submitted for purposes of section 405(c)(3)(B) of the Act when the claim is deemed filed pursuant to §104.21, regardless of whether any time limits are stayed or tolled.

(e) *Provisions of information by third parties.* Any third party having an interest in a claim brought by a Personal Representative may provide written statements or information regarding the Personal Representative’s claim. The Claims Evaluator or the Special Master or his designee may, at his or her discretion, include the written statements or information as part of the claim.

[66 FR 66282, Dec. 21, 2001, as amended at 67 FR 11245, Mar. 13, 2002]

§ 104.22 Advance Benefits.

(a) *Advance Benefits.* Eligible Claimants may apply for immediate “Advance Benefits” in a fixed amount as follows:

(1) \$50,000 for Personal Representatives; and

(2) \$25,000 for injured claimants who meet the requirements of paragraph (d) of this section.

(b) *Credit against award.* The Advance Benefit shall be credited against any final compensation award so that the amount of the Advance Benefit is deducted from the final award under this program.