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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Email	WriteRep Responses - From: Brian Walters	1	10/04/2001	b6;
002	Email	Fw: Victims Compensation Fund Comments - To: Pat Ryan et al - From: Patrick T. Conway	1	11/13/2001	b6;
003	Email	September 11 - To: Michelle Mulder et al - From: Debra Foxx	1	11/13/2001	b6;
004	Letter	World Trade Center Victims Federal Compensation Program - [page 1] - To: Rush Holt - From: Sheila G. Harris	1	11/17/2001	b6;
005	Email	RE: September 11th Victims Compensation Fund - To: Debbie Curto et al - From: Vivian Shoemaker	1	11/08/2001	b6;

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

09/11/2001 Victims Compensatory Funds Regulations [2]

FRC ID:

9702

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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- B. Closed by statute or by the agency which originated the document.
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Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

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006	Email	Comments - To: victimcomp.comments et al - From: Lorie Van Auken	1	11/08/2001	b6;
007	Report	[Draft] 9-11 Compensation Fund, Interim Final Rule [41 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	41	11/30/2001	

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CONGRESS OF THE UNITED STATES

November 26, 2001

The Honorable John D. Ashcroft
Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Attorney General:

Thank you for your strong leadership in the aftermath of the September 11 terrorist attacks. The Justice Department is at the core of our domestic response to terrorism and your steady hand has been reassuring to Americans across the country.

I am particularly pleased the Department of Justice has assigned a high priority to implementation of the September 11th Victims Compensation Fund. The suburban district I represent lost more than 70 men, women and children at the World Trade Center. Their families need this fund, which is why I am writing to share some of my views relating to its administration.

As an overriding principle, it is urgent that recoveries be broadly inclusive. The Air Transportation Safety and System Stabilization Act, which authorized the Fund, requires compensating physically injured individuals and the relatives of deceased individuals. Though it prohibits the filing of multiple claims on behalf of any single victim, it clearly envisions that multiple family members can recover benefits. This includes at least spouses, children, dependents, and people with a close personal relationship, such as a fiancé or a domestic partner.

For these families, to whom the Fund represents both justice and an opportunity to begin putting their lives back together, the most pressing issues are the nature and amount of compensation. In this regard, the Act provides a broad definition of economic and noneconomic losses. In the case of a deceased individual, noneconomic losses should include not only the decedent's pain and suffering prior to death, but also a surviving family's continuing mental anguish and emotional loss, including a spouse or child's loss of companionship and affection.

Congressman
Christopher Shays
Fourth District Connecticut

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The Honorable John D. Ashcroft -- Page 2

Economic losses will be easier to measure than noneconomic losses. While these losses (such as earnings and benefits related to employment) will vary substantially from family to family, it is imperative every family perceives it is being treated fairly. That cannot happen unless there is a uniform standard for measuring economic loss. Given that the attacks of September 11 were made on the entire nation, it would be inappropriate for a federal fund to apply different legal standards to Americans simply because they reside in different states.

In its request for public comments, the Department inquired whether "schedules or statistical methodologies should be developed and used in reaching a determination for each claimant within the mandated [120-day] time period." While the standard for measuring damages should be uniform and applied to claimants equally, the Fund should not be specifically designed to achieve uniform results. In fact, the rights guaranteed to claimants under Section 405 of the Act, including the right to present witnesses, would have little value if all that was contemplated was a cash award based solely on a preexisting schedule of damages.

If the Department is concerned that in requiring the speedy adjudication of claims, Congress effectively mandated the promulgation of a predetermined schedule of damages, I can assure you that was not our intent. The 120-day requirement is intended entirely for the benefit of claimants, and if more time is needed to ensure a full and fair hearing of any individual case, that claimant can be given the option of extending the period for reaching a final determination. Such an extension, if provided at the request of the claimant, would be wholly consistent with the Act.

I hope the Special Master will not unduly restrict any family's recovery by applying an overly broad interpretation of the mandate to reduce awards by the amount of collateral sources. Specifically, where the Act refers to collateral source compensation that a claimant "is entitled to receive," only amounts to which the claimant has a vested legal right should be deducted; future benefits that may or may not be received by a claimant should not be deducted. In cases where a claimant has *purchased* a collateral source benefit, like life insurance, only the net benefit should be deducted. Furthermore, to protect against the potential for double deduction, no collateral source amount should be deducted if the payer of the collateral source enjoys a right of subrogation or a lien on damages.

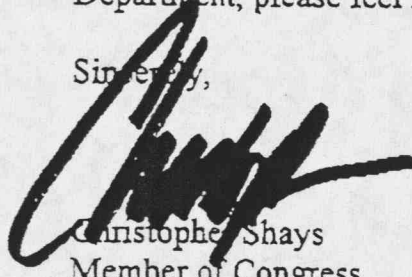
Finally, I agree with the Department that "strong policy reasons exist for excluding charitable contributions from the definition of collateral sources." The Department has inquired whether the Act permits such an exclusion. As a Member of Congress who voted for the Act, I believe that it does. Charitable payments are not offered as "compensation" -- they are more in the nature of relief or gifts. Including charitable gifts

The Honorable John D. Ashcroft -- Page 3

under the definition of compensation would surely defeat the purpose of the charity, which was intended as a gift to the victims -- not to the government.

I hope these recommendations are helpful to the Department as it promulgates regulations to administer this unique program. If I can be of additional assistance to you or to the Department, please feel free to call upon me.

Sincerely,



Christopher Shays
Member of Congress

CS:lw

Congress of the United States

Washington, DC 20515

October 16, 2001

The Honorable John Ashcroft
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Dear Attorney General Ashcroft:

We are writing to draw your attention to unmet crime victim service needs of family members, friends, and colleagues of Massachusetts victims of the terrorist attacks at the World Trade Center (WTC) and the Pentagon on September 11, 2001.

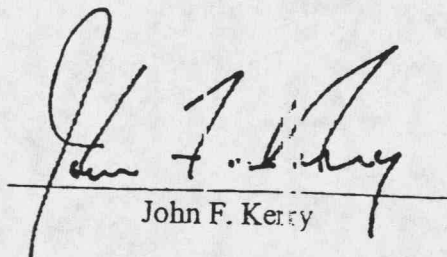
Over 70 residents of Massachusetts were aboard the two flights that crashed into the WTC. Massachusetts, through its proximity to New York City, is home to many family members of victims who worked in the WTC. In addition, several of the companies that had office space in the WTC were Boston-based companies. As a result, Massachusetts organizations and agencies that provide services to victims of crime are providing needed assistance to hundreds of family members, friends, and colleagues of victims of the September 11 attacks.

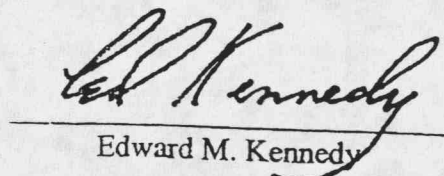
As you know, the Office for Victims of Crime (OVC) was established by the 1984 Victims of Crime Act and provides substantial funding to state victim assistance and compensation programs. We urge you to consider allocating some funds from the \$40 billion emergency supplemental bill that Congress passed to respond to the terrorist attacks to OVC to support critical victim services. OVC funds two major formula grant programs -- Victim Compensation and Victim Assistance. Through these initiatives, it directs funding to victim services programs on the front lines that provide specialized homicide bereavement, crisis response, and hate-crime victim services to the many families across the country who need and will be needing services as a result of the attacks on September 11.

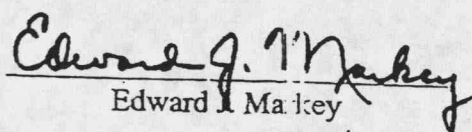
In Massachusetts, victim services programs were already stretched beyond their capacity with the general crime victim population before September 11, but the demands being made on these organizations since then are enormous. Without the assurance of additional federal or state funding, Massachusetts crime victim service agencies have stepped up to meet the needs of the families of the over 70 victims from our state on the two doomed flights that originated from Boston's Logan Airport and the Massachusetts residents and companies in the WTC. Counselors have logged tremendous hours of overtime working directly with families of victims; one agency has established a Terrorist Attack Support Group; another has dispatched bilingual counselors to schools to calm the special fears of immigrant children.

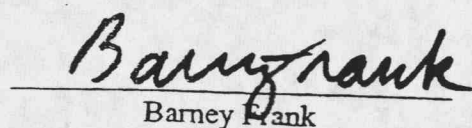
To meet the overwhelming and continuing demand for victim services in the wake of the terrorist acts, agencies in Massachusetts and nationwide are in need of emergency funding. It is our sincere hope that additional funding will be allocated to OVC for these purposes. We appreciate your attention to this matter.

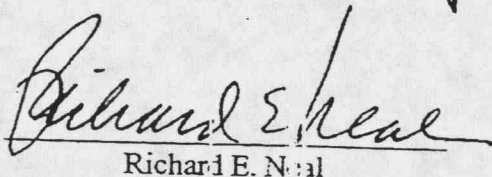
Sincerely,

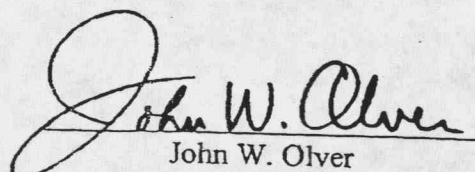

John F. Kerry

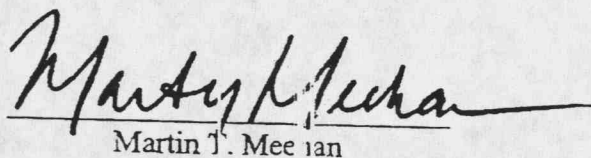

Edward M. Kennedy

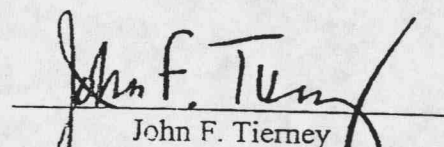

Edward J. Markey

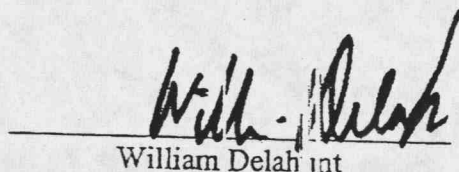

Barney Frank

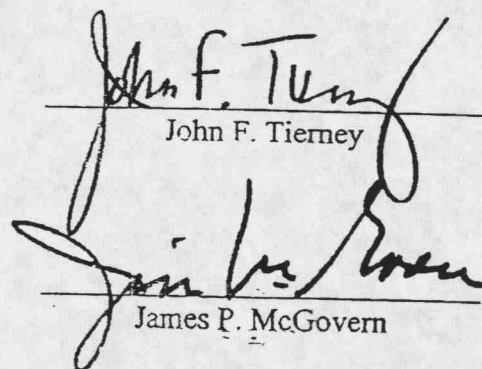

Richard E. Neal

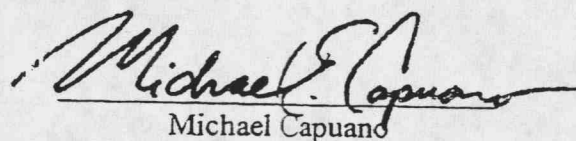

John W. Olver


Martin T. Meehan


John F. Tierney


William Delahunt


James P. McGovern


Michael Capuano

Congress of the United States

Washington, DC 20515

1280035

October 5, 2001

The Honorable John Ashcroft
Attorney General
U.S. Department of Justice
10th Street and Constitution Avenue
Washington, D.C. 20530

Dear Attorney General Ashcroft:

We recognize that our country will probably never be the same after terrorists attacked the United States on September 11. While it is appropriate to be strong and move on as a nation, it is also important to remember the victims of the attack and acknowledge the pain caused by the loss of so many lives. Our desire is to make sure no one, no matter how small, is left out when we recognize the victims.

As you know, on September 22, President Bush signed into law H.R. 2926, the Air Transportation Safety and System Stabilization Act (Public Law 107-42). This act contains a provision, called the "September 11th Victim Compensation Fund of 2001," that creates a government-sponsored fund for those victims who choose not to sue the airlines. We request that unborn children killed in the terrorist attack be included as eligible "claimants."

Some of the victims, we do not yet know how many, were pregnant when terrorists snuffed out their lives. Some husbands not only lost their wives, they also lost their unborn children. Some parents lost their daughters, and their unborn grandchildren.

For example, Lauren Grandcolas, 36, two months pregnant with her first child, left the following message on her husband's answering machine before senseless terrorism took her life: "Jack? Jack, pick up the phone. Honey, pick up the phone. I was just calling to tell you I love you and I can't wait to see you. There's a little problem with the plane, but I'm fine, I'm comfortable. Please tell my family that I love them." Mrs. Grandcolas was a passenger on United Flight 93, which never reached its target in Washington, D.C. because the passengers sacrificed their own lives in a heroic effort to thwart the terrorists' plans. Certainly, there were many other pregnant women and unborn children whose lives were stolen away on September 11.

We request that you include the smallest victims of all, unborn children, when you draft regulations to implement the victim compensation program for those who were killed or injured

by the terrorist attack on September 11. The right thing to do is to recognize all the victims and all the losses incurred by surviving family members.

Thank you for your compassion and your hard work as you fulfill your duties. Our prayers are with you in this trying time.

Sincerely,

Dick Loney

Sam Johnson

John T. Dabbs

Glenn Smith

Barrett

Mark Kennedy

Ron Hayes

Todd Tishut

Jim Lyman

Jim LeMort

Dan Welch

Cliff Hay

Ronnie Shuman

David Phelps

Bob Schaffer

Ken Barry

Joseph L. Pitts

J. Barcia

Orrin G. Hatch
Senate Judiciary Committee
Dirksen 224
Washington, D.C. 20510
Tel # (202) 224-5225
Fax # 224-9102



Facsimile Cover Sheet

TO: Ken Zwick

November 20, 2001
5:53 pm

FAX NUMBER: 301-519-5956

PHONE NUMBER:

FROM:

SUBJECT:

TOTAL NUMBER OF PAGES SENT (including cover sheet): 3

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COMMENTS:

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

November 20, 2001

The Honorable John D. Ashcroft
Attorney General of the United States
United States Department of Justice
950 Constitution Avenue, NW
Washington, DC 20530

Re: *Victim Compensation Fund in the Air Transportation Safety and System
Stabilization Act*

Dear Mr. Attorney General:

As you know, on September 21, 2001 Congress passed H.R. 2926, the Air Transportation Safety and System Stabilization Act (now Public Law 107-42). This measure will provide a much needed tool for help and healing for the families affected by the terrorist-inflicted tragedies. The Victim Compensation fund created within Title IV of that Act was created for just that purpose.

As I am sure you are aware, this fund is a major undertaking not only because of the multitude of victims for whom it is intended to provide relief and tremendous cost to the American taxpayer, but also because these victims very likely will receive relief that they would not recover if they choose to go to court as per the normal course. This is because the fund was created to compensate without requiring proof of fault or liability - which relieves the victims of the normal legal burden they will have difficulty overcoming in court with regard to this particular tragedy. There are victims of other tragedies for whom we were not able to provide such a means of "no fault" relief. For these reasons, the class of individuals entitled to recover from the fund was expressly limited only to those that suffered physical injury or were killed as a direct result of the terrorist incidents of September 11, 2001. See P.L. 10742 Title IV, section 405(c)(2)(ii). Moreover, the damages for which they are eligible to be compensated must be the direct result of the qualifying physical injury.

Individuals other than those victims explicitly covered under Title IV, including family members of the defined class of victims, may have colorable legal causes of action in their own right. Under the clear language of the statute, those individuals are not part of the class entitled to receive "no fault" relief under the fund - however, they are not precluded from pursuing their claims in court. That should be made clear to the American public - by limiting the class entitled

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to relief under the fund, we did not preclude those outside the class from their day in court. Similarly, those who are within the defined class intended to be compensated are also free to choose to go to court rather than access the fund if they feel unduly restricted by the parameters of the claim process.

Moreover, the intent in including a provision in the legislation that funds received from collateral sources be deducted from any award was not to unfairly penalize those who receive compensation to which they are entitled through insurance or otherwise. It was, however, to ensure that there is no duplication of compensation, regardless of the source. This is important to the administration of this unusual fund in order to ensure that there are adequate funds to be distributed to those in need.

We must remember that the resources of the American taxpayer are not unlimited and truly they have responded very generously to these horrible events. It would be wrong to take undue advantage of their generosity by an increasing their burden exponentially beyond the defined parameters of the fund. As we all know, the fund was not created to give a windfall to these tragic victims, but rather to assist them in their time of need to get through the loss suffered at the hands of these terrorists. It goes without saying that this fund was not intended to be a boon certain classes of people who may opportunistically assist or represent the victims. And as noted above, due to the intervening criminal act of the terrorists, this likely will be relief that these tragic victims may not receive as effectively or expeditiously through the normal legal process since in court their lawyers will be required to establish liability of entities other than the terrorists. Common sense parameters for the fund were necessary, clearly expressed in the language of the statute and need to be enforced. I urge you to adhere to the language and spirit of the statute and not be misguided by those that seek to expand the parameters of the fund's compensation, whether or not the effort is well intentioned. If you do not, we risk the possibility that many of those intended will not receive adequate, needed relief in a timely manner.

It is clear that you face a herculean task of creating and administering this unusual fund and I have every confidence in your ability to do so. I look forward to working with my colleagues to provide you with further input as this process progresses. Thank you for your efforts and diligence in this matter.

Sincerely,



Orrin G. Hatch
United States Senator
Ranking Republican Member
Senate Judiciary Committee

F000073

Congress of the United States
House of Representatives
Washington, DC 20515

November 15, 2001

The Honorable John Ashcroft
Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Attorney General,

We applaud the approach you are taking in soliciting wide public comment in fulfilling your legislative mandate to promulgate regulations governing the distribution of funds voted by Congress and approved by the President for victims of the terrorist attacks of September 11.

Because it was important for us to act speedily, the legislation of necessity sets out broad guidelines and leaves to you and your department the job of providing specificity so that these funds can be distributed fairly and expeditiously.

We write to express our view on one aspect of this important set of questions which is before you -- namely, we urge that in creating the category of those who qualify as "survivors of someone lost in the crashes", (Topic 5, Notice of Inquiry), we can best carry out the intent and spirit of the law by compensating all of those who suffered both grievous emotional loss from these murders, and significant financial loss as well.

That is, we believe that the federal government should provide such compensation as is appropriate to all of those who had a close relationship with the murdered victim and whose own financial position will be seriously adversely affected by the death. Relevant indicia of such a relationship include a shared residence, shared bank accounts for other financial instruments, joint membership in a health plan, a significant sharing of living expenses, etc. Obviously a wide range of different personal relationships will be covered by this, and we believe that this coverage is wholly appropriate in this instance. We note that this is the approach taken by Governor George Pataki of New York, where so many of the victims live.

The act we passed was not an effort by the Congress to regulate any set of personal relationships, nor to encourage or discourage people from following any particular pattern in their living arrangements. It was simply a prompt response by the Congress to the terrible murders inflicted on America on September 11, in particular by doing what we can to come to the aid of those who were particularly victimized by the deaths of people close to them. Aiding all of this latter category of victims seems to us the appropriate response.

F000214

The Honorable John Ashcroft

Page 2

Charles Shy

San Jose

Barnes Road

Wendy
San Jose

Amelia

(over)

Flowers

Rob Simmons
CT/2

Charles Schlect

David

Walter T. Gilbert

James

Jim

Charles Stange

F000215

The Honorable John Ashcroft
Page 3

Nancy L. Johnson

Jonnie Morrell

Major R. Chen

Jerold Radler

Theresa Brown

Bill Parnell Jr

Sue Kelly

Conway McCarty

Alan Saly

Frank Patton Jr.

Joe E. Senner

Ernest L. Engel

Wynne J. Hays

Robert King

Rosa L. J. Tamm

Lydia Horn

F000216

The Honorable John Ashcroft
Page 4

John W. McHugh

Carolyn B. Halsey

Ann O'Brien

Patricia Loney

Louise M. Stauch

Michael R. McHugh

Stan T. Soral

James Balchun

~~Gregory W. Winters~~

Jim Manning

Rush Holt

John B. Lawson

John Kinn

F000217

**Signatories to Letter to Attorney General John Ashcroft
Re: Aiding Survivors of September 11th Attack**

Page 2

Rep. Christopher Shays
Rep. Benjamin Gilman
Rep. Barney Frank
Rep. Maurice Hinchey
Rep. Jim McGovern
Rep. Amo Houghton
Rep. Anthony Weiner
Rep. Edolphus Towns

Rep. Rob Simmons
Rep. Joseph Crowley
Rep. Sherwood Boehlert
Rep. David Wu
Rep. Wayne T. Gilchrest
Rep. James Leach
Rep. Jim Kolbe
Rep. Charles Rangel

Page 3

Rep. Nancy Johnson
Rep. Major R. Owens
Rep. Sherrod Brown
Rep. Sue Kelly
Rep. Mark Foley
Rep. José E. Serrano
Rep. Nydia M. Velázquez
Rep. Rosa L. DeLauro

Rep. Connie Morella
Rep. Jerrold Nadler
Rep. Bill Pascrell, Jr.
Rep. Carolyn McCarthy
Rep. Frank Pallone, Jr.
Rep. Eliot L. Engel
Rep. Robert Menendez
Rep. Stephen Horn

Page 4

Rep. John M. McHugh
Rep. Rodney Frelinghuysen
Rep. Louise M. Slaughter
Rep. Steve Israel
Rep. Gregory W. Meeks
Rep. Rush Holt
Rep. Mark Kirk

Rep. Carolyn B. Maloney
Rep. Nita Lowey
Rep. Michael R. McNulty
Rep. Tammy Baldwin
Rep. Jim Maloney
Rep. John B. Larson

F000218

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90048-4183
323.651.1040

CONGRESS OF THE UNITED
STATES
HOUSE OF REPRESENTATIVES



HENRY A. WAXMAN
29TH DISTRICT OF CALIFORNIA

RANKING MEMBER
COMMITTEE ON
GOVERNMENT REFORM

MEMBER
COMMITTEE ON
COMMERCE
DEMOCRATIC STEERING
COMMITTEE

FACSIMILE TRANSMISSION
IF THIS FAX IS INCOMPLETE, PLEASE CALL 202-225-3976

To: Kenneth L. Zwick

Fax: 301-519-5956

From: Henry A. Waxman

Date: 11/26/01

Pages (incl. cover): 3

Comments:

F000248

Nov-26-2001 06:11pm From-

T-700 P.006/011 F-510

(202) 225-3976

SENIOR DEMOCRATIC MEMBER
COMMITTEE ON
GOVERNMENT REFORM

MEMBER
COMMITTEE ON
ENERGY AND COMMERCE

DISTRICT OFFICE:
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SUITE 400
LOS ANGELES, CA 90048-4183
(323) 851-7040

Congress of the United States
House of Representatives

Washington, DC 20515-0529

HENRY A. WAXMAN
29TH DISTRICT, CALIFORNIA

November 26, 2001

The Honorable Kenneth L. Zwick
Director
Office of Management Programs
Civil Division, Department of Justice

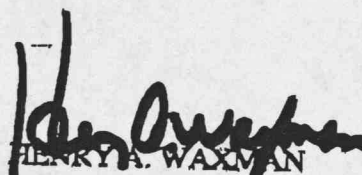
VIA FAX
301-519-5956

Dear Mr. Zwick,

I received the enclosed e-mail message from my constituent, Mr. Brian Walters, who wanted to share his concerns about the administration of funds by the September 11th Victim Compensation Fund of 2001. I wanted to share his comments with you.

With kind regards, I am

Sincerely,


HENRY A. WAXMAN
Member of Congress

HAW:bc

F000249

Noyes, Matt

From: writerep
Sent: Thursday, October 04, 2001 3:02 AM
To: CA29WYR
Subject: WriteRep Responses

DATE: October 4, 2001 01:49 AM

NAME: Brian Walters

ADDR1: (b)(6)

ADDR2:

ADDR3:

CITY: (b)(6)

STATE: (b)(6)

ZIP: (b)(6)

PHONE: (b)(6)

EMAIL: (b)(6)

msg:

I have recently heard of a bill that either exists or is in the making. It deals with the payment towards the families of the victims of the World Trade Center Attack. While I am a staunch supporter of providing financial assistance for the families of those that have innocently lost family members and for those that lost their loved ones in their attempts to save the innocent, the numbers that I am hearing are preposterous.

I have heard numbers in the range of 1 million dollars per victim. I find this completely unrealistic. With an estimate of 5000 deceased, that comes out to 5 billion dollars. And where will this money go? How are we assured that it will be used in the most practical and beneficial manner?

I feel that the right thing to do is provide the victims with the support that will help them survive. Not just now, but in the future. Let's take that money and build a safety net that will protect them as they attempt to get their lives in as normal of a lifestyle as possible without the love of the ones they've lost. Let's assure them of medical coverage for the remainder of their lives. Let's assure them of college funding for the children. Let's assure them of an income for 2-3 years, so they don't have to worry about the rent or mortgage or monthly bills.

I feel these solutions are much more effective than a giant check. These are solutions that can't be manipulated by the evil people that prey on victims. These are solutions that show that their country cares about them and understands the sacrifices that their Husbands, Wives, Mothers and Sons have made for the rest of us.

Brian Walters

(b)(6)

F000250

MARTIN T. MEEHAN
5TH DISTRICT, MASSACHUSETTS
<http://www.house.gov/meehan/>
2447 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3411 FAX: (202) 225-0771



Congress of the United States
House of Representatives
Washington, D.C. 20515

November 26, 2001

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SUBCOMMITTEE ON MILITARY PERSONNEL
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JUDICIARY
SUBCOMMITTEE ON CRIME
SUBCOMMITTEE ON IMMIGRATION & CLAIMS

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Mr. Kenneth L. Zwick
Director
Office of Management Programs
U.S. Department of Justice, Civil Division
Main Building, Room 3140
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Zwick:

I am writing in response to the U.S. Department of Justice's invitation for interested parties to submit comments regarding implementation of the September 11th Victim Compensation Fund of 2001 (*AG Order 2531-2001*).

I greatly appreciate the Justice Department's willingness to consider input from the public on this matter of critical importance to those who lost loved ones in the terrorist attacks of September 11th. 28 individuals hailing from or with close connections to Massachusetts's Fifth Congressional District – which I am privileged to represent – died in those attacks. A strong spirit of compassion for the families of those individuals and other victims of the September 11th attacks must guide implementation of the Fund. Indeed, the ultimate measure of the Fund's success will be the extent to which those who lost loved ones on September 11th consider it to be fair and respectful to the memories of those who died on that terrible day.

While there are many important matters raised in the notice of inquiry and advance notice of rulemaking (*Federal Register*, November 5, 2001), this letter touches solely on the issue of whether charitable contributions by non-profit organizations should be deducted from Fund awards. With respect to other matters discussed in the notice, I am aware that House Minority Leader Richard Gephardt and House Judiciary Committee Ranking Member John Conyers weighed in on these issues on October 25, 2001 with proposed Fund implementation regulations for you to consider. I concur with their recommendations and urge you to give those recommendations all appropriate consideration.

Section 405(b)(6) of Public Law 107-42 states that the Special Master appointed by the Justice Department to administer the September 11th Victim Compensation Fund shall reduce compensation paid to Fund claimants "by the amount of collateral source compensation the claimant has received or is entitled to receive as a result of the terrorist-related aircraft crashes of September 11, 2001." Section 402(4) of P.L. 107-42 defines "collateral source" as "all collateral

Attorney General John Ashcroft
November 26, 2001
page 2

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."

In its notice, the Department indicates that it "appreciates the *strong policy reasons for excluding charitable contributions from the definition of 'collateral sources'.*" [emphasis added] The notice proceeded to invite comment on whether the new law "indeed permits the Department to exclude such contributions from the definition."

I am extremely pleased that the Department recognizes the "strong policy reasons" for not deducting the amount of charitable contributions received by families of the victims of the September 11th attacks from any award they might receive from the Fund. I wholeheartedly agree with this position. A policy of deducting such contributions from the award could encourage potential claimants to engage in litigation rather than applying to the Fund, impose onerous record-keeping burdens on Fund claimants that are rightly grappling with more serious issues, greatly complicate the decisions of private charities to provide expeditious support and assistance to victims' families, and – depending on the response of those charities – potentially violate the intent of donors who made contributions specifically to help respond to September 11th-related losses.

I strongly believe that P.L. 107-42 permits the Department to act consistently with its policy instincts and exclude charitable contributions by non-profit organizations from serving as collateral source offsets for Fund awards. Indeed, a cautious and common-sense interpretation of the law supports that approach.

The law does not define the term "collateral source" but instead lists the following examples: life insurance, pension funds, death benefit programs, and government payments related to the September 11th aircraft crashes. It is accordingly instructive to review the use of this term in the most analogous context – state statutes establishing crime victim compensation programs.

Under these programs, states provide compensation to crime victims and their relatives for a wide variety of expenses and losses related to criminal injury and homicide. A number of the state statutes establishing these programs use the term "collateral source" in describing entities other than the state whose payments to a crime victim may be deducted from or considered to reduce any state award to such victim. I asked the Congressional Research Service to provide me copies of state crime victim compensation statutes expressly using the term "collateral source" in this manner. Notably, in the strong majority of such state crime victim compensation statutes provided to me, the term "collateral source" does not cover charitable contributions by non-profit

Attorney General John Ashcroft
November 26, 2001
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organizations.¹

Furthermore, the language of P.L. 107-42 contemplates -- at most -- an offset of *only* payments from third parties pursuant to statutory or contractual rights. Congress could have included charitable contributions by non-profit organizations in the list of examples describing "collateral sources," yet it chose not to do so. Instead, it listed as examples of collateral sources only benefits and payments pursuant to either statutory mandates or contractual obligations. Indeed, Section 405(b)(6) of P.L. 107-42 -- the actual collateral source offset requirement -- reinforces this notion that statutory or contractual obligation is required for a third-party payor to constitute a "collateral source". In describing the types of payments not yet received by the claimant for which the offset would apply, it mentions "collateral source compensation the claimant . . . is entitled to receive as a result of the terrorist-related aircraft crashes of September 11, 2001." [emphasis added] Of course, no claimant is "entitled" to receive a charitable contribution by a non-profit organization. Congress would have used the term "likely to receive" as opposed to "entitled to receive" had it desired to cover charitable contributions pursuant to recently or previously established donation policies of non-profit organizations.

Accordingly, public policy and proper statutory interpretation support the conclusion that

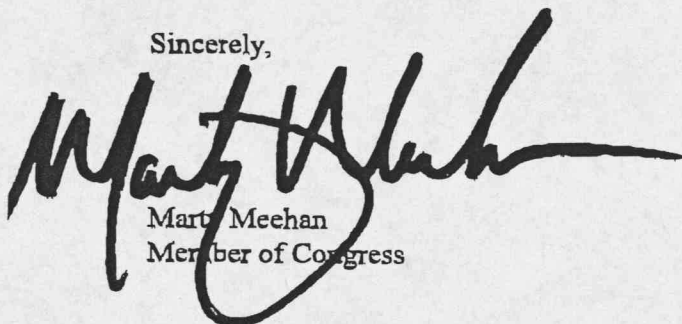
¹As provided to me by the Congressional Research Service, the following state crime victim compensation fund statutes using the term "collateral source" do not consider such term to include charitable contributions: Alabama (ALA. CODE § 15-23-3 [2001]); Kansas (KAN. STAT. ANN. § 74-7301 [2000]); South Dakota (S.D. CODIFIED LAWS ANN. § 23A-28B-22 [2001]); Utah (UTAH CODE ANN. § 63-25a-413 [2001]); Arkansas (ARK. CODE ANN. § 16-90-703 [2001]); District of Columbia (D.C. CODE ANN. § 3-421 [2001]); Louisiana (LA. REV. STAT. ANN. § 46:1802 [2001]); Maine (ME. REV. STAT. ANN. tit. 17, § 1322 [2000]; *note that this statute appears to deal with restitution payments made directly by an offender*); Mississippi (MISS. CODE ANN. § 99-41-5 [2001]); North Carolina (N.C. GEN. STAT. § 15B-2 [2000]); Texas (TEX. CRIM. PROC. CODE § 56.32 [2000]); West Virginia (W. VA. CODE § 14-2A-3 [2000]); and Oklahoma (OKLA STAT. tit. 21, § 142.3 [2000]).

States crime victim compensation fund statutes using the term "collateral source" that do appear to consider such term to include charitable contributions include Minnesota (MINN. STAT § 611A.52 [2000]); Montana (MONT. CODE ANN. § 53-9-103 [2001]); and North Dakota (N.D. CENT. CODE § 54-23.4-01 [2001]); New Mexico (N.M. STAT. ANN. § 31-22-3). Indiana's crime victim compensation statute lists specific sources which do not likely cover charitable contributions. However, it also appears to consider there to be "other collateral sources". IND. CODE § 5-2-6.1-32 (2001). Wyoming's crime victim compensation statute does not further define the term "collateral source". WYO. STAT. § 1-40-110.

Attorney General John Ashcroft
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charitable contributions by non-profit organizations should be excluded from the definition of collateral sources and not considered to offset any Fund award. I expect that most crime victims' advocacy groups will reach this conclusion and earnestly hope that the Department will do likewise. Please feel free to contact me or Glen Shor of my staff at 202-225-3411 with any questions or comments. Thank you in advance for your consideration.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Marty Meehan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Marty Meehan
Member of Congress

NEW JERSEY

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Congress of the United States

November 19, 2001

Committee on Education
and the Workforce

Committee on the Budget

Committee on Resources

Member

Congressional Arts Caucus
Congressional Working Group on Children
Congressional Fire Services Caucus
Sustainable Development Caucus
Internet Caucus
Law Enforcement Caucus

Mr. Kenneth L. Zwick
Director
United States Department of Justice
Office of Management Programs -- Civil Division
Main Building, Room 3140
950 Pennsylvania Avenue
Washington, D.C. 20530

Dear Mr. Zwick:

I am writing on behalf of constituents of my district who have expressed concern with the Victim Compensation Fund signed into law on September 22, 2001 as part of the Air Transportation Safety and System Stabilization Act. Seven of the survivors of the more than one hundred deceased who lived in my district have asked me to forward their comments to you in response to the Notice of Inquiry and Advance Notice of Rulemaking published on November 5, 2001. Copies of these comments are enclosed, and I have summarized below what I believe are three major areas of concern which they raise. If these concerns are addressed, I believe participation in the fund will increase. I trust that you will give these comments all due consideration while drafting the interim final rules to be published by December 21, 2001.

One of the principal concerns my constituents have with the Victim Compensation Program is the requirement that claimants waive their right to sue others before they are advised of whether or not they will receive compensation under the Program or how much. They find this troublesome because, typically, when one is asked to settle in lieu of litigating, one has some expectation of the size of the settlement and the settlement process to allow comparison with the benefits and difficulties of litigation. My constituents feel, however, that they will be asked to choose between a gamble and a gamble, and they do not have an incentive to choose the gamble that comes with no appeal rights (the Victim Compensation Program). I note that there does not appear to be any prohibition in the legislation to establishing the claimant's entitlement to a minimum lump sum upon agreeing to waive the right to sue others. Perhaps it would encourage participation in the Program, therefore, if the regulations include a provision entitling claimants to a minimum lump sum upon filing a claim and establishing basic eligibility.

Another concern my constituents have with the Program is that all collateral source amounts received or to be received by a claimant as a result of the attacks are to be deducted from any amount of compensation awarded under the Program. They are troubled by this because it is not entirely clear what will and will not be considered a collateral source amount. If this rule is applied to charitable contributions, those

F000295

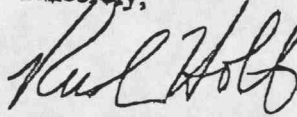
charitable contributions are in a sense cancelled for both the giver and the receiver. The legislation certainly does not intend to deter charitable giving, it simply intends to protect both critical industries and the victims of the attacks from lengthy litigation that would be economically and psychologically debilitating. I believe that the American public generally intends for the victims' families to benefit from their charitable generosity, and perhaps participation in the Program would be encouraged if the regulations make it clear that charitable contributions received by the survivors are not to be deducted.

Finally, careful reading of the legislation shows that it is also ambiguous who the "claimant" is under the Program. Clearly, "claimant" includes a person injured in the attacks who is filing on his or her own behalf. However, with respect to those who were killed in the attacks, some sections of the legislation indicate that the "claimant" is the individual who was killed (for example, sections which refer to claimants being "present at" the attacks and claims being filed "on behalf of the deceased"), and other sections indicate that the "claimant" is the survivor of the person who was killed (for example, the provision under which awards are to be reduced "by the amount of the collateral source compensation the claimant has received", since it is the survivor who receives collateral source amounts). The question of who the claimant is has many implications. If the claimant is the deceased, it seems that life insurance payable to the survivor should not be deducted. If the claimant is the survivor, it seems that pain and suffering of the deceased should not have to be demonstrated specifically. I think that questions about deducting collateral source payments and also about non-economic losses of the claimant would be reduced if the regulations clarify who the claimant is.

These, I believe, are three of the most fundamental concerns my constituents have raised with this legislation and which, I believe, should be addressed in the regulations. I would appreciate it if you would respond to me with respect to all of these concerns before the interim final rules are published on December 21, 2001. In addition, as indicated by the enclosed, my constituents have other concerns with the legislation. Some object to the requirement that they waive their right to sue everyone, when it seems that the legislation was only designed to protect the airlines. Some are deeply concerned about the lack of appeal rights. Some object to the limitation that only one person is allowed to file a claim with respect to a deceased person, when many suffer from the wrongful death of each person. Therefore, I would also appreciate it if the Special Master would arrange for a public hearing with respect to this legislation as soon as possible somewhere in the Central New Jersey area, which was deeply affected by the attacks.

I thank you for your time and attention in reviewing these important questions, and I look forward to your response. We all want regulations that will compensate fairly the victims of the September 11 attacks.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rush Holt", written in a cursive style.

RUSH HOLT

RH/mpm

Mulder, Michelle

From: PAT CONWAY SMTP (b)(6)
Sent: Tuesday, November 13, 2001 2:31 PM
To: Pat ryan; Mulder, Michelle
Subject: Fw: VICTIMS COMPENSATION FUND COMMENTS

-----Original Message-----

From: PAT CONWAY <pconway@fcol.com>
To: PATRICIA ESPO RYAN (b)(6); michelle.mulder@mail.house.com
<michelle.mulder@mail.house.com>; debbieadurto@corzine.senate.com
<debbieadurto@corzine.senate.com>; senator@billnelson.senate.gov
<senator@billnelson.senate.gov>; bob graham@graham.senate.gov <bob
graham@graham.senate.gov>; victimcom.comments@usdoj.gov
<victimcom.comments@usdoj.gov>
Cc: (b)(6)
Date: Tuesday, November 13, 2001 12:26 PM
Subject: VICTIMS COMPENSATION FUND COMMENTS

>DEAR MR. ZWIK,

>
>I AM PROVIDING THE FOLLOWING COMMENTS FOR YOUR CONSIDERATION IN REGARDS TO
>THE SEPT 11TH VICTIMS COMPENSATION FUND. FIRST AND FOREMOST, THE LAST
>THING

>THE VICTIMS FAMILIES (HEREIN REFERRED TO AS THE FAMILIES) NEED IS
>PROTRACTED

>LITIGATION. ALACRITY IS ESSENTIAL. IT IS MY UNDERSTANDING THAT THE FUND
>WILL BE STRUCTURED TO ENCOURAGE THE FAMILIES TO SURRENDER THEIR RIGHTS TO
>SUE. THAT BEING SO, I RECOMMEND THE FOLLOWING GROUND RULES:

>
>1. ANY AWARD WILL NOT BE REDUCED FOR OTHER BENEFITS (E.G., INSURANCE,
>PENSION, AND DEATH BENEFITS). THE OTHER BENEFITS WERE PAID FOR SEPARATELY
>AND SHOULD HAVE NO BEARING ON THE AWARD.

>
>2. THE FAMILIES RETAIN THE RIGHT TO APPEAL.

>
>3. IF THE APPEAL IS NOT AN OPTION, THEN THE FAMILIES WOULD CHOOSE THEIR
>MEDIATOR FROM A LIST PROVIDED BY THE GOVERNMENT. THIS LIST WOULD INCLUDE
>BACKGROUND INFORMATION ON THE MEDIATORS SO THAT THE FAMILIES MAY MAKE AN
>ENLIGHTENED CHOICE.

>
>4. THE FAMILIES SHOULD HAVE SOME FORMULA TO CALCULATE A MINIMUM,
>ACCEPTABLE
>AWARD. THE FORMULA SHOULD CONSIDER LOST FUTURE EARNINGS, NUMBER OF
>CHILDREN, STANDARD OF LIVING, ETC.

>
>5. ESTABLISH PARAMETERS TO CALCULATE PAIN AND SUFFERING AT THE MEDIATION
>HEARING.

>
>6. IF THE MEDIATOR DOES NOT ADHERE TO THE ESTABLISHED PARAMETERS, THE
>FAMILIES MAY APPEAL.

>
>7. THE AWARD MUST ENCOMPASS MORE THAN LOST FUTURE EARNINGS. IT MUST
>CONSIDER EMOTIONAL SECURITY, FAMILY DEVELOPMENT, AND OTHER NON-TANGIBLES.

>
>8. THE AWARD WOULD BE AN "AWARD" AND THEREFORE NONTAXABLE BY FEDERAL,
>STATE, AND LOCAL GOVERNMENTS.

>
>THANK YOU FOR YOUR TIME AND CONSIDERATION.

>
>PATRICK T. CONWAY
>MAJOR, US MARINE CORPS RETIRED

Mulder, Michelle

From: Toni Esposito[SMTP:toni@voicenet.com]
Sent: Tuesday, November 13, 2001 9:50 PM
To: Mulder, Michelle
Subject: HELP HER PLEASE

As a relative of one of the victims of the September 11th terrorist attacks, I trust that the regulations for the Victims Compensation Fund ("the Fund") can be fashioned in such a manner to bring equity and closure this most awful chapter in American history. Towards that end, the Fund must be structured to encourage victims' families to surrender their rights to sue because they believe they will be treated fairly and promptly. To send such a compelling message I respectfully submit that the regulations must contain following elements:

1. Do not reduce the award from any collateral source funds collected, including insurance, pension benefits, death benefits, and governmental payments (which we understand are being considered as offsets). Such offsets should be disallowed for, among other reasons, the same reason the IRS exempts life insurance proceeds from taxation (i.e., to encourage citizens to plan for their heirs). Such offsets would penalize those victims who sacrificed and saved for their families' futures and unjustly transfer these assets, thereby representing a lifetime of work, to insurance companies and other corporate entities that may share the blame for the consequences that resulted from the tragic events of 9/11. In a nutshell, these assets have nothing to do with the damages that flowed from 9/11, and therefore there should be no offset to damages based on the net worth of the victims' families. It would also result in awarding more in damages to those who did not sacrifice and save for their families' futures, which would be an inequitable result.
2. Provide the victims' families with the right to appeal the award, as doing so would undoubtedly increase participation in the Fund.
3. Should the Department of Justice decline to offer victims' families the right to appeal, then at a minimum they should have input regarding the selection of the mediator who would decide the award. The government should provide a list of potential mediators with their background (e.g., educational, work experience, prior award history, etc.), which would allow victims' families to make an informed choice.
4. There should be set parameters for calculating damages (i.e., mathematical formula factoring lost future earnings, pension benefits, number of children, and other pecuniary benefits that would have been earned taking into consideration life expectancy tables), that would provide a floor for calculating damages and provide assurance to victims' families as to what they could expect to receive, at a minimum, if they elected to opt into the Fund. I believe this has been referred to in the press as the development of a "grid." In short, the victims' families should be able to calculate, with some certainty, the minimum amount of money they could expect to be awarded prior to participating in the hearing. That should serve as a powerful inducement to opt into the Fund.
5. Determine pain and suffering at the hearing.
6. If the mediator deviates for the guidelines the victims' families should be able to appeal the decision.
7. The regulations should include a scheme that would afford the victims' families one that is similar to the one they would enjoy in a wrongful death case. The amount awarded as damages should include all

funeral, burial, and estate administration expenses incurred. Importantly, the amount should compensate the victims' family for contributions they would have received between the time of his death and the end of this life expectancy, such as future lost wages. His gross earnings, including all fringe benefits between the date of his death and his life expectancy, must be factored in. Additionally, all monies the victim would have spent for or given to his family for such items as shelter, food, clothing, medical care, education, entertainment, gifts and recreation, taking into account his salary and age, must also be considered. The amount awarded should also consider the comfort and friendship that he would have given to his family had he lived and such other elements as work around the home and provision of society and comfort.

8. Since the amount awarded would be intended to restore the victim's family's loss, it should not be considered as "Income." Therefore, it should not be taxable by the federal or state taxing authorities.

In closing, I understand that the DOJ is suggesting that the victims' families surrender their right to sue without advising them what they can anticipate by way of award and without the ability to appeal such award. This is, to be kind, unacceptable. The above suggestions would encourage attorneys and families alike to opt into the Fund, thereby forgoing their right to sue. This would bring closure to an American Tragedy and reassure victims' families that our government has their best interests at heart. We only want to place them in the financial position they would have been in had their loved ones not been taken away in the worst terrorist attacks in American history—which may have been avoided. But that is another story. Only you can help. Thank you.

Toni Esposito
my sister lost her husband
in WTC

Mulder, Michelle

From: (b)(6)
Sent: Tuesday, November 13, 2001 1:21 PM
To: Victimcom.comments@usdoj.gov; Mulder, Michelle; Debbie_curto@corzine.senate.gov
Subject: September 11

My brother was killed on September 11th. He was one of the unlucky employees of Cantor.

I am writing because I'm horrified by the way Congress has handled this situation so far. I can only image if a member of Congress lost a family member that day, how different the outcome would be. You have no idea the pain and suffering that is torturing my family. How can the government say that there is only one person who represent each family? My parents lost their only son. My sisters and I lost our only brother. My sister-in-law is left to raise her three children by herself. A 9 year old boy, 7 year old girl and a 3 year old boy.

What is this about "double dipping"? The government is afraid families are going to get "rich" from this tragic event. I invite any member of congress to go live with my sister-in-law and her three children for one week, live with their heart ache, live with their despair. There is not enough money in the world to help heal my family. But since there is no other way for the families can seek justice, except by filing lawsuits, that is what we, as Americans, should have the right to do.

I thought the government was here to protect us. Instead you hire airport employees who have criminal records to "protect us". Where was the Homeland Security during all of this?

On top of all of our pain and suffering, this should be the last thing my family, along with (5000 other families) should have to deal with. I hope in the end the government does what is right.

Thank you,

Debra Foxx

(b)(6)

SENT BY FAX
FAX: (609) 750-0618
Att: Michelle Mulder

(b)(6)

Honorable Rush Holt
50 Washington Road
Princeton Junction, NJ 08550

RE: WORLD TRADE CENTER VICTIMS
FEDERAL COMPENSATION PROGRAM
STEWART D. HARRIS - (Cantor Fitzgerald Employee)

Dear Congressman Holt:

My husband, Stewart D. Harris, was a 52 year old employee of Cantor Fitzgerald Securities for 20 years, and is one of the many Cantor employees who is missing at the World Trade Center. Unfortunately, he was on the 101st Floor at the time of the terrorist attack. To say that my two children and I are devastated and are feeling a great loss is to grossly understate our feelings. He was a wonderful husband and a very involved father, and will be greatly missed.

As a result of this horrible tragedy, my family is now in a state of great uncertainty. We have not only lost our husband/father but the sole supporter of our household. I am in the midst of seeking financial relief and have tried to keep abreast of all developments relating to governmental programs currently being discussed. The Federal Compensation Program has been one option that I am eagerly awaiting the details. However, there have been some rumors that have not only upset me but have made me feel like my husband has become a victim a second time. I have heard that Congress is working on a formula in order to figure out the compensation a family will get under this Federal Compensation Program. It is my understanding that a victim's annual compensation and age on September 11th will be determining factors in that formula. It is also my understanding that in the formula the amount of years that one is expected to work is also a critical factor. Lastly, it has been suggested to me that Congress is contemplating using the age of 55 years or 60 years as the baseline for one to retire, and, therefore, compensation would not be figured for any years past that. I am of the further understanding that the expected workable years will also vary according to the industry (in our case, that being the brokerage industry). To say that the above factors, in my opinion, are grossly unfair and lacking in justice, once again, understates my feelings.

F000302

Page 2 - Sheila G. Harris/November 17, 2001

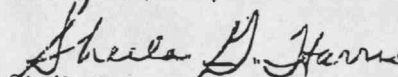
I'd like to point out that while my husband did work in the brokerage industry, he remained with one company for 20 years. Notwithstanding the fact that there is a large amount of movement within the industry, my husband clearly was an exception. Furthermore, this would indicate that he would have continued to work in this capacity, in the brokerage industry, until he was at least 65 years old. To make a broad generalization that people in the brokerage industry do not remain in the industry (or with a firm) on a long-term basis would result in a gross injustice and prejudice against those who do not fit the presumed profile. Such a presumption is wrong.

My husband was a healthy 52 year old man, who had every intention of working until he was at least 65 years old. Retirement before 65 was simply not an option for him since financially we were not prepared. All savings towards retirement were made by my husband's contributions into a 401K. Additionally, the market has been such that my husband lost a great deal of the money he had put into the 401K Plan. For these reasons, we could not have afforded retirement and, therefore, he would have worked until 65 years old or older.

I am certain that I am not the only one in this situation. Therefore, since you are my Congressman, I ask that you truly represent my family (and, most importantly, my deceased husband) when Congress puts together the final details for the Federal Compensation Program. It is not my desire to take the litigation route, especially since my family is not in a position to wait for the Courts. I have two kids that need to be taken care of and without a fair compensation program I will be unable to adequately provide for them. Since my husband was 52 years old, he had at least another 13 years that he would have had to work. My husband's life was cut short by terrorists. Please do not make him a victim again by cutting short the years that he planned to work. He would never have considered retirement before the age of 65 and I am simply asking that Congress take our situation into consideration when they fine-tune the formula in which they use in determining the compensation that the victim's families receive. It is the only fair and just way to treat this unfortunate matter. Please do not allow Congress to victimize us again by not providing us with the support that my husband had planned to provide.

I would appreciate your response to the above as soon as possible. I am having a difficult enough time dealing with the loss of my husband, and, in addition, having to deal with the financial problems that I am now faced with is way too much to bear. I ask you to please represent my family in a fair and just manner. Thanking you in advance for your prompt attention,

Very truly yours,


Sheila G. Harris

F000303

Mulder, Michelle

From: Vivian Shoemaker[SMTP: (b)(6)]
Sent: Thursday, November 08, 2001 11:27 AM
To: debbie_curto@corzine.senate.gov; victimcomp.comments@usdoj.gov; Mulder, Michelle
Subject: RE: September 11th Victims Compensation Fund

I lost my son, Alan Kleinberg, age 39, in the World Trade Center attack on Sept. 11, 2001. The grieving and the devastating loss of my son will remain with me for the rest of my life.

Through my tears, I will try to express my opinion regarding the Compensation Fund.

1. Eligibility To Make a Claim

Don't parents count? According to the regulation, if my daughter-in-law, (whom I am very close to), decides to go with the Fund, I am totally excluded from receiving any monetary damages. It should be specified that other family members (parents) should also be part of the award. Their award should not be deducted from the spouses. As the law stands now, I also cannot sue or file a lawsuit against the terrorists, terrorist organization or countries that support terrorism, nor can I sue any company for negligence. I am totally excluded as if my heartache does not matter.

The regulation should clearly state that surviving family members have their own, derivative claims. The regulations should also create uniform rules addressing which family members are entitled to share in an award and how they will share in the award. Again, don't I count?

2. Nature & Amount of Awards

The victims should have the option of accepting the award or being able to sue on their own. They should not have to sign away their right to sue before they know what the award will be.

The victims should also be allowed to sue the assets of the Terrorist funds whether they receive an award from the Fund or not. The Act could not have been intended to protect the financial interest of terrorists or terrorist organizations.

Collateral benefits should not include payments from charities.

The regulations should create a procedure by which there can be an administrative appeal of the award.

I certainly you can help me to have a voice in this matter.

Thank you,

Vivian Shoemaker

(b)(6)

(b)(6)

Mr. Kenneth L. Zwick, Director
Office of Management Programs
Civil Division
U.S. Department of Justice
Main Building, Room 3140
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

RE: CIV 104P; AG Order No. RIN: 1105-AA79
September 11th Victim Compensation Fund of 2001

Dear Mr. Zwick:

I am a September 11th widow. As someone who is experiencing first-hand the bureaucratic nightmare generated by variants in private and public aid institutions, I implore you to consider this - that the Victims Compensation Fund as currently written alludes to a series of economic and non-economic "criteria" (undefined). While commenting on what is not known is difficult at best, I offer these concerns:

- Collateral subtracted from compensation punishes those families of victims who paid for policies and benefits and Federal programs out of their salaries, who lived within their means and saved and whose surviving family members have already struggled to receive help from an array of charity funds whose donations were intended by the American people to be distributed to those families regardless of circumstance.
- There is no consideration of the amount of income contribution or benefits (such as health insurance) that have been lost.
- The relative pain and suffering of the victims cannot and should not be quantified in these circumstances; to attempt to do so is wildly inappropriate.
- The administrative cost of information gathering, verification, documentation, and evaluation required to implement this process would proportionately reduce the funds available to the families and put them (yet again) through unnecessary bureaucracy.
- The requirement to accept the offer in lieu of pursuing a lawsuit prior to knowing the dollar amount of the payment is egregious and unfair.
- The possibility of subjective evaluations raises the potential of inequity and places the burden of proof on those seeking some sort of help.

For all these reasons, I urge you to abandon the arbitrary set of criteria set forth in the rules and regulations and simply divide the total into equal cash payments to every applicant. Otherwise, I believe that this Act will spawn the hundreds, perhaps thousands of lawsuits it seeks to avoid.

Sincerely,

Nikki Stern

F000305

Mulder, Michelle

From: Lorie Van Auken[SMTP: (b)(6)]
Sent: Thursday, November 08, 2001 2:39 PM
To: victimcomp.comments@usdoj.gov
Cc: debbie_curto@corzine.senate.gov; Mulder, Michelle
Subject: Comments

My husband of almost 16 years was killed on the 105th floor in the WTC North Tower. He was an employee of Cantor Fitzgerald. I have several comments about what I have read about the 9/11 settlement fund.

1. If I am not mistaken, this law was set up to protect the airlines from going under. Why should the U.S. Government care if I sue the Taliban, or anyone else, who has nothing to do with the airlines even if I sign on to the settlement?
2. I believe that a set minimum amount of money should be received by the family of each victim who lost their life on 9/11/01. This set amount, which would be revealed to us in advance, would enable me to evaluate whether or not it makes economic sense for me to sign on to this settlement. On top of the set minimum, all other factors should be considered such as: economic earnings potential of the victim, pain and suffering, loss of companionship etc. From this amount, subtractions would be made.
3. Will Social Security benefits and/or Worker's Compensation be subtracted from the settlement amount? I do not believe these monies should be subtracted.
4. Is the settlement amount taxable?
5. I do not agree that life insurance should be subtracted from the settlement amount. Will my premiums be reimbursed if life insurance is subtracted?
6. Will charitable contributions be subtracted?

Lorie Van Auken

(b)(6)

United States Senate

WASHINGTON, DC 20510

October 31, 2001

Dear Attorney General Ashcroft:

I write to express my concern that all victims of the September 11th attacks receive equal treatment in applications for relief under the September 11th Victim Compensation Fund of 2001. I urge that the regulations you promulgate and your administration of the fund ensure that all victims receive full compensation for their losses without regard to their sexual orientation.

Just as those who died in the World Trade Center spanned all races, creeds, and colors, the tragedy touched lesbian and gay families as well as heterosexual families. One of the heroes of September 11 on board United Flight 93, Mark Bingham, was a gay man. Many of the lesbian and gay victims are survived by longtime partners. David O'Leary lost his partner of 17 years, Michael Lepore, a project analyst at Marsh & McLennan with whom he shared a Yonkers home. Catherine Anello lost her partner Pamela Boyce, an assistant Vice President for accounting at Carr Futures on the 92nd floor of One World Trade. Their stories, and the stories of the other gay and lesbian victims of this tragedy, are as compelling as any others'.

The need for support and recompense is no less real for these survivors than it is for the countless other relatives who lost loved ones. America has reached out with enormous generosity to all of the victims because our common humanity recognizes that grief and loss are not reserved to any single culture or group — they are borne by each and every one of us, whatever our race, religion, or sexual orientation.

The laudable purpose of the September 11th Fund is set forth clearly in the Act: to provide compensation for the losses of those who died and those who were injured. It is crucial for the many deserving families that the regulations implementing this Section permit recovery for all deserving relatives, including the committed partners of gay and lesbian victims of the terror attacks. For those whose family relationships do not meet certain strict formal legal definitions, such as same-sex partners and non-biological children of victims, the enormity of the loss of a beloved companion and parent could be compounded by the prospect of ineligibility for compensation intended for their protection. The Department of Justice should not permit this potential inequity. I urge you to include among relatives eligible for compensation those who lost their life partners or non-biological parents, regardless of sexual orientation and marital status.

Just a few days ago, Governor Pataki issued an Executive Order granting surviving same-sex partners of the World Trade Center attacks comparable benefits to those received by surviving spouses from the state's Crime Victim Board. (The Board, I note, receives a large proportion of its compensation funds from the Department of Justice's Office for Victims of Crime.) In many other areas, New York state and local laws recognize that an array of people

MB00001

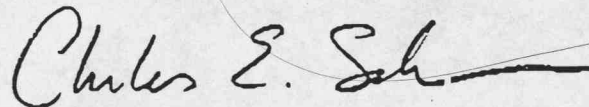
come together to form families that are emotionally and financially interdependent, and the law has been taking affirmative steps to protect those who face peril when a family member perishes. These court rulings, laws, and executive orders deserve special consideration and carry special weight because the vast majority of the victims of the September 11 attacks were killed in New York, and New York law would normally apply in compensation litigation.

Our nation has come together in this time of tragedy to lend its unqualified support to all the innocent victims of the attacks. We must stand united to fulfill our moral obligation to all those harmed by this tragedy. I therefore believe that all same-sex partners and non-biological children be eligible to serve as proper representatives for claims related to individuals who died as a result of the September 11th attacks. I further encourage you to treat non-economic damages, such as loss of companionship and loss of consortium, identically for those victims who were in heterosexual and homosexual relationships.

Ensuring that same-sex partners and the non-biological children of victims receive compensation permits the federal fund to be distributed with basic equality and fairness to all those in need. And it upholds the fundamental values of liberty and equality cherished by all Americans, values that we are all fighting to defend as we wage war on those who are bent on undermining our freedom.

Thank you for taking these considerations into account as you continue your work on this important matter.

Sincerely,

A handwritten signature in dark ink, reading "Charles E. Schumer". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Senator Charles E. Schumer

MB00002

Congress of the United States
Washington, DC 20515

October 25, 2001

The Honorable John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear General Ashcroft:

On September 21, 2001, Congress passed H.R. 2926, the Air Transportation Safety and System Stabilization Act (now Public Law 107-42), a critical first step toward ensuring the future vitality of commercial aviation in America and throughout the world.

While H.R. 2926 provides immediate assistance to the industry, it also addresses Congress' urgent responsibility to ensure fairness, justice and compassion for the human victims of the horrific events of September 11, and for their families. Title IV of the Act establishes a September 11th Compensation Fund to be administered by a Special Master appointed by the Attorney General of the United States.

We write to urge you to appoint that Special Master expeditiously but with due diligence. As you know, Section 407 of the measure requires that you, in consultation with the Special Master, promulgate regulations to carry out the activities of the fund within 90 days of the bill's enactment. To that end, it is vital that a Special Master be appointed quickly.

We feel strongly that the Special Master you choose must have the support and confidence of the Senate and the House and of the elected representatives of the victims in particular. Title IV vests an enormous amount of power and discretion in you and in the Special Master. The regulations you promulgate and the way you administer the fund will have enormous repercussions for the victims and their families.

The Special Master you select must have extensive experience, extraordinary judgment and legal ability, broad respect within the legal community and bipartisan support in Congress. Accordingly, we respectfully request that you consult with us prior to selecting the Special Master and promulgating regulations.

MB00022

The Honorable John Ashcroft

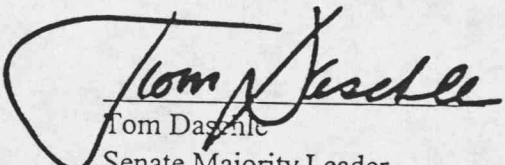
October 12, 2001

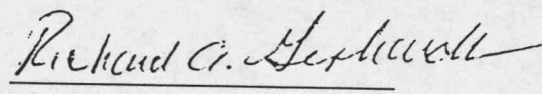
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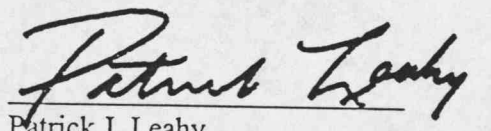
Our nation and Congress have come together, heeding the President's call for unity in action and spirit in the wake of the terrible events of September 11. We know that you will appoint the Special Master and promulgate the regulations in that same spirit of cooperation and consultation, and we stand ready to assist in this effort. We look forward to communicating in the very near future to discuss this process.

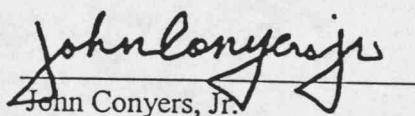
Attached you will find proposed regulations we would like you to consider for the September 11th Compensation Fund.

Yours respectfully,


Tom Daschle
Senate Majority Leader


Richard A. Gephardt
House Democratic Leader


Patrick J. Leahy
Chairman, Senate Judiciary Committee


John Conyers, Jr.
Ranking Member, House Judiciary Committee

MB00023

Regulations pursuant to Section H.R. 2926, Section 407,
"September 11th Victim Compensation Fund of 2001"

401. Scope and Purpose. The regulations in this part apply to claims presented or filed pursuant to the September 11th Victim Compensation Fund of 2001 (the "Act"). The purpose of these regulations is to effectuate a coherent framework to provide full, fair, uniform and expeditious compensation to victims and families of victims resulting from the terrorist attacks of September 11, 2001 and these regulations should be interpreted to effectuate that purpose.

402. Definitions and Use of Terms. For purposes of these regulations and as used in the Act, except where otherwise provided, the following definitions shall apply:

1. Spouse. The term, "spouse," shall mean the person who is deemed by the laws of the state in which the claimant resides to be legally married to the claimant at the time of his or her death; or is deemed to be the claimant's spouse under the laws of the state in which the claimant resided that would apply in determining the devolution of the claimant's intestate personal property or would have the right of a spouse to share in the claimant's intestate personal property under such laws.
2. Child. The term, "child," shall mean any natural or adopted child of the claimant or decedent on whose behalf a claim is brought under the Act.
3. Minor Child. The term, "minor child," as used in these regulations, shall refer to any child who is no more than 18 years old, or no more than 23 years old where such child is enrolled full time as a student in a secondary or post-secondary educational institution.
4. Decedent. The term, "decedent," shall mean a person who has been declared by law or appropriate legal authority to be deceased.
5. Decedent Claimant. The term, "decedent claimant," shall mean a decedent person on whose behalf a claim is brought under the Act.
6. Dependent. The term, "dependent," as used in these regulations shall mean any person who received or reasonably would receive in the future services or support from the decedent or injured person.
7. Personal Representative of the Decedent. For the purposes of filing a claim under the Act, "personal representative of the decedent," shall mean: (1) a person named by the decedent in a will or other testamentary document; (2) a parent or the legal

guardian of the decedent where the decedent was a minor or was under the legal custody of another person or institution pursuant to an award of custody established by a court of competent jurisdiction; or (3) a person duly qualified or appointed under an applicable state law.

8. Immediate Aftermath. The term, "immediate aftermath," shall mean the period commencing at the time of the crash of each of the air carriers in the September 11th attack, or the period commencing at the time of the collapse of any building that occurred on that same date as a result of such crash and terminating 48 hours thereafter, and shall be extended beyond such period only to include efforts by authorized persons to rescue persons or recover human remains from the site of the collapse of any such building or crash.
9. Physical Harm. The term, "physical harm," shall mean any direct injury to a person and any resulting condition, disability or loss that directly and in natural sequence is caused by the injury.
10. Present at. The term, "present at," shall mean being within the described physical location, within any building at the described physical location, or in such proximity of any described physical location so that a person suffered physical harm due to impact from any part of an aircraft or building within a described physical location.
11. Collateral Source. The term "collateral source" shall include payments to the Claimant from sources of compensation or benefits, including life insurance, pension funds, death benefit programs, and payments by Federal, State or local governments as a result of the terrorist-related aircraft crashes on September 11, 2001. It shall not include any grants or gifts given, or expected to be given, to the Claimant as a result of the terrorist-related aircraft crashes on September 11, 2001, from any non-profit, religious or other charitable 501(c)(3) organization.
12. "collateral source compensation has received or is entitled to receive." For the purposes of determining the amount by which to reduce a Claimant's compensation due to collateral source compensation, the Special Master shall consider collateral source payments received by the Claimant or personal representative of decedent and collateral source payments that are reasonably certain to be due Claimant or personal representative of decedent in the future. Reasonably certain means collateral source payments as to which there is either a statutory or contractual right or fully vested interest at the time of the final determination.

403. Special Master/Hearing Officers.

1. Special Master. The Attorney General's appointment of any individual as the Special Master shall be for a term of 3 years, subject to termination by the Attorney General for incompetency, misconduct, or neglect of duty or for any other good cause shown.

The Special Master shall be responsible for the following:

- a) Administering the Office of Special Master, hiring its staff, providing for the efficient, expeditious, and effective handling of claims, and performing such other duties related to the Act as may be assigned by the Attorney General;
- b) Administering the September 11thth Victim Compensation Fund established under this Act;
- c) Promulgating all procedural and substantive rules for the administration of this Fund;
- d) Appointing and fixing the salary and duties of such administrative staff as necessary. Such staff shall be subject to removal for good cause by the Special Master;
- e) Appointing and fixing the salary and duties of such Hearing Officers as necessary;
- f) Managing and executing all aspects of budgetary and administrative affairs affecting the Hearing Officers and their staff; and
- g) Reporting every 6 months to the Attorney General and the committees of the Judiciary of the House of Representatives and the Senate on the number of claims filed and their disposition, the types and amounts of awards, the length of time for the disposition of the petitions, the cost of administering the Program, and recommendations for changes in the Program.

12. Hearing Officers.

1. Qualifications. Hearing officers shall be retired federal court judges, retired state court judges of general jurisdiction or appellate courts or

certified mediators. Hearing officers shall be selected from the locales where hearings are to be held and shall be in consultation with the Chief Judge of the United States District Court in the District(s) or the Chief Justice of the State from said locations. Employees of the United States government, airline industry or insurance industry shall not be selected as Hearing Officers.

2. Authority of Hearing Officers. Hearing Officers are authorized to:
 - a) Conduct formal hearings with respect to, and adjudicate claims in accordance with, these regulations and the Act;
 - b) Administer oaths and examine witnesses;
 - c) Compel the production of documents and appearance of witnesses by issuance of a subpoena;
 - d) Prepare documents for the signature of the parties;
 - e) Issue decisions and orders with respect to claims as provided in this part; and
 - f) Do all other things necessary to enable him or her to discharge the duties of the office.

A Hearing Officer may be removed by the Special Master because of incompetence, misconduct, neglect of duty or for other good cause shown.

No Hearing Officer shall conduct any proceedings in a claim in which he or she is prejudiced or partial, or where he or she has any interest in the matter pending for decision. Upon assignment of a Hearing Officer, a Claimant may within 15 days challenge said Hearing Officer setting forth in writing the basis of said challenge. A decision to withdraw from the consideration of a claim shall be within the discretion of the Hearing Officer and reviewable by the Special Master. If the Hearing Officer withdraws, another Hearing Officer shall be designated by the Special Master to complete the adjudication of the claim in a timely manner.

No Hearing Officer shall be permitted to appear or act as a representative of a party under this part while such individual is employed as a Hearing Officer. No Hearing Officer shall be permitted at any time to appear or act as a representative

in connection with any case or claim in which he or she was personally involved.

No Hearing Officer shall act in any claim involving a party that employed such Hearing Officer within one year before the adjudication of such claim.

Notwithstanding paragraph (1) of this subsection, no Hearing Officer shall be permitted to act in any claim involving a party who is related to the Hearing Officer by consanguinity or affinity within the third degree as determined by the law of the place such party is domiciled. Any action taken by a Hearing Officer in knowing violation of this paragraph shall be void.

404. Presenting Claims.

1. Forms and Contents - All claims must be in writing and submitted on the standard form contained in these regulations. The form must be completed, signed under oath either by a person eligible to file a claim under the Act, by that person's legal guardian or by the personal representative of a decedent and any counsel for the claimant and mailed to _____.
2. Attorney Referral- Claim forms issued by the Special Master shall include clear and conspicuous statements regarding Claimant rights to an attorney. Forms shall be accompanied by information on how to receive pro bono assistance.
3. Standard Claim Form - Copies of the standard claim form shall be available _____.
4. Filing - Upon receipt of a claim, the Special Master shall within 14 days review the claim for completeness. If a claim is deemed complete or at the expiration of 14 days, the claim shall be deemed filed. The date of filing shall be recorded by a stamp on the face of the standard form. If the claim is deemed to be incomplete, it shall be promptly returned unfiled to the sender with a statement identifying reasons why the claim does not comply. The claim may be resubmitted after correcting the deficiencies.

When claims are filed, the filing shall be promptly acknowledged with a letter identifying the number assigned to the claim and the date the claim was filed. Claims which substantially comply with the requirements of Rule 403.1 shall not be deemed to be incomplete and shall be accepted for filing.

MB00028

5. Single Claim - There may be only one claim for each injury or death. The claim shall identify and be on behalf of persons who are entitled to be beneficiaries of the claim. In the case of a decedent, the claim shall be filed by the personal representative of the decedent on behalf of all persons entitled to receive compensation, by reason of the death of the decedent.
6. Who May File A Claim - The following persons are eligible to file claims for compensation:
 - a) An injured adult person, on behalf of themselves and any spouse or children.
 - b) A duly appointed guardian of an injured adult person, on behalf of the injured person and any spouse or children of the injured person.
 - c) A duly appointed guardian of an injured minor, on behalf of the injured child and the parents of the injured child.
 - d) In the case of a decedent, a duly appointed personal representative. A personal representative shall act on behalf of any surviving spouse, any children of the decedent, any children of a deceased child of the decedent, parents of the decedent, any dependents of the decedent and the decedent's estate. Personal representatives shall be appointed in accordance with the laws of the decedent's domicile
7. Attorney Representative - A claimant need not be represented by an attorney to file a claim under the Act.
 - a) If the claimant desires to be represented, then the attorney selected by the claimant must be a member in good standing of the bar of the highest court of a state.
 - b) Attorneys on behalf of claimants shall attest that he/she is a member in good standing of the bar of the highest court of a state and is authorized to represent the claimant.
 - c) It shall be the ethical obligation of any attorney who represents a victim of the September 11th terrorist attacks to advise said person(s) of the compensation available under the Act and the availability of any pro bono program.

MB00029

8. Immigration Status Information -- Any information concerning the immigration status of a Claimant or a dependent of a Claimant shall not be disclosed to the Immigration and Naturalization Service.

405. Hearings.

1. Time of Hearings. Hearings must be scheduled and completed within 120 days of the date a claim is filed. The claimant may extend said time or may waive the right to a hearing by making a written request to the Hearing Officer. Any such request must be signed by the Claimant.
2. Notice of Hearing. The Hearing Officer shall provide to the Claimant at least 10 days written notice of the time and place at which the hearing will be held.
3. Commencement of 120-day Hearing Period. The 120-day period for review and determination of a claim shall commence upon the date that the claim is deemed filed.
4. Time and Place of Hearing. Hearings shall be scheduled and held, to the extent practical, at a place within 50 miles of the Claimant's residence unless an alternative location is required by the Claimant. At the request of the Claimant, the Hearing Officer shall provide for an opportunity to conduct a hearing via telephone, Internet or video conferencing.
5. Parties to Proceedings. The following persons shall be parties to the proceedings on claims: (a) the Claimant and any authorized representative and (b) the government acting by and through authorized personnel of the Department of Justice. Parties may waive their right to appear.
6. Burden of Proof. The burden of proving a fact alleged shall rest with the party making the allegation. The standard of proof shall be a preponderance of the evidence. Proof by a preponderance of the evidence means that it is more likely than not that the proposition to be proved is true.
7. Affidavits. Written affidavits or declarations, subject to penalty for perjury, will be accepted as evidence of employment history, earnings, loss of services, and survivor relationships.
8. Rules of Evidence. The Hearings Officer is not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure. The Hearing Officer shall conduct the hearing in such a manner as to best ascertain the rights of the Claimant and fulfill the purposes of the Act.

9. Documentary Evidence. A Claimant may submit either the original or a clear readable copy of any document. The Hearing Officer may require the submission of an original document, if an original exists, if necessary to a decision on the claim.
10. Witness. Witnesses at the hearing shall testify under oath or affirmation. The Hearing Officer and the parties may question witnesses with respect to any matters relevant and material to any contested issue.
11. Record of Hearing. All hearings shall be open to the public and shall be mechanically or stenographically reported. All evidence upon which the Hearing Officer relies for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All medical reports, exhibits, and any other pertinent document or record, either in whole or in material part, introduced as evidence, shall be marked for identification and incorporated into the record.
12. Submission of Insufficient Evidence. In the event a Claimant submits insufficient evidence regarding any matter, the Hearing Officer shall inform the Claimant what further evidence is necessary and request that such evidence be submitted within a specified reasonable time which may, upon request by the Claimant, be extended for good cause.

406. Governing Law. To provide consistent and uniform application of the Act to all persons filing a claim, the following rules shall apply in rendering decisions on claims:

1. Physical Harm. Claimants suffering physical harm due to the terrorist-related aircraft crashes of September 11, 2001, shall be entitled to recover full economic and non-economic loss as follows:
 - a) Economic loss means any pecuniary loss of a Claimant including but not limited to loss of earnings or other employment benefits, loss of earning capacity, medical expense loss, experienced in the past or to be experienced in the future and loss to a Claimant's surviving spouse and children of services, support, consortium and affection, and the loss to a minor Claimant's parents of services, support, companionship and affection, experienced in the past or to be experienced in the future.
 - b) Non-economic loss means loss to the Claimant due to physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, any injury to reputation, and any other losses authorized by the Act, experienced in the past or to be experienced in the future, including any aggravation of an existing disease or physical defect.

2. Wrongful Death. Personal representatives of decedents shall be entitled to recover full economic and non-economic loss resulting from a decedent's death due to the terrorist-related aircraft crashes of September 11, 2001, as follows:
- a) On behalf of a decedent's surviving spouse, decedent's children, children of any deceased child of the decedent and parents of the decedent, the economic and non-economic loss each has suffered including all monies the decedent would have spent or given to each person for such items as shelter, food, clothing, medical care, education, entertainment, gifts and recreation during the normal life expectancy of the decedent; the pecuniary value of the services, society and comfort that the decedent would have provided to each person, including such elements as work around the home, transportation and provision of physical comforts and services; the loss of decedent's companionship and protection and the survivor's mental pain and suffering as a result of the decedent's injury and death, suffered in the past and reasonably expected to be suffered in the future.
 - b) On behalf of any relative by blood or marriage who is dependent upon the decedent for support or services and any person who resided in the household of the decedent at the time of the death who was dependent upon the decedent, the support or services that the decedent would have provided to each such dependent during the decedent's life expectancy.
 - c) On behalf of the decedent's estate, the costs of administration of the estate and any medical, funeral or other last expenses of the decedent; hedonic damages; the estate's loss of net accumulations, which is that part of the decedent's net income after taxes, including pension benefits, which the decedent, after paying his personal expenses and monies for the support of his survivors, would have left as part of the estate if he had lived his normal life expectancy; and compensation for any conscious mental pain and suffering suffered by the decedent as a result of the terrorist acts until the time of the decedent's death.
3. Claimants shall be entitled to recover as damages the reasonable and fair costs of presenting their claims to the Fund and their evidence at any hearing.

407. Presumptions. Presumptions shall be rebuttable upon proof that the fact is different than the presumed fact. Unless the Hearings Officer finds that a preponderance of the evidence shows a fact to be different, the following presumptions shall apply to determining claims:

- 1. It shall be presumed that the life expectancy of an individual is as set forth in the Life Tables, Vital Statistics of the United States 1998, published by the National Center of Health Statistics, U.S. Department of Health and Human Services.

2. In the absence of any expert evidence to the contrary, it shall be presumed that the work-life expectancy of an individual is 65 years.
3. In the absence of any expert evidence to the contrary, it shall be presumed that the loss earnings of a decedent is the sum of the last 12 months of a decedent's earnings times the remaining work life expectancy of the decedent.

408. Decisions.

1. Form and Contents of Decisions. Claim decisions shall be in writing and shall contain the names of the parties, the names of all beneficiaries of the decision, any finding of fact or conclusion of law, the damage due each claimant or beneficiary of a claim and any amounts being deducted as a collateral source, together with the reasons therefore. Decisions shall be based on the record before the Hearing Officer.
2. Issuance of Decision. All decisions shall be made not later than 10 days after the termination of the hearing and must be promptly furnished to the Claimant and any attorney representative by the quickest means practical. Upon request or agreement of the Claimant, the hearing can be continued to a time certain.
3. Deduction of Collateral Sources. After determination of the damages due any Claimant or beneficiary of a claim, the Hearing Officer shall determine whether any collateral sources are applicable to the determined damages and deduct from said damages the net present value of the collateral source (after reduction for any cost to the claimant or beneficiary). Except for life insurance, collateral sources which do not duplicate any item of economic loss should not be deducted. As to any collateral source as to which there is a right of subrogation, said amounts shall not be deducted from the determined damages.
4. Review of Hearing Officer Decisions. Within ten days of the date of a decision the Claimant may request review of the decision by the Special Master. Such a request must be accompanied by a written extension of applicable time limits to allow a reasonable time for review. The review shall be conducted by the Special Master based on the record before the Hearing Officer.
 - a) A decision of the Hearing Officer that is not supported by substantial evidence, that incorrectly applies the law or these regulations or that is otherwise contrary to the law shall be reversed and remanded for further proceeding.

- b) In the event a claim is remanded for further review, the decision shall be entered not later than 120 days from the date of remand.
 - c) There shall be no further review.
5. Authority to Compromise and Settle. The Special Master or his or her designee is delegated authority to enter into a compromise or settlement of any claim under the Act either before or after a decision has been made.

409. Payment of Benefits.

1. Payees. Benefits shall be paid, as appropriate, to each beneficiary of a claim as set forth in the decision. The benefits may be paid directly to a Claimant or beneficiary or to a revocable living trust created by the Claimant or on behalf of a beneficiary, or, at the direction of a court, to a trust described in 42 U.S.C. § 1496p(d)(4)(A). A Hearing Officer may require that a legal guardian or representative be appointed to receive payment on behalf of any minor child or person who is mentally incompetent.
2. Subrogation Liens Barred. There shall be no right of subrogation on behalf of a collateral source payee that is deducted from a Claimant's award. To the extent that any state or federal law allows a lien to be placed or filed on behalf of any collateral source payor, such a lien is barred. If there is a determination under applicable law that a collateral source payor has the right to a lien and subrogation against a claim under the Act, then any amounts paid or payable from said payor shall not be deemed a "collateral source" under the Act.
3. Periodic Payments. At the election of any Claimant or beneficiary, amounts payable to said Claimant or beneficiary pursuant to a decision under the Act may be received as a periodic payment described in 26 U.S.C. § 104(a)(2), funded by an annuity the cost of which shall be such amount. Any such election shall be made by providing notice thereof to the Hearing Officer prior to the date of the decision. If an amount is payable in periodic payments funded by an annuity, then the Special Master may transfer, in a qualified assignment, the obligation to make such periodic payments, *See* 26 U.S.C. § 130. The claimant or beneficiary shall provide to the Special Master or the Hearing Officer, within 60 days following issuance of the written notice under section 405(b)(3), the name of the assignee to whom a qualified assignment is to be made and the documents required to make the qualified assignment in a form acceptable to the Special Master.
4. Tax Treatment of Amounts Paid From The Fund. Amounts paid from the Fund to, or on behalf of, Claimants or beneficiaries upon a decision under the Act are

compensation (other than punitive damages) paid on account of personal injury or sickness, in a case involving physical injury. For United States federal income tax purposes, such amounts are excludable from the gross income of the recipients. See 26 U.S.C. § 104(a)(2).

6. Reports to Congress. The Attorney General shall report annually to the Committee on the Judiciary of the U.S. House of Representatives and the Senate on claims paid under the Act, stating the name of each Claimant, beneficiary and the amount awarded.

410. Privacy Policy.

- a) The Special Master shall adopt and enforce a privacy policy consistent with Department of Justice privacy policy to ensure that any documents, testimony, reports or other information utilized during the claim process are afforded protection against improper disclosure.
- b) The Special Master shall prominently display its privacy policy on the claim form and on all official publications that provide information concerning the claim process.
- c) The Special Master shall prominently display its privacy policy on the website.

411. Notice of Program to Potential Litigants. The Department of Justice shall monitor the federal civil court docket for actions brought by victims in connection with the September 11th airline crashes and inform the Special Master of any claims that have been brought or are brought within 90 days after the date on which these regulations are promulgated. When the Special Master receives this information, it shall immediately notify any and all plaintiffs, by first class mail, of their rights to claim benefits under the program if they withdraw from such action within 90 days after the date on which these regulations are promulgated.

1. Public Notice of Program. The Special Master shall immediately develop and implement a comprehensive program to inform the public about the Victim Compensation Fund and their rights thereto.

In developing and implementing this program, the Special Master shall produce printed informational material for the use of potential Claimants. This informational material will explain to the public their rights to compensation under the program and will inform persons as to the procedures necessary to file a claim. The informational material shall also inform potential claimants of any available pro bono programs.

The Special Master shall send written notice immediately to all persons and/or the families of persons identified as injured, missing or dead by the Attorney General as a result of the September 11, 2001 airline crashes. This notice shall inform persons as to their rights to compensation under the Fund and inform persons as to the procedures necessary to file a claim. The Special Master shall send to each of these persons copies of all informational materials on the program immediately upon availability.

The Special Master shall move immediately to establish a "1-800" telephone number and website to receive requests from potential Claimants for informational material and claim forms.

The Special Master shall purchase sufficient advertising in both print and media in the New York, New Jersey, Boston, Los Angeles, Chicago, Dallas and Washington, D.C. media markets to inform the public about the availability of compensation and the process for filing a claim.

The Special Master shall take whatever additional steps it deems appropriate to publicize the availability of compensation for eligible Claimants.

MB00036

Places where inserts are required (e.g., rule, discussions of rule and rationale) are marked in redline. You may need to turn off the "color" button on your printer to show redlining.

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 104

CIV 104P; AG Order No.

RIN: 1105-AA79

"September 11th Victim Compensation Fund of 2001"

ACTION: Interim rule with request for comments

SUMMARY: Shortly after the September 11, 2001 terrorist attack, the President signed the "September 11 Victim Compensation Fund of 2001" (the "Fund") into law as Title IV of Public Law 107-42 ("Air Transportation Safety and System Stabilization Act") (the "Act"). The Act authorizes compensation to any individual (or the personal representative of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes on that day. The Act provides that the Victim Compensation Fund program will be administered by a Special Master appointed by the Attorney General.

On November 26, 2001, the Attorney General appointed Kenneth R. Feinberg as Special Master for the program. The Attorney General announced that Mr. Feinberg would lead the effort to develop and promulgate regulations governing the administration of the Fund, would establish and administer the Fund, would be responsible for disseminating all public information dealing with the Fund, and would develop forms and oversee personnel within the program.

Consistent with a timetable established in the Act, the Department of Justice, in consultation with the Special Master, is issuing certain procedural rules so the Special Master may commence operations of the program as soon as practicable. In order to allow the Special Master to begin distributing funds, including "advance benefits" to the neediest eligible

claimants, the Department is issuing these rules as "Interim Final Rules" that will have immediate force and effect of law. These rules are designated "interim," however, because the Department is also seeking further comment for a period of 14 days as part of its further review and may expand or adjust aspects of these rules after receiving additional comments.

DATES: These interim rules take effect immediately upon publication of this notice in the FEDERAL REGISTER. Comments in response to this notice are due by [insert the date 14 days after the date of publication of this notice in the FEDERAL REGISTER].

ADDRESSES: Comments on the interim rules should be submitted by email to:

victimcompensation.comments@usdoj.gov, or by telefax to 301-519-5956. Telefaxes should be limited to 15 pages. Comments may also be mailed to Kenneth L. Zwick, Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania Avenue NW, Washington, DC 20530. However, the Department encourages commenters to submit their comments by email or telefax. Comments received are public records. The name and address of the commenter should be included with all submissions. The comments will be made available on the Victim Compensation Fund web site, www.usdoj.gov/victimcompensation. Comments will also be available for public inspection at a reading room in Washington, DC. Arrangements to visit the reading room must be made in advance by calling 888-714-3385 (TDD: 888-560-0844).

FOR FURTHER INFORMATION CONTACT: Kenneth L. Zwick, Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania Avenue NW, Washington, DC 20530, telephone 888-714-3385 (TDD 888-560-0844).

SUPPLEMENTARY INFORMATION:

Background.

The President signed the "September 11 Victim Compensation Fund of 2001" (the

"Fund") into law on September 22, 2001, as Title IV of Public Law 107-42 ("Air Transportation Safety and System Stabilization Act") (the "Act"). The purpose of this Fund is to provide compensation to eligible individuals who were physically injured as a result of the terrorist-related aircraft crashes of September 11, 2001, and compensation through a "personal representative" for those who died as a result of the crashes. Generally, eligibility is limited to: a) individuals on the planes at the time of the crashes (other than the terrorists); and b) individuals present at the World Trade Center, the Pentagon or the site of the crash in Pennsylvania at the time of the crashes or in the immediate aftermath of the crashes.

The Fund is designed to provide a no-fault alternative to tort litigation for individuals who were physically injured or killed as a result of the aircraft hijackings and crashes on September 11, 2001. Others who may have suffered losses as a result of those events (e.g., those without identifiable physical injuries but who lost employment or suffered property damage) are not included in this special program. A claimant who files for compensation waives any 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.

Determinations on eligibility and the amount of compensation are to be made by the Special Master. After determining whether an individual is an eligible claimant under the Act, the Special Master is to determine the extent of harm to the claimant, and then determine the amount of compensation to be awarded. The law also provides that the Special Master is to make a final determination on any claim within 120 days from when the claim was filed and, if an award is made, to authorize payment within 20 days thereafter. The determinations of the Special Master are final and are not reviewable by any court. Claims with the Fund must be filed on or before two years after the effective date of these regulations, i.e. [insert date]. Payments from the Fund are made by the United States Government, which in turn obtains the right of subrogation to each award.

Pursuant to the Act, regulations addressing certain administrative matters must be issued within 90 days of enactment (i.e., by December 21, 2001). Section 407 of the Act provides that the Department, in consultation with the Special Master, promulgate regulations on four matters by December 21, 2001:

- (1) forms to be used in submitting claims;
- (2) the information to be included in such forms;
- (3) procedures for hearing and the presentation of evidence; and
- (4) procedures to assist an individual in filing and pursuing claims under this title.

In addition, section 407 authorizes, but does not require, the Department to issue additional rules to implement the program. These Interim Final Rules address issues beyond the four specifically required by the Act in order to create a program that will be efficient, will treat similarly situated claimants alike, and will allow potential claimants to make informed decisions regarding whether to file claims with the Fund. Nonetheless, the Department recognizes that it cannot anticipate all of the issues that will arise over the course of the program and that there will inevitably be many difficult issues that the Special Master will have to resolve in the course of making determinations on individual claims.

Rulemaking history to date

On November 5, 2001, the Department requested public comment on a number of issues. 66 F.R. 55901. The Department noted that at that time, the Special Master had not yet been appointed, but that it wanted as much public comment as feasible before issuing those rules which it is required to promulgate by December 21, 2001. On November 26, 2001, the Attorney General appointed Kenneth R. Feinberg as Special Master. As called for by the Act, these regulations are promulgated in consultation with the Special Master.

In the 21 days for initial response to the Department's notice, more than 800 comments were received. Some were very brief and only spoke to a single issue; others responded to the

Department's questions on a point by point basis. Still others contained detailed analyses, recommendations and even proposed regulatory language.

The range of commenters was very broad. Some commenters identified themselves as citizens and taxpayers or law professors, and many identified themselves as individuals who had contributed to charities for those impacted by the terrorist crashes. Many other commenters identified themselves as members of victim's families, partners or close friends, including some from organizations and groups of survivors. Several commenters identified themselves as employers who lost a significant number of employees in the crashes. A number of commenters identified themselves as residents of housing near Ground Zero in New York.

In addition, the Department received comments from many organizations including the American Insurance Association, the American Arbitration Association, Trial Lawyers Care, New York Trial Lawyers' Association, New York City Bar Association, Massachusetts Bar Association, National Center for Victims of Crime, National Association of Crime Victim Compensation Boards, the Oklahoma Crime Victim Compensation Board, Consumers Union, Public Citizen, the National Right To Life Committee, the Lambda Legal Defense & Education Fund, the American Civil Liberties Union, the Association of Flight Attendants, the Council on Foundations, the Nonprofit Coordinating Committee of New York, Independent Sector, the Alternative Dispute Resolution of the Federal Bar Association, the Alliance of Fiduciary Consultants, and the Foreign Claims Settlement Commission.

Individual members of Congress, groups of members, and members of the Senate leadership also provided comments. Further, joint comments were submitted on behalf of the New York City Mayor, the New York Governor, and the New York Attorney General, by individual members of the New York Assembly as well as the Speaker and others, and by the Attorney General of Connecticut.

Comments were also submitted by United Airlines and American Airlines, and from

various individuals and companies who identified themselves as having expertise or experience in the administration of claims programs.

The Department read every submission it received in response to this notice, from handwritten notes to scholarly discussions, even the 300 or so submitted on the last day. The Department wants to express its appreciation for the time and careful thought reflected in those submissions.

While the Department reviewed every submission it received, it will not regulate on every topic addressed in those comments. Over 70 separate topics were identified; almost two dozen full size notebooks are necessary to organize all of the comments by topic. All of the comments will be retained by the Department for subsequent consideration when it reviews comments on this interim final rule, and the comments will remain posted on the Department's web site where they may be reviewed by the public. The Department was pleased to see that some comments responded to others placed on the web site, and hopes this facility will continue to be of interest to the public.

It is not feasible to repeat all of the suggestions received in the comments in this notice, let alone directly respond to each. This notice of interim final rulemaking highlights some of the points raised commenters in order to indicate the range of views received on how various issues should be approached. As a general matter, the comments highlighted are not attributed to any particular commenter.

The Department notes that it received some comments not directly relevant to this rulemaking. Those commenters soliciting immediate assistance were referred to the appropriate authority or agency handling situations relevant to each commenter's needs. The Department also received a number of comments about the operations of various charitable organizations earlier this year. Obviously, the Department does not control the operations of these organizations, but the Special Master will endeavor to establish good communications with the

charitable community and help eliminate any misunderstandings about the respective responsibilities of this community and the Fund.

The decision to issue these rules as “interim final rules”.

The Administrative Procedure Act (APA) 5 USC 551 et. seq., generally requires “notice and comment” before a Federal rule can be issued and placed into effect. The publication of a proposed rule in the Federal Register for at least 30 days of comment is the normal way in which this requirement is satisfied. 5 USC 553(b). The APA provides a number of exceptions to the requirement for notice and comment before a rule can go into effect, several of which are applicable to this rulemaking.

The APA provides that an agency need not go through proposed rulemaking and comment before issuing rules to implement benefit programs. 5 USC 553(a)(2). Moreover, the APA provides that rules of agency organization, procedure and practice are exempted from notice and comment, as are rules that merely interpret the statute. 5 USC 553(b)(A). A number of the rules being issued here fall into these categories.

Moreover, the APA provides an agency can waive the requirement for “notice and comment” on any matter for which there is “good cause.” 5 USC 553(b)(B). In turn, “good cause” under the APA is defined to mean situations where notice and comment are unnecessary, impractical, or contrary to the public interest. A Congressional deadline for the issuance of a rule, like that applicable in this case, has often been held to render notice and comment “impractical” and sometimes also “contrary to the public interest.”

The comments were overwhelmingly in support of putting the rules into place promptly so that the program could commence operations; a number specifically indicated the circumstances provided good cause for the Department to take such an action.

After careful consideration, the Department, in consultation with the Special Master, has determined that taking the time to provide additional notice and comment for these rules before

issuing them as final rules would be impractical in light of the short time between the enactment of the statute and the deadline for rulemaking, and also would be contrary to the public interest in early implementation of the Act. Accordingly, the Department, in consultation with the Special Master, has determined that there is good cause to issue these rules as "final" rules without first going through notice and comment on the specific language of the rules.

In its request for public comment of November 2, 2001, the Department further indicated it was considering promulgating these rules as "interim" final rules. "Interim" final rules are rules that have the force and effect of law, but that also are being reviewed to see if further adjustment is appropriate. Public reliance upon the interim final rules is appropriate, particularly in light of the fact that the Department has already received extensive public comment in response to its Notice of Inquiry and Advance Notice of Rulemaking. A public comment period of 14 days will be a part of the further review while the interim final rules are in effect.

The effective date of these interim final rules

While the Act specified that these rules should be issued by December 21, 2001, it did not specify when they should go into effect. Accordingly, the Department asked for comment on this point. The Department noted that the APA generally provides that rules not go into effect for at least 30 days absent "good cause" to waive this requirement.

Many commenters were in favor of an immediate effective date so that claims could be filed right away. Many indicated an immediate need for relief, and expressed frustration about experiences with obtaining short-term assistance. However, some commenters noted that since it would take claimants time to absorb the rules and begin preparing their submissions, and that time would be required to get the personnel of the Special Master in place to begin accepted claims. Moreover, a number of comments from family members, employers and those who have worked with potential claimants specifically stated that without some indication in advance of what they will receive, families are unlikely to sign into the Fund and waive right to sue.

A number of commenters suggested some sort of compromise -- making available some amount of short-term relief on an immediate basis, and then commencing the more detailed review process that would be necessary to evaluate claims in detail. Some suggested using flat amounts for these immediate awards, while another suggested an interest-free line of credit on which families can draw. Others suggested that claims be prioritized by "need" in some way so that those in particularly dire straits could obtain more prompt action.

After careful consideration, the Department, in consultation with the Special Master, has decided upon an immediate effective date for these interim final rules so that the Special Master may begin considering applications for advance benefits. In order to comply with the Attorney General's November 26, 2001 instructions to the Special Master to pay benefits to the neediest eligible claimants as quickly as possible, these regulations permit claimants to seek immediate "Advance Benefits" in the fixed amount of \$25,000 in the case of deceased individuals and an amount up to, but not exceeding, \$25,000 in the case of severely injured individuals for whom the Special Master makes a preliminary determination of eligibility. To qualify for advance benefits, applicants must complete a two page short form (the Registration/Eligibility Form) identifying basic eligibility and indicating that advance benefits would assist them in confronting current or immediate financial hardships. Such forms will be made available at claims intake centers and the Victims Compensation Fund website address listed above.

Advance benefits will be treated as advance payments on ultimate awards from the Fund. Thus, the amount of any advance benefits received will be deducted from the claimant's subsequent award. Because the fixed amounts for advance payments are equal to or less than the minimum payments for eligible claimants from the Fund under § __ of these regulations, no portion of the advance payments will have to be returned by claimants who ultimately recover from the Fund. Under these rules, completion of a Registration/Eligibility Form for advance payment does not constitute "submission" of a claim to the program and thus does not trigger §

___ of the Act regarding waiver of the right to bring suit. However, acceptance of an advance payment will constitute "submission" of a claim and will waive the right to bring a later legal proceeding under § ___ of the Act.

Application for advance benefits (the filing of a Registration/Eligibility Form) will not be considered the "filing" of a claim for purposes of triggering the 120- day period for determination of compensation. Instead, eligible claimants may apply for and receive advance benefits and then file their lengthier "Personal Injury Compensation Form" or "Death Compensation Form" at any time within the two-year time frame for filing claims under the program. This will allow needy eligible claimants to obtain prompt advance payments even though they may need more time to collect full information regarding the amount of compensation they seek. This later filing of a "Personal Injury Compensation Form" or "Death Compensation Form" for full benefits from the Fund shall constitute the "fil[ing]" of a claim for purposes of the 120-day period for the Special Master to make a determination.

Eligibility. In its November 5, 2001 request for public comments, the Department noted that section 405(b) of the statute requires the Special Master to determine whether a claimant is an "eligible individual" under section 405(c). "Eligibility," in turn, is defined by the Act to include: (i) individuals (other than the terrorists) aboard American Airlines flights 11 and 77 and United Airlines flights 93 and 175; or (ii) individuals who were "present at" the World Trade Center, the Pentagon, or the site of the aircraft crash at Shanksville, Pennsylvania at the time or in the immediate aftermath of the crashes; or (iii) personal representatives of deceased individuals who would otherwise be eligible. Moreover, to be eligible for an award, an individual must have suffered physical harm or death as a result of one of the terrorist-related air crashes. The Department sought comment on whether a Departmental regulation or a statement of policy by the Special Master would be appropriate to clarify these criteria, and if so, what those criteria should be.

Individuals eligible for compensation. The Department specifically invited comment on the following questions:

- * How should “present at” be interpreted?
- * Should the term “physical harm” be limited to serious injuries, as it is under some other no-fault compensation schemes, (*see, e.g.*, N.Y. Ins. Law § 5102), or should it be construed more broadly?
- * Should “physical harm” be limited to currently identifiable injuries?
- * Can and should the program address latent, but not yet evident, harm?
- * What duration of time is intended by the statutory phrase “immediate aftermath”?

Many of the comments responded to the questions about where and when harm took place, and in particular on how to delineate among those who suffered from the impact of the crashes in New York. Several commenters recommended that anybody in New York City be considered “present” because the debris and ash from the collapse of the World Trade Towers was widespread. They also noted that the fires at the site continue to burn and that construction workers involved in demolition are still exposed to them; hence for these workers, they assert that “immediate aftermath” be defined broadly. A number of comments from residents who live near the Ground Zero site in New York described in considerable detail the impact of the crash on their lives and the costs they have incurred in order to protect themselves from harm (e.g., cleaning and air filtration to eliminate the consequences of continued dust exposure). However, other commenters asserted the legislation intended to constrain the Fund to the locus of the buildings themselves, and to some very limited time period after the crashes.

With respect to the nature of harm involved, many commenters asserted that there should be no lower boundary for “nonserious” injuries. Of those who commented on the point, there were disagreements as to whether post-traumatic stress could be considered physical harm for purposes of filing a claim under the Fund. Certain commenters indicated that hundreds of

thousands, if not millions of persons, suffered substantial stress from witnessing the attacks and devastation. Other commenters, however, [fill in – there must have been other views if there was “disagreement”]

Some of the comments focused on the problem of latent injuries and diseases. A number of commenters mentioned the coughing they have experienced as a result of continued exposure to the crash site, and some nearby residents expressed concern about latent harm to children that might accrue from returning to their homes before the conclusion of the rescue and cleanup efforts. On the other hand, other commenters expressed concern about covering any harms that do not manifest themselves within the two-year lifetime of the Fund.

Finally, some commenters raised questions concerning the meaning of the word “victim.” For example, some commenters urged that any unborn children who died should be considered eligible for awards as victims. A few commenters argued illegal aliens should not be eligible for awards, but others noted that legal status should make no difference in eligibility for an award under this program, and urged that the INS not be notified of information about legal status that might be obtained by the Special Master.

These interim final rules define the term “present at the site” (i.e., the World Trade Center, Pentagon, or Shanksville site) to mean physically present at the time of the crashes or immediate aftermath:

(1) in the buildings or portions of buildings that were destroyed as a result of the airplane crashes; and

(2) in the area contiguous to the crash sites 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, fire, explosions, or subsequent collapse of buildings (generally, the immediate area in which portions of buildings fell during the collapse of the buildings or other nearby locations in which debris fell upon and injured otherwise eligible persons, and the area

affected by impact).

There are several reasons for this geographic limitation. First, this geographic limitation comports with the plain meaning of the statutory term "present at." Second, this geographic limitation is consistent with the further statutory requirement of physical injury or death, because the zone designated is that in which there was a demonstrable risk of physical harm from falling debris, explosions, or fire.

These interim final rules define the term "immediate aftermath" of the crashes to mean, for purposes of all claimants other than rescue workers, the period of time from the crashes until 12 hours after the crashes. This time frame appears to cover all of those who suffered physical injury or death, with the exception of rescue workers addressed separately below.

With respect to rescue workers who assisted in efforts to search for and recover victims, these rules define "the immediate aftermath" to include the period from the crashes until 48 hours after the crashes. These rules provide for this longer time period for rescue workers in recognition of their heroic efforts and their selfless reasons for being at the sites. While some rescue workers may have suffered death or injuries after this time period, the 48 hour time period appears to be the longest period that is consistent with the statutory term "immediate aftermath." While rescue workers who suffered death or physical injury after the 48 hour time period may be similarly worthy of compensation from the government or other sources, the language of the Act indicates that any such compensation should be through programs other than this Fund.

These interim final rules define the term "physical harm" to mean an objectively verifiable physical injury that occurred at the time of or in the immediate aftermath of the crashes that falls within at least one of the following definitions, as evidenced by contemporaneous records from medical professionals who provided treatment at the time of the injury:

- (1) physical injury creating a risk of death or permanent disability;
- (2) physical injury requiring hospitalization,

(3) physical injury resulting in permanent partial or total disability, disfigurement or incapacity, or

(4) physical injury involving temporary disability, disfigurement or incapacity.

There are several reasons for this definition. The statutory term “physical harm” indicates that Congress did not intend for this Fund to compensate those who suffered only emotional harm or property damage. The statutory term “physical harm” also indicates that Congress did not intend for this Fund to cover those who face only a risk of future injury (*i.e.* latent harm that does not fully manifest itself within the statutory time period for this Fund). Indeed, because participation in this Fund precludes claimants from recovering through tort litigation, those with latent injuries that later became manifest would likely be undercompensated if they sought compensation now from the Fund before the injuries became manifest. Conversely, those who recovered for latent injuries that did not later become manifest could be overcompensated if they recovered from the Fund. While Congress might later consider whether an administrative program for latent harm caused by the September 11, 2001 terrorist-related aircraft crashes may be appropriate, the language of the statute that created this Fund does not contemplate awards for that purpose.

Claims on behalf of decedent victims. Section 405(c)(2)(C) provides that in the case of an individual who is deceased but who otherwise meets the other criteria for eligibility, a claim can be filed by the personal representative of the decedent. Section 405(c)(3)(A) provides that no more than one claim may be submitted by an individual or on behalf of a deceased individual.

The Department sought comment on whether a Departmental regulation or a statement of policy by the Special Master would be appropriate to clarify questions concerning personal representatives, for example:

- * Whether the Special Master should require that all those who consider themselves to be survivors of someone lost in the crashes be notified of a claim by a “personal

representative”;

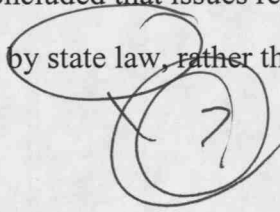
- * Whether the Special Master can, within the brief statutory period identified by the statute, determine who among contesting claimants is the appropriate “personal representative”;
- * Whether the Special Master should, in any matter involving a dispute as to the identity of the “personal representative,” require prior adjudication and judgment by a state court of competent jurisdiction; and
- * Whether the Special Master should make determinations of compensation for claimants even when the identity of the “personal representative” is in dispute, but escrow payment until such disputes can be resolved by a court of competent jurisdiction.

The comments indicated a tremendous amount of confusion about whether the statute intended to cover just the losses incurred by the victim or the losses incurred by relatives and others. Some commenters pointed out that Section 405 provides that only claims on behalf of the victim can be filed with the Fund, presumably leaving to the courts any claims by family members or partners on their own behalf. However, some commenters noted that section 403 of the Act states that the purpose of the Act is to provide compensation to any individual “or relatives of a deceased individual” who was killed as a result of the terrorist-related aircraft crashes, and that various types of losses that may be compensated by the Fund pursuant to Section 402 are akin to those that in civil actions are normally considered losses to survivors rather than to the victim.

As a result, there were many comments concerning the “eligibility” of particular “survivors” of the victim. Some commenters suggested that only a spouse and children be considered “eligible.” Others expressed concern as to whether parents, divorced spouses, children of a prior marriage, and others with a legal relationship would be “eligible” for an award

under the Fund. In this regard, a number of comments specifically urged that non-married partners and others with a non-traditional relationship be considered "eligible" for an award, noting that those providing assistance and support immediately after the crash (including some victim support programs and charities) were taking a very broad view of those impacted, and asserting that this would have been the intent of the deceased. Similarly, there were a number of comments about how "eligible" survivors would participate in the decision whether to submit an application to the Fund, since in their view the application to the Fund would prohibit all of them from filing civil litigation. Some commenters explicitly suggested that the law be interpreted to allow claims both on behalf of the decedent's estate and on behalf of any survivors, and suggested that such claims could be consolidated for decision before the Special Master. Others, however, specifically recommended that claims be limited to those on behalf of the estate. Many commenters, presuming this to be the case, recommended that the state courts be responsible for designating the representative to represent the estate, and that any award be distributed in accordance with the requirements of the will or the State's rules on intestacy.

In many or most cases, the identity of the "Personal Representative" will not be in dispute. Subject to certain contingencies, the interim final rules define the term "Personal Representative" to mean, in order of priority, (i) an individual appointed by a court of competent jurisdiction as the Personal Representative of the decedent, (ii) the person named by the decedent in the decedent's will as the Executor or Administrator, or (iii) the person identified by the laws of intestacy of the state of the decedent's domicile. **[subject to review]** The Personal Representative filing a claim must give notice of the claim to all survivors of the decedent (including, but not limited to, the spouse, former spouses, children, other dependents, and parents) and the executor, administrator, and beneficiaries of the decedent's will. The Department, in consultation with the Special Master, concluded that issues regarding personal representation under the program should be determined by state law, rather than be subject to



federal rulemaking. This is in large part because those who file for recovery under the Fund waive their rights to recover through litigation, in which state law would determine the identity of the appropriate representatives of the decedent, or the decedent's estate, to bring suit. Thus, if the identity of Personal Representatives for purposes of this Fund were determined by federal regulation, there could be many situations in which the representative as defined by state law would choose litigation while the Personal Representative as defined by federal regulation would seek to recover from the Fund. Furthermore, adjudication of the proper "Personal Representative" may be a highly complex endeavor involving conflicting factual assertions that could not, in many cases, be completed within the 120-day statutory deadline. Where a dispute does exist as to the identity of the Personal Representative, the Special Master may escrow authorized payments until such time as the interested parties resolve the matter, or pending determination by a court of competent jurisdiction.

Filing a Claim with the Fund; assistance to claimants.

In its November 5, 2001 Notice of Inquiry, the Department noted that section 405(a) of the Act establishes some specific requirements with respect to the claim form and the information to be included. The law requires the Special Master to develop a claim form to use in filing claims for compensation under this program. The Special Master is to ensure that the form can be filed electronically if it is determined to be practicable. Moreover by law, the form must include a statement of the factual basis for eligibility and information regarding the amount of compensation sought. In addition, the form is to request information from the claimant as to: 1) the physical harm suffered by a victim, or information confirming the death of the victim, as a result of the terrorist-related aircraft crashes of September 11, 2001; 2) any possible economic and non-economic losses that the claimant suffered as a result of the crashes; and 3) any collateral sources of compensation the claimant has received or is entitled to receive as a result of such crashes.

In its request for public comment of November 5, 2001, the Department noted that it would appear that these requirements, combined with the statutory time frame for the Special Master to reach a decision once a claim is filed, contemplate a detailed form and filing. Accordingly, the Department invited comments on whether there are actions the Special Master should be required to take before he or she can accept a claim, or deem a claim "filed." The Department noted that the statute appeared to provide only a very limited time for the Special Master to evaluate a claim before making a decision – 120 days from the date a claim is filed. Accordingly, the Department sought comment on whether the Special Master should be permitted to dismiss a claim as not properly filed for lack of adequate supporting information and, if so, whether an individual should thereafter be permitted to refile the claim. Comments were also solicited on whether it would be advisable to include in the rules a procedure where the time for making a determination could be extended by agreement.

The Department also requested comment on the design and content of the claim forms in light of the statutory requirements, as well as on making the forms and their instructions readable and readily available. The Department also sought comment on how it should implement the statutory requirement that claimants be provided with assistance.

While most of those who commented supported the maintenance of firm deadlines on the Special Master to complete action on a claim, many commenters suggested that a claimant be able to halt the clock at the claimant's discretion for various purposes: e.g., to provide further evidence before the claim is evaluated, to allow more time to prepare for a hearing, or to allow for an administrative review of an initial award determination. Some suggested that the Special Master also have the authority not to start the clock until the claim contained sufficient information upon which an award determination could be made, or to halt the process for a set period of time to allow for review of an initial determination, provided that the claimant concurred with this decision.

A number of commenters stressed that a claimant should not lose the right to pursue a claim because a filing is incomplete. Many suggested that claimants not be required to waive their rights until it was determined that the claimant was eligible and his or her claim was actually going to be processed by the Special Master. At the same time, some of these comments expressed concern about the need to come to closure on whether a claim could be filed and when the 120-day clock would begin to run. One commenter, for example, suggested the Special Master should have 14 days to review a claim before deciding if there was enough information to proceed.

Notwithstanding the statutory requirements for the information which claimants need to provide, most commenters urged the Department to establish a simplified procedure for initiating a claim with the Fund. Many family members in particular questioned the need for a form in light of all of the information already provided to obtain short-term assistance from charitable organizations and public authorities. Some employers offered to provide the required information on behalf of their employees or survivors. On the other hand, some noted that in light of the pro bono legal assistance which has been offered to the survivors, the claim forms for this program would likely be filled out by an experienced trial lawyer. A number of commenters suggested a bifurcated claim: a simple submission to start, to be followed by further information collected with the guidance of claimant assistance personnel from the Office of the Special Master.

A number of commenters had suggestions as to how the Special Master might assist claimants in filing claims and throughout the claims process. Many suggested that local offices be established in at least New York City, Washington D.C., and Pennsylvania. Some urged that extensive outreach efforts be made to locate potential claimants and make them aware of the program's operations, and further urged that multi-lingual assistance and publications be available. One group suggested that each Hearing Office have an Applicant's Assistant. Others

suggested the Special Master hire victim advocates to assist claimants throughout the process, and another organization suggested an Ombudsman to help claimants should problems arise.

The Department believes that it is important that this Fund be accessible to potential claimants who have limited resources and who are not trained in the law. Rather than attempt to address in detail the means by which the Special Master should provide assistance to claimants, these interim final regulations leave the Special Master with discretion to implement steps to provide assistance to claimants and to make this Fund accessible to them.

The claims evaluation process

Section 405(b)(4) of the Act provides that a claimant, after the filing of the claim, has the right to present evidence to the Office of the Special Master. The statute specifically provides that the claimant has the right to present witness statements and documents, the right to obtain legal counsel, and such other due process rights as are determined to be appropriate by the Special Master.

In its November 5, 2001 Notice of Inquiry, the Department solicited comment on whether every claimant should be granted an oral hearing or whether paper hearings may be sufficient, and what types of oral hearing might practicable consistent with the statutory time frames.

Further, the Department sought comment on how evidence might be established, whether it is authorized to enforce requests made by the hearing officer to third parties for evidence that is necessary to a proceeding – e.g., evidence that might bear on whether all aspects of the claim file on which the decision will be based are accurate and complete. The Department sought comment on whether such proceedings should be recorded, whether such proceedings should be held in a location convenient to the claimant, how to deal with scheduling conflicts, and whether the opportunity for a hearing can be waived by a claimant through inaction or unwarranted delay.

It would appear that the commenters had different views on the role hearings should play in claims evaluation. Most of the commenters suggested that a hearing is the right of a claimant.

Some commenters, focusing on the purpose of this program as an alternative to civil litigation, seemed to view the hearings as essential to each and every claim. These commenters recommended hearings as a sort of "mini-trial" which would include rules of evidence (albeit relaxed rules), and adversarial questioning of witnesses. Using the same analogy, however, these commenters suggested that many claims could be "settled" based on only the paper submissions. Other comments suggested that the hearings be more akin to an opportunity, for those claimants who want to exercise it, to make an informal oral presentation of their cases, so as to be sure that the decisionmaker is taking their individual circumstances into account. Many of these commenters also suggested that not all claimants would want a hearing. Some commenters suggested allowing claimants to elect among different "tracks" for processing claims right from the time of the filing – one that would involve a hearing, and one that would not.

There were many comments on the qualifications for hearing officers. Among those suggested were retired trust executives, retired judges, attorneys experienced in handling high volume caseloads and those experienced in civil litigation. A number of commenters also made recommendations for some sort of review process -- either to ensure that decisions were relatively uniform, or to ensure that claimants had the option of a second look before an award was finalized. A number suggested that a panel of hearing officers be used for this purpose; indeed, a few commenters recommended that final award determinations should always be made by a panel rather than a single individual. Yet another commenter suggested final decisions could be appealed to an independent mediator.

A number of commenters submitted extremely detailed procedural suggestions for the claims and hearing process. Among other things, these suggestions dealt with how eligibility and damages could be established through the use of affidavits under penalty of perjury in the event relevant documents had been lost as a result of the crashes themselves (e.g., designations of beneficiaries maintained by employers). A number of commenters suggested the Special Master

have the right to subpoena evidence required in a proceeding.

The interim final regulations provide that..... [to be addressed by Special Master]

Awards made by the Fund.

Section 405(b) of the statute indicates that the Special Master shall determine the amount of compensation based on "the harm to the claimant, the facts of the claim, and the individual circumstances of the claimant." It also states that determinations of the Special Master are not subject to judicial review. Accordingly, developing a methodology for determining awards on the basis of consistent and clear principles that treat each claimant fairly is essential. Moreover each of the perhaps thousands of determinations must be made in a very short time period.

In its November 5, 2001 Notice of Public Inquiry, the Department invited suggestions on practical means to achieve these results within the 120 period for processing claims. In particular, the Department invited comment on whether and how statistical methodologies should be developed and used as a starting point for decision, and whether publication of hypothetical or presumptive awards for classes of individuals would assist potential claimants in determining whether to file.

The Department also sought more specific comment on how the Special Master should determine "economic losses." As indicated above, the Special Master will not require that any claimant employ counsel or any experts on economic or other theories of losses. The Department indicated that instead, the Special Master would draw on available information from appropriate specialists in relevant fields to analyze economic losses. The Department invited comment regarding the necessary qualifications for such specialists, the data that should be utilized, the methodologies that should be employed in analyzing economic losses, the documentation that should be required for every claimant, and how state law should bear upon such determinations. In addition, the Department invited comments on how to address the

economic losses of individuals whose lost future income streams would have been highly contingent, variable, or unpredictable.

The Department also sought additional comment in this regard with respect to “non-economic losses.” Section 402(7) lists several types of non-economic losses. The Department invited comments regarding whether, and in what manner, the Special Master can or should draw meaningful distinctions between individuals who died in different locations and, similarly, whether the Special Master can or should draw meaningful distinctions between individuals who suffered similar injuries. The Department also invited comments on whether the Department should, as some have suggested, issue regulations determining the amount of non-economic loss for classes of similarly situated individuals or whether, instead, the Special Master should determine all non-economic loss on a detailed claim-by-claim basis. Further, the Department requested comment on what facts and circumstances should be considered in determining non-economic losses for each individual, and what standards should be employed.

The range of comments on how best to quantify economic losses was widely varied. One group that commented suggested a minimum value be calculated based on median income and remaining years of work, with flexibility to adjust the award upward after hearing all the evidence in individual cases. Similarly, certain comments suggested that use of a “grid” would be appropriate in certain circumstances to identify presumed awards. On the other hand, certain commenters steadfastly opposed the use of any type of matrix stating that such a process would devalue the individuality of victims.

In terms of valuation, a few commenters suggested basing awards on the average of what survivors have received in airplane crashes and terrorist acts over the past 5 years. Other commenters recommended that awards should mirror the amounts that a party could anticipate receiving from personal injury or wrongful death actions. Although noted by some [CONFIRM], most of these commenters did not address the inherent risks and expenses of

litigation, including the often substantial possibility of zero recovery, the multi-year delay in obtaining judgment, or the often-extensive fees and costs of taking a case through trial and appeal. Another commenter argued that the fairest approach to determining economic losses would be to utilize the approach insurance companies use in settling claims.

Some commenters specifically urged that economic awards not be based on differences in individual income prior to the crash. Some suggested using a flat dollar figure per surviving family member (e.g., \$250,000 for each survivor). Another suggested a flat amount for death at \$100,000, injury at \$50,000, and various other losses at pegged dollar figures. On the other hand, many commenters pointed out that the purpose of the program was to act as a substitute for civil damage actions, and that efforts should be made to determine and take into consideration the amount of income likely lost by a decedent. A large number of comments were received with respect to how to establish such income (e.g., average over a certain number of prior years, plus information supplied by employers on future prospects). Many comments stressed that no assumption should be made that retirement would take place (even for bond traders and others with higher incomes) prior to age 65.

Comments with respect to determining non-economic losses were as varied as those addressing economic losses. One commenting association suggested that non-economic losses, such as pain and suffering, should be standardized, as they do not vary by income strata and to avoid the need to relive the anguish of specific victims. Numerous commenters advocated a fixed non-economic award, stating that the Government could not, and should not, attempt to draw distinctions in the amount of pain suffered by victims or their survivors, as all who perished were victims of the same horrific attack. One commenter suggested that the most equitable process for determining non-economic awards would be an elective process whereby a claimant could elect to have the award calculated by use of a matrix, or alternatively, the claimant could present evidence at a hearing to establish the amount to which the claimant believes he or she is



entitled. Many commenters stated that the statute necessitated an individual determination of non-economic losses, and that attempts to categorize claimants would be contrary to law. A group representing survivors of decedents suggested that non-economic losses must be uncapped and based, in part, on the number and age of any surviving children or dependents, the current and future pain and suffering experienced by the victim's family, and the severity of pain suffered by the victim himself or herself.

In addition, a number of commenters raised questions about the taxability of various kinds of awards to be made by the Fund. Several commenters asserted forcefully that compensation from the Fund should be nontaxable under Federal law, analogizing to various types of tort awards. Another commenter stated that state victim compensation fund awards generally are not taxable, either by the state or the federal government. One commenter stated that all compensation to the September 11th victims, regardless of the source, should not be taxed; on the other hand, another commenter stated that he did not see the purpose of distributing taxpayers' money to victims, and urged taxing the awards so as to return some of the money to the Treasury. The Special Master and the Department have considered all of the varying comments along with the language of the statute. The Special Master and the Department have carefully considered a great deal of evidence and data about the many victims of the September 11 attacks, and the interim final regulations are based upon this review. The interim final regulations direct the Special Master to develop a methodology for determining "presumed" economic and noneconomic losses. Claimants may request that the Special Master depart from the presumed economic and noneconomic losses based upon exceptional circumstances. In these cases, the Special Master will exercise his discretion to determine awards as he deems appropriate based upon the facts and circumstances of the claimant.

In developing a framework to use in making compensation determinations, the

Special Master and shall attempt to accommodate two principal objectives.

First, the Special Master shall develop a straightforward, efficient approach that would be as simple as possible to administer. The statute directs the Special Master to act extremely swiftly. He must review each claim and make an award determination within 120 days of filing. We anticipate that the Special Master may receive hundreds, or even thousands, of claims as soon as the program is initiated. In this very compressed time frame, it would not be feasible to hold lengthy hearings for each claimant who requests compensation from the Fund.

To minimize the need for these types of time-consuming determinations, the Special Master shall develop a methodology that is based on information that will be readily available to the claimants. It should also be a methodology that the Special Master can apply consistently to all the claims that are submitted. This will enable the Special Master to take in account each claimant's unique circumstances and still make compensation determinations swiftly and efficiently.

Second, the methodology should treat claimants fairly. We identify below several considerations that will help ensure the fair administration of the Fund. As an initial matter, we believe that claimants are treated most fairly when they are able to predict with some assurance what they will receive from the Fund. This certainty is especially important since the Act provides that, upon submission of a claim, a claimant waives the right to file a civil action for damages sustained as a result of the September 11 attacks. For claimants to make an informed decision regarding this waiver, they should have the best possible understanding of how their award will be calculated and be able to predict with as much certainty as possible how much they would receive from the Fund should they decide to file a claim. Obviously, until a final determination is made, the claimant will not know with absolute certainty how much he or she is entitled

to receive. Nevertheless, we believe that the program will work most fairly if the claimant has a very good idea of what to expect from the Special Master's final determination.

Equally important is the fair treatment of each victim relative to that of other victims. Although the Act contemplates that each victim's award will be based on his or her individual circumstances, fair administration of the program requires us to ensure that similarly situated individuals receive comparable awards. To ensure that victims receive consistent treatment, the Special Master's methodology should reflect reasonable economic assumptions and predictions regarding economic loss.

Determination of economic loss requires a prediction about each claimant's future, and this assessment will be, by its nature, somewhat speculative. But to ensure that determinations are made quickly, predictably, and fairly, the Special Master must bring a uniform set of assumptions to each claim that is filed. It would not do for the Special Master to apply one set of economic assumptions to one claim, but very different assumptions to another. The Special Master should evaluate and review a great deal of information regarding assumptions that may appropriately be made in connection with these determinations.

The Special Master's methodology for noneconomic losses should also treat all victims fairly. As discussed below, the Department, in consultation with the Special Master, has concluded that victims who died in the attacks should receive equal amounts for the pain, emotional suffering, and mental anguish that they experienced that day, except that an additional amount should be included for the spouse and minor child of each victim who died. These conclusions reflect our belief that there is no fair way of distinguishing between the noneconomic losses suffered by the victims who died in the September 11 attacks.

Economic loss for decedents.

The interim final regulations provide that the Special Master shall develop and publish a list or table of presumptive determinations for Economic Loss for decedents based upon a "present value" methodology for assessing in current dollars the monetary value of lost future income. The Department believes that such a list or table will not only permit prospective claimants to assess their likely recovery from the Fund before submitting any claim, but will also foster consistent awards for similarly situated claimants throughout the life of the program. However, such a list or table must take account of the individual circumstances of each claimant, including the age of the decedent as of September 11, 2001; the number of dependent children who survive the decedent; whether the decedent is survived by a spouse; and the amount and nature of the decedent's salary/income for recent years. The present value of lost future income should be determined after considering recent levels of salary/income, appropriate rates of tax and consumption, and making appropriate determinations regarding the volatility of high salaries or high variable income, and work life expectancy.

The Department recognizes that the figures developed for these presumptive determinations of Economic Loss will not always perfectly reflect all circumstances of each individual claimant. Accordingly, each claimant will have the opportunity to accept the presumptive determination as that claimant's determination for Economic Loss and accelerate the processing of appropriate payment, or instead to challenge that figure through the hearing process set forth in Section ____.

The Regulations also provide that the Special Master's table or chart should identify presumptive determinations of Economic Loss up through a salary level commensurate with the 99th percentile of individual income in the United States, as determined by the Bureau of Census for the year 2000. The Department recognizes that projecting earnings over worklife for people

with extraordinary annual incomes is a very complex exercise, often requiring a detailed evaluation of variable and often complex formulae for nonvariable income, differing work life expectations, often highly volatile industries or markets and other factors that are not often subject to easy generalization. Indeed, in certain high intensity and very lucrative professions, many persons retire or change professions before the typical age for retirement in the United States.

For claimants with truly extraordinary earnings in recent years, the Special Master offers an option: either accept the presumptive determination identified on the table at the 99th percentile of income (with a lengthy assumed work life) or engage in a more detailed process involving additional information submissions. To select the latter alternative, applicants will be required to submit a range of detailed evidence regarding the claimant's or decedent's earnings history and many other issues. The Special Master may consider a range of information, including the ages of current and former employees in the claimant's or decedent's former firm, demographic information on retirement trends for high wage earners, the individual's historical expenses (including mortgages, tuition, automobiles, etc.), savings, medical history, and any other factors he deems relevant, including economic trends, information available from the Bureau of Labor Statistics, the Census Bureau and other entities on average income by profession and average retirement age by profession and income. Claimants should be aware that a detailed review of all of these variables might not produce as high an award as would a presumed determination that is based upon the 99th percentile projected over a lengthy work life.

Noneconomic losses for decedents.

Each person who was killed or injured in the September 11 attacks suffered grievous harm, and each person experienced the unspeakable events of that day in a unique way. Some victims experienced terror for many minutes, as they were held hostage by terrorists on an airplane or trapped in a burning building. Some victims had

no warning of what was coming and died within seconds of a plane hitting the building in which they worked. Some victims jumped to their deaths from the World Trade Centers. Some died as the buildings tumbled to the ground. Some victims called loved ones in the immediate aftermath of the attacks, never to be heard from again.

We see no rational or just way of distinguishing among these thousands of victims, for purposes of assessing noneconomic losses due to the pain, emotional suffering, and mental anguish suffered by those who died on September 11. Each of those who lost their lives that day suffered tremendous physical and emotional harm.

The regulations therefore set a presumed award for noneconomic losses sustained.

That amount shall be [\$250,000?]. This figure is based upon the awards otherwise provided for military service members killed in combat [cite] and for public safety officers who die in the line of duty [cite].

\$100,000

that is total award

Similarly, the victims who were killed that day left behind thousands of family members who have suffered loss as a result of their deaths. Again, each victim's circumstances are unique. Some were married with young children, whereas others were single. Some had many siblings, others did not. Some had elderly parents. Each of those family members who survived the victims will experience loss of society, companionship, and consortium. Again, however, for purposes of compensation, we think there is no rational or fair way of distinguishing among similarly situated family members who have been left behind. The presumed noneconomic losses shall therefore include an additional \$50,000 for each spouse and minor child of the deceased victim.

As is the case for presumed economic loss, claimants may accept or challenge the presumed noneconomic losses according to the procedures set forth in § ___ of these regulations.

Economic and noneconomic losses for injured claimants. [To be supplied by Special Master]

Collateral Sources

Section 405(b)(6) provides that the Special Master shall reduce the amount of compensation by the amount of the collateral source compensation "a claimant has received or is entitled to receive" as a result of the terrorist-related aircraft crashes of September 11, 2001. In its November 5, 2001 Notice of Inquiry, the Department sought comment on this topic. The Department specifically sought comments on how to determine what constitutes a "collateral source" for purposes of this provision. The Department invited comments on whether charitable or other contributions could or should appropriately be considered "collateral sources," and on whether "in kind" and/or material contributions could or should be considered collateral sources. Similarly, the Department invited comments on how to determine whether potential future collateral source payments are ones which individuals are "entitled to receive" for purposes of Section 405(b)(6).

General comments. A number of commenters took issue with any collateral source reductions, and in particular to those reductions required by the statute which they assert would not be offset from awards obtained during wrongful death suits. Some urged that the type of collateral source offsets should be interpreted narrowly; and a number of commenters suggested that if collateral source benefits to a victim are to be offset, a counter-offset should be made for the premiums or contributions made by the victim to purchase various benefits. Some commenters specifically suggested that only the value of these collateral benefits funded by a victim's employer should be offset. A significant number of comments from those identifying themselves as family members of victims, or those who work with the family members, indicated that if collateral benefits were deducted from awards offered by the Fund, they would probably seek relief through the civil justice system rather than through the Fund.

On the other hand, many commenters asserted that this program should not "unjustly enrich" the victims nor their survivors, and supported the use of offsets. Some of these

comments imply that the Fund has only a limited pool of resources to distribute to claimants (akin to the funds being collected and distributed by charitable organizations); hence, these comments suggest that the Fund offset collateral sources in order to focus on helping those most in need, whom the comments suggest could be lower-income victims who lacked the resources or opportunity to provide for collateral benefits.

The Department appreciates the commenters' views regarding whether collateral sources should be used at all to reduce the amount of the award. Nonetheless, the Department notes that the Act explicitly requires that certain payments be treated as collateral source payments that reduce the amount of the award from the Fund. Thus, while the Department may have discretion in determining whether certain other payments should be deemed "collateral sources" under the Act, other payments were expressly included by Congress in the definition. Some of the more specific questions that arise in this context are discussed below.

"A claimant has received or is entitled to receive." Some commenters specifically focused on the word "claimant" in this phrase, and urged that any collateral source benefits not paid or to be paid directly to the claimant not be deducted from the award. These comments were often parallel to those concerning the question of whose losses are to be compensated under the Fund: only those of the decedent (estate), or those of others as well. (See the discussion of Eligibility.)

A number of comments also focused on the words "entitled to receive." Some recommended that only those collateral benefits scheduled to be paid as a result of contractual or other clear obligations should be deducted from an award. Others recommended that only the present value of any future contingent awards be considered in making any offset.

Life insurance. Although the statute requires life insurance awards to be deducted, many commenters approached the topic as if this were a policy choice still to be made. The comments were split in that regard, with those identifying themselves as family members of victims

NOT
REALLY

unanimously against any such reduction. Many asserted that deducting life insurance will lead to no awards for those who planned ahead, and that this would be the deciding factor in determining whether or not to seek compensation from the Fund. One suggested that life insurance should only be offset if payable to a dependent of the victim, and another group of commenters indicated that only the sums received by the eligible applicant net of all taxes that exceed the premiums or other payments made by the applicant be deducted. A number suggested that if life insurance is to be offset, the premiums paid should be returned to the victim by reducing the amount of the benefit offset. Again, the language of the Act affords the Department no discretion on this point.

Pensions. While similar concerns were raised in connection with pensions, a more common comment concerned the meaning of the term "pension." For example, some commenters noted that pensions are not normally considered to be "compensation for a loss" but are instead akin to savings.

Workers compensation and victim assistance program. One commenter pointed out that most of the victims may be eligible for Workers' Compensation benefits because they were killed while on the job. This source further points out that with respect to those receiving benefits under New York law, the compensation insurer can suspend Workers' Compensation payments if benefits are being paid to the injured workers or survivors because of a third party claim. New York State legal authorities confirmed this situation, and urged that workers' compensation payments not be considered a collateral source to this extent. These comments do not challenge the appropriateness of reimbursing employers and their insurance carriers out of awards made by the Fund, in the same manner as would be the case in a civil action; rather their focus is on calculating awards made by the Fund in such a way as to avoid having the compensation payment deducted twice -- once by the Fund, and second by the action of State law. No state entity has indicated that it would refuse to pay worker compensation benefits that

qualify as "collateral sources" under the Fund. **[CHECK] [FOR DISCUSSION]**

With respect to state victim assistance funds, one commenter noted that 42 USC 10602(e) -- which generally provides that state crime victim boards shall not pay out benefits if another program is paying benefits -- was explicitly amended in October, 2001 to mention this September 11 Victims' Compensation Act. The commenter suggests that some programs that have made payments may be entitled to reimbursement as a result. However, unlike the workers' compensation laws, there is no mention here of any payment being offset or reduced by what a victim receives from elsewhere.

Charitable contributions. Many victims of the terrorist-related crashes on September 11, 2001 have or may well receive support from special funds set up to assist them, as well as from special programs established by some of their employers to share future profits and the like. Accordingly, whether to reduce Fund awards by the amount of such contributions was perhaps the subject which received the most comments in response to the Department's November 5, 2001 Notice of Inquiry. The issue was discussed in a number of news articles at about the time the Notice of Inquiry was issued.

Commenters were very divided on the point. Many were strongly opposed to reducing awards by the amount of charity funding received. This includes some commenters who donated to charities established for this purpose, as well as employers who established funds to help the families of the victims. Many drew a distinction between funds provided for short-term assistance and need, and those designed to compensate victims for their losses. On the other hand, a number of comments from those who contributed money to various charities viewed the purposes of the charities and the Fund as one and the same: compensating the victims. These commenters asserted that they had not intended in making their contributions to unjustly enrich the families through their contributions, and would hesitate to make such contributions in the future if their help turned out in the end not to have really been necessary.

A number of commenters also pointed to the practical difficulties of trying to establish what claimants may have received from charities. Some suggested the Fund should have access to any database of charitable contributions, including one that was reported to be under consideration in New York state.

After discussing these factors, some commenters suggested that the Special Master only offset charitable contributions over a certain amount, typically a very significant amount. A few commenters approached this another way, and suggested only offsetting charities set up for longer term assistance to the victims (e.g., tuition funds or scholarships for the children of all the victims). — UNJUST ENRICHMENT

Interim final regulations on collateral sources. The interim final regulations provide that collateral sources will include: (i) payments representing wages, employment benefits or compensation for injury the decedent's beneficiaries or the injured claimant has received or is entitled to receive from employers, from statutory or contractual entitlement programs, or from governmental entities as a result of the terrorist-related crashes; and (ii) proceeds from life insurance policies after deducting the cost paid by the decedent to procure such policies.

The interim final regulations provide that the collateral sources will not include:

(i) funds in a decedent's or injured claimants' 401K or similar retirement or pension plan funded by contributions by the decedent over the working life of the decedent;

(ii) any payments received which are required to be repaid or for which a lien attaches

[Discuss Workers Comp];

(iii) the value of services or in kind charitable gifts such as provision of emergency housing, food or clothing; and

(iv) charitable donations provided to the beneficiaries of the decedent, to the injured claimant, or to the beneficiaries of the injured claimant.

The regulations also provide that no monies paid under this Fund shall be subject to

attachment, lien, or reimbursement on account of any payments made by any workers' compensation program or insurer for any victim. **[DISCUSS]**

The interim final regulations further provide that regardless of the amount of collateral compensation that a claimant has received or is entitled to receive, the amount of the award from the Fund shall not be less than \$50,000 in the case of a deceased individual or, in the case of a severely injured individual, a minimum amount to be selected by the Special Master.

same as

Payment of awards

Some expressed the view that the government should ensure certain types of benefit payments are not squandered. One commenter asserted each claimant should have the right to receive an award in periodic installments, in particular those claimants which may be dependent on the Fund's award as their sole source of income. Another commenter suggested payments to children should go to a trustee for the benefit of the child. Another suggested that payments for children's higher education or starting a business should be set aside in trust funds that will mature to a fixed amount by a date certain. Others suggested using "structured settlements" or the purchase by the Special Master of annuities. But other commenters objected to any Government supervision of what happens to the Funds payable.

The interim final regulations do not address the manner in which claimants may use funds that they receive from the Fund, except that the Personal Representatives must agree in an acknowledgment and release form to distribute the award to the beneficiaries of the decedent in accordance with the decedent's will or applicable state law or ruling by a court of competent jurisdiction. In addition, the regulations provide that the Special Master may, if appropriate information is provided, distribute payments to individual beneficiaries. **[Discuss; guardians ad litem and minors]** While the Department does not believe that it is appropriate for the Special Master to place further legal restrictions on the claimants' or beneficiaries' use of payments from

the Fund, the Department does contemplate that the Special Master will have discretion to provide claimants with information regarding annuities or other financial planning devices or to offer structured awards with periodic payments.

Limitations on fees for assistance, and payment of such fees by the Special Master

In its November 5, 2001 Notice of Inquiry, the Department requested comments on whether the Special Master has the authority to limit the types and amounts of fees that can be charged by counsel, accountants, experts or others who are retained by claimants to assist them to file and pursue compensation claims, and whether such fees can and should be paid by the Special Master directly out of compensation awards. The Department also solicited comments on what limitations, if any, the rules should impose on non-attorney, non-claimant representatives' participation in filing claims and in subsequent proceedings (that is, should such representatives be limited to personnel working with designated organizations, others or should representation be confined to attorneys).

A number of commenters pointed out that the right to be represented by counsel is provided by the statute, that not all claimants would be comfortable using pro-bono counsel to represent their interests, and that payment of attorney fees is necessary to ensure representation by counsel of choice. Some of these commenters suggested, however, that fees could be limited so as not to exceed 10% of the award to claimant. Some victims assistance organizations reported similar fee limits. One organization supported the "loadstar" method for determining attorney fees (actual hourly work, perhaps with an upward or downward multiplier permitted for particularly difficult or particularly simple cases). However, many others who commented were opposed to the use of money from the Fund for the payment of any legal fees.

Because the Act does not provide for payment of legal or other fees by the Fund, the interim final regulations do not impose any limits on the types or amount of fees that claimants may pay their attorneys or others providing assistance. Although the Department's regulations

do not set specific limits on attorneys fees separate from those existing in state law or attorney ethical standards, the Department believes that contingency arrangements exceeding 5% of a claimant's recovery from the Fund would not be in the best interest of the claimants.

The Department contemplates that the Special Master will have discretion to inform potential claimants of the nature of the Fund so that they may make informed decisions regarding the types or amount of fees that they pay for legal or other assistance. For example, the Special Master may notify claimants and potential claimants of the availability of pro bono legal services. Likewise, the Special Master may inform claimants and potential claimants that the Fund is a no-fault, administrative scheme that should not involve the kind of risks and expense that would justify any significant contingency fees.

The application of various laws and Executive Orders to this rulemaking.

There are a number of laws and Executive Orders whose provisions may have implications for this rulemaking process. The Department's determinations on the applicability of these laws and Executive Orders is set forth here. Comments are welcome on any of these matters.

Congressional Review Act ("CRA")

The CRA provides that before any rule can take effect, a copy must be submitted to the Congress, and certain other information about the rule must be made available upon request. 5 U.S.C. 801(a)(1). The Department is submitting a copy of this interim final rule to the Congress as required so that it may take effect.

The law further provides that if a rule is a "major" rule, that rule generally cannot take effect until 60 days after the copy of the rule has been submitted to the Congress. 5 U.S.C. 801(a)(3). This rule is not a "major" rule under the CRA. The rulemaking does not appear likely to have an annual impact on the economy of \$100 million or more; it does not appear likely to

result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or on particular geographic regions; and the rulemaking does not appear likely to have significant adverse impacts on competition, employment, investment, productivity or other similar consequences. Accordingly, the effective date of the rules, as discussed above, is not affected by this requirement.

Paperwork Reduction Act of 1995 ("PRA 95")

The Paperwork Reduction Act ensures that the government's collection of information from the public is subjected to close scrutiny and that "burden hours" imposed on the public are minimized. The PRA 95 defines a "collection of information" as the "obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format." 44 U.S.C. 3502(3)(A). Under PRA 95, no person may be required to respond to, or may be subjected to a penalty for failure to comply with information collection requirements until the information collection requirements have been approved by OMB, and have been assigned an OMB control number. OMB requires the Department to submit considerable detail about the proposed PRA95 impacts of rules before reaching its determination, which is then normally valid for a period of 3 years. PRA95 requires notice and comment to the public on proposed paperwork burdens before OMB can approve a collection of information. The law authorizes the PRA notice and comment process to be consolidated with the rulemaking notice and comment process. 44 U.S.C. 3507(d)(1).

In light of the law's deadline for implementation of the Compensation Fund, the Department of Justice has asked for and received an emergency PRA approval under the provisions of 5 USC 1320.13 on the grounds that the use of normal clearance procedures would reasonably be likely to cause a statutory deadline to be missed. Under that emergency approval, the information collections created by this rulemaking may display an approved OMB control number for 180 days while the public is given an opportunity to review and comment on the

information collections. The normal public notice required by 5 USC 1320.5(a)(1)(iv) before an agency may sponsor a collection of information was waived as part of the emergency approval; however, a notice requesting public comment on the information collections will be published soon by the Department, and any changes resulting from this notice and comment process will be announced at a later date.

Privacy Act of 1974

The Privacy Act, 5 U.S.C. 552a, provides special protection for all records in a system of records maintained by the government from which information is retrieved by name or personal identifier. Since the administration of the Fund is going to require the establishment of files retrievable by claimant name, social security number, or other personal identifier, the Privacy Act will be applicable to them.

Basically, the Privacy Act supplements the requirements of the Freedom of Information Act, 5 U.S.C. 552 concerning access to government documents; however, the Privacy Act generally makes it easier for individuals to have full access to their own records, and more difficult for others to obtain access to those records. It also permits an individual to request the government to amend any record maintained in his or her name to correct any information which the individual asserts is not accurate, relevant, timely or complete. 5 U.S.C. 552a(d)(2).

When an agency establishes a new system of records that is covered by the Privacy Act, it must publish a notice identifying the new system and detailing access to those records. The agency must, for example, list the "routine" purposes under which it may share the records with other agencies (and must keep a record of any such sharing), and determine whether there are any circumstances under which individuals may not have unlimited access to records maintained in their names (e.g., certain types of investigative records). The Department will be publishing the required notices promptly so that these protections are in place as soon as initial claim forms are received.

Negotiated Rulemaking Act of 1990

The Negotiated Rulemaking Act explicitly authorizes agencies to bring together those with interests in a rulemaking and attempt to reach consensus on the requirements of the rule before the rule is published for notice and comment. Experience has indicated that while such an approach may result in better rulemaking, the process of bringing together the parties and attempting to reach consensus, through the mechanism of a committee formally chartered for the purpose under the Federal Advisory Committee Act, is likely to take much more time than is available to the Department for the implementation of this program. Accordingly, the Department determined that these rules were not good candidates for negotiated rulemaking under the Act.

Assessment of Federal Regulations and Policies on Families

In accordance with section 654 of the Treasury and General Appropriations Act of 1999, Pub. L. 105-277, 112 Stat. 2681, the Department has examined these interim rules and determined that they will not adversely affect the well-being of the nations' families. Rather, the Department believes this rulemaking will positively affect the well-being of families in that it provides benefits to individuals who have been adversely affected by major disasters.

National Environmental Policy Act of 1969 ("NEPA")

Pursuant to NEPA, 42 U.S.C. 4321 et. seq., the Department certifies that the proposed rules have been assessed and that they do not have a significant effect on the quality of the human environment.

Regulatory Flexibility Act

In accordance with the mandates of the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., the Department, after consultation with the Special Master, has determined that these regulations will not have a "significant economic impact on a substantial number of small entities," and has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.