

Leading the September 11th Victim Compensation Fund: A Conversation with Rupa Bhattacharyya, Special Master, Victim Compensation Fund, U.S. Department of Justice

By Michael J. Keegan

**9/11
VICTIM
COMPENSATION
FUND**

In the aftermath of the September 11th terrorist attacks on the United States, Congress created the September 11th Victim Compensation Fund (VCF), which provided compensation for economic and noneconomic loss to individuals, or the personal representative of individuals, who were killed or physically injured in the attacks. In 2011, as it became clear that exposure to the toxins generated in the aftermath of the attacks was having lingering health effects, Congress passed and the President signed a new law, which reactivated the VCF to accept claims for a specific timeframe and expanded its pool of eligible claimants. President Trump recently signed into law H.R. 1327, the VCF Permanent Authorization Act. The Act extends the VCF's claim filing deadline until 2090 and appropriates such funds as may be necessary to pay all eligible claims.

Rupa Bhattacharyya, special master of the VCF, joined me on *The Business of Government Hour* to discuss her priorities, how the program works, efforts to expand outreach to the 9/11 community, and what the future holds for the VCF. The following is an edited excerpt of our discussion, complemented with updated and additional research.

On the History and Mission of the VCF

The VCF was originally created in 2001, immediately following the attacks, as an alternative to tort litigation, and was designed to provide compensation for any individual (or a personal representative of a deceased individual) who suffered physical harm or was killed as a result of the terrorist attacks. The original VCF (known as "VCF I") operated from 2001-2004 under the direction of special master Kenneth Feinberg, distributed over \$7 billion, and concluded operations in June 2004 after compensating more than 5,500 claimants.

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signed the James Zadroga 9/11 Health and Compensation Act of 2010, which reactivated the September 11th Victim Compensation Fund (now known as "VCF II"), expanded its pool of eligible claimants, and appropriated \$2.775 billion to pay claims. VCF II opened in October 2011 and was originally authorized to accept claims until October 2016. In December 2015, Congress reauthorized the VCF for five more years, allowing individuals to submit claims until December 18, 2020, and appropriated an additional \$4.6 billion to pay claims, bringing the total appropriated amount for VCF II to \$7.375 billion.

By February 2019, however, it became clear that that funding was insufficient to compensate the number of claims pending and expected, and in fact, the VCF made the decision to slash awards by up to 70 percent in order to preserve the available funding, as it was required to do under the law. As a result, just recently, on July 29, 2019, the president

signed the Never Forget the Heroes: James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the September 11th Victim Compensation Fund. The VCF Permanent Authorization Act extends the VCF's claim filing deadline from December 18, 2020, to October 1, 2090, and appropriates such funds as may be necessary to pay all eligible claims.

On the Responsibilities of the VCF Special Master

When Congress established the VCF in 2001 to compensate the victims of the terrorist attacks and their families, it created the position of special master to administer the claims process. The attorney general at the time, John Ashcroft, appointed Ken Feinberg to serve in that capacity, and Mr. Feinberg was given the sole authority to determine what each claimant would receive. By law, his rulings were final and were not subject to judicial review. When the fund was revived in 2011, this same structure was kept in place, and the same discretion was afforded the new special master. I was appointed as special master by Attorney General Loretta Lynch in July 2016.

As to my responsibilities and duties, they are very straightforward—and at the same time fairly complex. Our mission—my mission—revolves around three tenets: being fair to the claimants, faithful to the statute, and defensible to the taxpayers. While that is fairly straightforward, there are many moving parts involved in making sure those expectations are continually being met.

On the Challenges of Managing the VCF

This is an interesting question—and one that, on at least one level, is different today than it would have been several months ago. I'll come back to that in a minute. The top challenge I have is simple: getting claims reviewed in the most timely, fair, and efficient way possible. It has long been my goal to reduce the time it takes us to review a claim—once we have everything we need—to 12 months or less. We are not there yet, but we continue to make progress, and I am optimistic that we will be there soon. Now backing up to talk about what has changed. One of my top priorities, until the recent passage of the VCF Permanent Authorization Act, was making sure that we did not exhaust our finding. That is a problem we no longer have—but that said, we are still extremely committed to the type of fiscal responsibility and responsible stewardship of government funding that helped to get us the vote of confidence that the legislation represents. Beyond that, our challenges are reflected in our ongoing mission—which is to operate the VCF in a manner that is fair to the claimants, faithful to the statute, and defensible to the taxpayer.



On the Implications of 9/11-Related Illnesses

What has surprised everyone in the 9/11 community, myself included, is the increase in the number of people who are getting sick and dying due to 9/11-related illnesses. There is no accurate count of how many people might have been exposed to toxins stemming from the attacks. There is also considerable uncertainty about the number of individuals who ultimately will fall ill due to the long latency periods that can elapse before manifestation of the cancers determined to be related to 9/11 exposure. Moreover, the VCF has suffered from an information gap; in the early years of the program, many eligible individuals were not aware that the VCF was an available resource. They assumed it was meant only for New York City first responders. As an example, even the FBI, which has lost at least 16 employees to 9/11-related illnesses, did not recognize until fairly recently that its employees might be eligible for VCF compensation.

As a result of increasing outreach, but also as a harbinger of the increasing seriousness of 9/11-related illnesses, the VCF received a record number of new claims in 2018 and will exceed that number in 2019. For perspective, in the first five years of the Victim Compensation Fund, through December 31, 2016, roughly 19,000 compensation forms were filed. In the two years after that, through December 2018, almost 20,000 additional compensation forms were filed, with over 10,000 compensation forms already filed to date in 2019.



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—*Rupa Bhattacharyya*

On the VCF Permanent Authorization Act

For the most part, the law is unchanged with two very large exceptions: the length of time until the filing deadline and the removal of a funding cap. Prior to passage of the law, the deadline for filing a claim was December of 2020. Now, people can file a claim until October 1, 2090. And while we previously operated with a set amount of appropriated funding that the VCF could not exceed, the new law appropriates such funds as may be necessary to pay all eligible claims.

On the VCF Claims Process

The VCF process has two distinct steps: registration and filing a claim. Registration is simple and fast and preserves your right to file a claim in the future if you become sick. You can register on the VCF's website, at www.vcf.gov, or over the phone by calling the VCF Help Line at 1-855-885-1555. You don't need to be sick, exhibiting symptoms, or have a certification from the World Trade Center (WTC) Health Program to register. We encourage people to register with the VCF now, even if they are not sick, to avoid missing any deadlines. There is no harm in registering and it does not obligate you to file a claim in the future or waive any legal rights.

Filing a claim is done once the WTC Health Program has certified an eligible 9/11-related illness. This requires the completion of the VCF claim form, and the submission of a number of relevant documents. As a general rule, claims are reviewed in "first in, first out" order based on the date the claim was submitted. The timeframe for processing depends on the type and complexity of the claim, whether the documents needed to evaluate the claim have been submitted, and other factors.

The VCF reviews claims in two phases: eligibility and compensation. For eligibility, the VCF reviews the claim to determine whether the claimant is eligible to receive compensation under the law. This includes assessing whether the claim was timely registered; the claimant has sufficiently proven that he or she was present at one of the attack sites or in the New York City Exposure Zone (Manhattan, south of Canal Street); the claimant suffers from an eligible physical injury or condition as certified or verified by the WTC Health Program; and the claimant has properly complied with the Act's requirements that any 9/11-related lawsuit be properly settled or dismissed.

On Compensation Determinations

For compensation, all awards are individually calculated based on the specific circumstances of the claim. The VCF

reviews eligible claims to determine the appropriate amount of noneconomic loss—commonly referred to as "pain and suffering"—based on the nature or severity of the individual's physical injury or condition. Noneconomic loss awards are capped by statute at \$90,000 for non-cancer conditions and \$250,000 for a cancer condition. If a government entity or private insurer has formally determined that the claimant suffers a full or partial occupational disability as a result of an eligible 9/11-related physical injury or condition, the VCF generally also will calculate economic loss. This portion of the award can encompass a variety of components, including loss of income as well as loss of pension and other employment benefits. The VCF also awards, in limited and appropriate cases, reimbursement of out-of-pocket medical expenses, replacement services losses, and reimbursement for burial costs in deceased claims. Once the claim review process begins, the VCF contacts the claimant if additional information is needed.

The VCF is required by law to subtract from the calculated award certain "collateral offsets," which are benefits paid to the claimant by other entities because of the eligible 9/11-related condition. These offsets may include disability benefits, settlements from 9/11-related lawsuits, and in the case of deceased claims, life insurance paid to the victim's beneficiaries.

By statute, claimants are limited to filing only one claim with the VCF, but VCF policy allows claims to be amended at any time before the program closes in 2090 if the claimant suffers a new injury or incurs a new and previously uncompensated loss. Claimants are also allowed to appeal in the case of an eligibility denial, or if the individual believes the award calculation did not properly account for the individual circumstances in the claim. Hearings are non-adversarial and





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provide an opportunity for claimants to tell us their story, and we have a dedicated staff of pro bono hearing officers (who operate under a special appointment from the attorney general) who generously lend their expertise and gravitas to the VCF’s administrative appeals process. The law provides that the ultimate decisions of the special master on eligibility and compensation are final and unreviewable by any judicial authority, which is an extraordinary grant of discretion that I take extremely seriously.

On the Importance of Collaboration and Partnerships

The VCF is a program that is subject to substantial public scrutiny, including from members of Congress and representatives of various 9/11 advocacy groups who were instrumental in the successful passage of the legislation reopening the VCF in 2011, the additional \$4.6 billion in funding added in 2015, and the permanent reauthorization with all necessary funding passed earlier this year. The VCF has been extremely dedicated to forming positive, productive

relationships with key stakeholders. By taking a proactive approach to our communications with external stakeholders (reaching out to them before they contact us) and generously sharing information, we have maintained extremely positive and constructive relationships with all of our external constituencies. We are on good terms with the congressional offices of the New York delegations with representatives from New York districts often present at events also featuring the VCF. Under my leadership, the VCF has also continued its practice of meeting regularly with the law firms representing VCF claimants to update them on claim progress and new or revised policies. We routinely “blast” emails to law firms for every website update and the publication of other key information. We also continued our practice, as we considered policy changes over the course of the year and following publication of the Notice of Inquiry, of attempting to “socialize” the more significant changes with law firms to get feedback and, more importantly, begin to build support for the changes. More generally, we have appointed three claim reviewers who serve as law firm liaisons; they have weekly or biweekly calls with the law firms that handle a substantial volume of VCF claims to explain policies, solicit feedback, and update claim statuses. The lawyers—who represent over 80 percent of VCF claimants—have been very appreciative of the VCF’s level of information dissemination and have repeatedly praised the clarity of the guidance and outreach they have received.

The 9/11 community continued to push this year for increased VCF outreach and we have made a special effort to revamp our outreach plan and activities—so much so that we have established an Outreach Team to handle the numerous requests for VCF information. As part of our outreach activities, we participate in numerous meetings and information sessions with external entities, establishing a positive dialogue and presenting information about the VCF to their members and constituents. These included multiple training sessions for WTC Health Program and Clinical Centers of Excellence (CCE) employees, including benefits counselors and social workers who are in a position to pass accurate information to potential claimants; and



regular contact with 9/11 Health Watch and the FealGood Foundation, advocacy groups with a strong following among the 9/11 community.

We spent considerable time this year shoring up relationships with some of our long-time partners. We have regular contact with the Fire Department of New York, the New York Police Unions, the Social Security Administration, the Veterans Administration, and the New York Workers' Compensation Board to discuss information exchanges and to make sure that the processes we have in place are efficient and generating the needed data. In addition, we established significant new contacts with federal law enforcement agencies, which are underrepresented in the VCF claimant pool, participating with the FBI in numerous events, and reaching out to contacts with the U.S. Marshals Service and the Secret Service to ensure that information is available to their employees.

We also have firmly cemented our collaborative relationship with the National Institute for Occupational Safety and Health (NIOSH), which administers the WTC Health Program, by regularly attending monthly WTC Health Program Responder Steering Committee meetings. The relationship with NIOSH and the CCEs continues to be critical to many of the policy issues we have successfully reassessed over the last year, as we were able to refine our guidance by incorporating their feedback and gain a better understanding of how our policies were affected by their practices and vice versa.

On Accomplishments and What's Next

The clearest indicator of the VCF's success is the overwhelming vote of confidence the VCF received in July 2019, when the Congress overwhelmingly and with bipartisan support passed, and the president signed into law, legislation reauthorizing the VCF essentially permanently (until 2092) and providing it with such appropriated funds as may be necessary to pay all eligible claims, an unconstrained amount of statutory funding that is nearly unheard of in a program where awards are insulated by law from judicial review. The permanent authorization of the VCF, with no substantive alteration of its claim review procedures or mechanisms for award calculation, clearly reflects that the program is achieving exactly the results it was created to achieve. This has been an exceptional year, given the sheer volume of activity surrounding my decision early in the year relating to the

reduction of awards and then the passage of the Permanent Authorization Act. But I am confident that the foundation we laid will continue to serve us well as we move forward to provide compensation to those suffering as a result of the 9/11 attacks for many years to come.



To learn more about the September 11th Victim Compensation Fund, go to vcf.gov.



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