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Assistance for Victims of Crime and Terrorism

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Assistance for Victims of Crime and Terrorism

Summary

Since the events of September 11, 2001, there has been extensive interest in public and private efforts to assist victims of terrorist attacks. The Victims of Crime Act of 1984 (P.L. 98-473) established the Crime Victims Fund (CVF), which is one of the main federal sources of money and support for crime victims. The CVF consists of monies collected from criminal fines, forfeited bail bonds, penalty fees, and special assessments collected by the Offices of the U.S. Attorneys, the U.S. Courts, and the Bureau of Prisons. Between its inception in FY1985 and FY2001, no money was directly appropriated to the CVF; however, in FY2002, as a result of the terrorist attacks, Congress appropriated \$68.1 million to the CVF. The Office of Victims of Crime (OVC) within the Department of Justice is charged with providing services to federal crime victims, and with using the CVF to provide grants to help finance victims compensation and assistance programs. The OVC administers three grant programs: (1) formula grants to states for victim compensation; (2) formula grants to states for victim assistance; and (3) discretionary grants to enhance victim services. OVC also manages an anti-terrorism emergency reserve fund. Money in the reserve fund is used to aid victims of terrorist attacks both within and outside the United States.

On September 22, 2001, Congress passed the September 11 Victims Compensation Act (P.L. 107-42), which established a program to provide federal compensation to the victims or families of victims who were physically injured or killed in the terrorist attacks of September 11, 2001. The act requires the Attorney General to appoint a Special Master to administer the compensation program. On November 26, 2001, Kenneth R. Feinberg was appointed to the position. Additionally, on October 22, 2001, the President signed into law the USA PATRIOT Act of 2001 (P.L. 107-56), which made several changes to the Victims of Crime Act to enhance services to victims of terror, and to bolster the resources of the Crime Victims Fund.

There are several issues that arise as Congress provides aid for the victims of the terrorist attacks. First, with assistance being provided as quickly as possible from state and federal programs, as well as from numerous charitable sources, there are some concerns about duplication of services and awards, and whether victims are being treated equitably. Among the charities, there are concerns that donated money is not being used as the donors intended, as well as issues of fraud by certain charities and recipients. Additionally, the question has been raised whether victims of other terrorist attacks have been treated fairly; e.g., should the victims of the Kenya and Tanzania embassy bombings or victims of future attacks receive the same compensation as the victims of the September 11 attack? Last, the newly passed September 11th Victims Compensation Fund of 2001 (P.L. 107-42, hereafter referred to as the September 11th Fund) raises issues of equity among the victims of the attacks.

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Assistance for Victims of Crime and Terrorism

Introduction

The Victims of Crime Act of 1984 (P.L. 98-473) established the Crime Victims Fund (CVF) within the Treasury.¹ The CVF consists of monies collected from criminal fines, forfeited bail bonds, penalty fees, and special assessments collected by the Offices of the U.S. Attorneys, the U.S. Courts, and the Bureau of Prisons. In FY2002, for the first time in the history of the fund, because of the increased number of victims resulting from the terrorist attacks of September 11, 2001, Congress appropriated money to the CVF. The CVF is used to provide assistance to crime victims, and is managed by the Office of Victims of Crime (OVC).

As a result of the terrorist attacks of September 11, 2001, a large number of people are eligible for assistance from the federal and state governments. Victims who were injured and the families of those killed in the September 11 attacks may be eligible for benefits through federal entitlement programs such as Social Security and Medicare. They also may be eligible for benefits through federal programs designed to provide assistance in disaster situations.² Assistance from nongovernmental sources such as insurance companies and charities may be available. Additionally, these victims are considered crime victims and as such are eligible for assistance through four federally funded programs: (1) state crime victims assistance programs (non-monetary assistance); (2) state crime victims compensation programs (monetary compensation); (3) the Department of Justice's Office of Victims of Crime (OVC) (non-monetary assistance); and (4) the Department of Justice's September 11th Victims Compensation Fund (monetary compensation).³

In response to the September 11 attacks, Congress passed the September 11th Victims Compensation Fund of 2001, which established a federal compensation program for the victims of the attack.⁴ Additionally, on October 26, 2001, the President signed the USA PATRIOT Act of 2001, which amended the Victims of Crime Act (VOCA) to increase funding for programs for victims of terrorist attacks.

¹P.L. 98-473, signed into law on October 12, 1984; 98 Stat. 2170; 42 U.S.C. 10601.

²For more information of selected disaster relief programs for the victims of terrorist attacks, see CRS Report RL31125, *Recovery from Terrorist Attacks: A Catalog of Selected Federal Assistance Programs*, by Ben Canada.

³For more information on OVC, see [<http://www.ojp.usdoj.gov/ovc/>].

⁴P.L. 107-42, Title IV, signed into law on September 22, 2001 (H.R. 2926).

Office of Victims of Crime

The Department of Justice (DOJ) administratively created the Office of Victims of Crime (OVC) in 1983, and in 1988, through legislation, Congress formally established OVC.⁵ OVC administers the grants of the CVF, and advocates, through policy development, for the fair treatment of crime victims. OVC also sponsors training on victim/witness issues for professionals who come in contact with victims (e.g., victims service providers, mental and medical health professionals, law enforcement agents, and the clergy). OVC offers direct services to people victimized on federal or tribal lands, and to American citizens victimized abroad, including emergency funds to provide victims of federal crimes with services such as crisis counseling, travel expenses, and temporary shelter.⁶ Additionally, the Office of Victims of Crime established and manages a Resource Center that provides research, findings, and literature on victims issues, and a training and technical assistance center that serves as a centralized access point for information about OVC's training and technical assistance resources.

The Victims of Crime Act mandates that DOJ perform three functions related to service for federal crime victims: (1) identify the victims and collect information on how to contact the victims or surviving family members; (2) provide notice to victims about victims services, and developments in legal proceedings against the alleged perpetrators; and (3) provide reasonable protection for victims from the accused and their representatives. These functions are performed by OVC.⁷

The Victims of Crime Fund

In addition, OVC administers victims compensation and victims assistance formula grants to states, and discretionary grants.⁸ State compensation programs, which are partially funded by monies from the CVF through the victims compensation grants, provide money for medical expenses, loss of wages, and funeral expenses. State assistance programs, which are partially funded by monies from the CVF through the victims assistance grants, provide services including, but not limited to, crisis intervention, counseling, emergency shelter and child care, and emergency transportation. Discretionary grants from the CVF, awarded to organizations, fund

⁵P.L. 100-690, Subtitle D, signed into law on November 11, 1988.

⁶Travel expenses can be used for many purposes, including travel expenses to court. For example, OVC helped the families of those killed in the Pan Am flight 103 bombing attend the trial of the perpetrators in the Netherlands. Compensation and assistance for victims of non-terrorist federal crimes is handled by the victims services program of the state where the crime occurred.

⁷Since one of the mandated functions is to provide information about significant events in the court case, OVC is involved with the victims until the conclusion of the case, including, as in the Oklahoma City bombing, the adjudication of the death penalty.

⁸A formula grant is a non-competitive grant made to states based on a defined characteristic or set of characteristics (e.g., population, crime rates, poverty rates). A discretionary grant is made through a competitive process where grantees submit applications and money is awarded to those judged to be the best.

demonstration projects, training, and other assistance to expand and improve the delivery of services to federal crime victims. The funds for these programs come not from direct appropriations but from the CVF, which consists of criminal fines, forfeited bail bonds, penalty fees, and special assessments. There was a cap on the CVF from 1985 through 1993, and the money over the cap reverted to the Treasury. Congress reinstated the cap in FY2000 through the appropriations process. The FY2002 Commerce, Justice, State appropriations act⁹ caps the CVF at \$550 million, an increase of \$13 million over a cap placed on the fund in FY2001. This cap does not include the \$68.1 million appropriated to the CVF as part of the \$40 billion emergency supplemental appropriations for use in responding to the attacks of September 11.¹⁰

The CVF Grant Programs. The Victims of Crime Act requires that the first \$10 million expended from the CVF annually is used to improve the investigation and prosecution of child abuse cases. The \$10 million is divided between the Department of Health and Human Services (\$8.5 million) and the Office of Victims of Crime (\$1.5 million). According to VOCA, as amended by the PATRIOT Act, the funds remaining in the CVF after the money is expended for child abuse cases are distributed as follows:

- 47.5% to state compensation programs;
- 47.5% to state assistance programs; and
- 5% for discretionary grants to fund innovative programs that focus on victims services.¹¹

For example, if the CVF contains \$550 million the money would be allocated as follows: \$256.5 million for compensation grants, \$256.5 million for assistance grants, and \$27 million for discretionary grants. Federal crime victims are eligible for compensation and assistance from the state where the crime occurred. Federal crime victims are also eligible to receive emergency funds and assistance from OVC.

Compensation Grants. Every state, the District of Columbia, Puerto Rico, and the territories administer a crime victim compensation program that provides financial compensation to victims of state and federal crimes. These programs are administered independently, and the awards and requirements may differ by state.¹² Many state compensation programs are the payers of last resort, providing

⁹P.L. 107-77, §619; signed into law on November 28, 2001.

¹⁰Emergency Supplemental Appropriations Act (P.L. 107-38), signed into law on September 18, 2001; and Department of Defense Appropriations Act, 2002 (P.L. 107-117), signed into law on January 10, 2002.

¹¹Prior to the amendments of the PATRIOT Act, the grant monies were distributed as follows: 48.5% to state compensation programs, 48.5% to state assistance programs, and 3% for discretionary grants.

¹²For example, in Virginia the maximum amount of compensation is \$15,000, while in Pennsylvania it is \$35,000. New York State provides unlimited compensation for medical expenses while it limits other types of compensation such as lost earnings. (For information on benefits for individual states, see [<http://www.ojp.usdoj.gov/ovc/help/progdir.htm>]).

compensation only after the victim or victim's family has tried and failed to collect from all other "collateral sources" (e.g., workers' compensation, Social Security, etc.) Compensation grants are formula grants to states that are allocated *based on the percentage of payments to crime victims in the previous year*. Under the 1996 Anti-Terrorism Act, states must provide compensation to residents who are victims of terrorist attacks within or outside the United States.¹³

Compensation grants can be used for:

- medical expenses, including mental health counseling;
- loss of wages; and
- funeral expenses.

Additionally, to be eligible for compensation grants the state program must promote victim cooperation with law enforcement.

Victims Assistance Grants. These formula grants are distributed to the states, the District of Columbia, and the territories *based on the relative population of the state*. Each state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands receives a base amount of \$500,000, while the Northern Mariana Islands, Guam, and American Samoa receive a base amount of \$200,000 each. The funds that remain after each state and territory has received its base allocation are distributed based on the relative population of the state. The states award these grants to local community-based organizations, either public or non-profit organizations, that provide direct services to crime victims, and each state has discretion to determine which organizations will receive the funds. Most states award these grants on a competitive basis. The law states that priority shall be given to programs that assist the victims of sexual assault, child abuse, and spousal abuse.

Victim assistance includes, but is not limited to:

- crisis intervention;
- counseling;
- emergency shelter and child care;
- temporary housing and security measures;
- criminal justice advocacy;
- payment for forensic medical examinations, to the extent that such costs are not otherwise paid; and
- emergency transportation.

Of the nearly 10,000 organizations nationwide that perform these services, approximately 3,300 receive some money from the CVF.¹⁴

Discretionary Grants. Five percent of the CVF is set aside for OVC to award as competitive grants for training and technical assistance, demonstration initiatives, and to fund services for victims of federal crime. In addition, at least 50%

¹³P.L. 104-132.

¹⁴See [<http://www.ojp.usdoj.gov/ovc/factshts/cvfvca.htm>].

of the funds for these discretionary grants is awarded to grantees to address issues of how law enforcement, government, medical professionals, and victims service providers respond to federal crime victims. Initiatives funded through discretionary grants include:

- training federal criminal justice system personnel on victims' issues;
- developing materials to help federal victims understand their rights and available services;
- establishing and expanding existing services for federal crime victims;
- developing training curricula;
- training victim services and criminal justice personnel;
- identifying and disseminating information on promising practices related to victim services; and
- supporting and evaluating demonstration projects.

The Cap. A cap was placed on deposits to the CVF for the first 8 years of its existence. The cap was lifted in FY1993, and was reinstated in the Departments of Commerce, Justice, State appropriations act beginning in FY2000 to “protect against wide fluctuations in receipts into the Fund, and to ensure that a stable level of funding will remain available for these programs in future years.”¹⁵ In FY2001 the CVF collected \$776.5 million, and was capped at \$537.5 million.¹⁶ The FY2002 Commerce, Justice, State appropriations act caps the CVF at \$550 million.¹⁷ Legislation has been introduced in the 107th Congress (H.R. 1092) that would eliminate the cap.

Emergency Anti-Terrorism Reserve Fund. In 1996, following the Oklahoma City bombing, Congress gave OVC the authority to establish an emergency fund of \$50 million to be used for victims of terrorism and mass violence.¹⁸ Money from this reserve fund can be used to provide assistance and compensation to victims of terrorism and mass violence outside the United States, or to provide supplemental grants to states to provide emergency relief to the victims of mass violence and terrorist attacks within the United States. OVC may also use the reserve fund to

¹⁵Conference Report 106-479 for the FY2000 Commerce, Justice, State Appropriations Act, Section 620.

¹⁶VOCA specifies that “the excess over that sum (over the cap) shall be deposited in the general fund of the Treasury and shall not be a part of the Fund.” (P.L. 98-473, §1401(c)(1); 98 Stat. 2171). The FY2001 CJS Appropriations (P.L. 106-553, §619) states that “amounts deposited or available in the Fund in any fiscal year in excess of \$537,500,000 shall not be available for obligation until the following fiscal year.” According to OVC the excess money reverts to the Treasury and is not kept in a separate fund for OVC (phone conversation with OVC, 202-616-4466), while DOJ’s legal counsel asserts that the money does not revert to the treasury (phone conversation with the Office of Justice Programs, 202-307-3912). The PATRIOT Act addressed the issue of what happens to the CVF monies in excess of the cap by mandating that the excess funds are retained in the fund, but this section was repealed in the FY2002 Commerce, Justice, State Appropriations Act (P.L. 107-77, §111).

¹⁷H.R. 2500; H.Rept 107-278.

¹⁸P.L. 104-132, §§231-233; 42 U.S.C. 10603b.

provide funds to the Offices of the United States Attorneys to provide emergency relief to the victims.¹⁹

Money may be transferred from the CVF to the anti-terrorism reserve fund but only if the amounts deposited in the CVF in a fiscal year are 110% of the amounts deposited in the CVF in the previous fiscal year. In 2000, Congress raised the amount allowable in the reserve fund to \$100 million;²⁰ however, the PATRIOT Act reversed this change, lowering the maximum amount of the reserve fund to \$50 million.²¹

The Victims of Trafficking and Protection Act of 2000 (P.L. 106-386) contains a provision to provide victim assistance and compensation to United States citizens who are victims of terrorism outside the United States. The regulations for this program have not been proposed, but according to OVC, compensation is expected to be approximately \$100,000 per victim, and victims of past terrorist attacks who were killed or injured may be eligible for compensation.²²

OVC Victim Assistance Efforts in Response to the Terrorist Attacks of September 11, 2001²³

On September 11, 2001, OVC began providing several types of services to the victims of the terrorist attacks, including a call center for victims and families, a victim and family assistance website, an emergency victim fund, and technical support.

Call Center. By 4:00 p.m. on September 11, OVC had activated a call center for victims and families for the purposes of providing identifying information on victims, supplying crisis counseling, and referring victims to locally based assistance.²⁴ The call center has provided information and feedback to OVC, and the information has been used to plan for different types of necessary victim assistance. In addition, DOJ is using the call center to develop a comprehensive database of victims that will fulfill the mandated task of identifying victims and collecting contact information.

¹⁹Section 112 of the Supplemental Appropriations Act for FY1997 (P.L. 104-208) specifies that \$500,000 of the anti-terrorism reserve fund may be set aside for the United States Attorney's Offices to provide assistance to the victims of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, including funds to provide lodging and travel assistance to facilitate observation or participation in the trial proceedings.

²⁰P.L. 106-386, §2003.

²¹The fund contained approximately \$17 million on September 11, 2001, and all the money was used to provide victim assistance to the September 11 victims. The PATRIOT Act specifies that \$50 million of the \$68.1 million appropriated to the CVF may be placed in the anti-terrorism reserve fund.

²² Information provided in a telephone conversation with Kathryn M. Turman, Principal Deputy Director of OVC, on October 29, 2001.

²³Information for this section was provided by Kathryn M. Turman, Principal Deputy Director of OVC, in a congressional briefing on September 24, 2001.

²⁴In the first two weeks that the call center was operational, the center received over 80,000 calls, including 25,000 from victims or families of victims.

Victim and Family Assistance Website. On Monday, September 17, 2001, OVC activated a special website for victims and their families. This website, which is password protected, is modeled after the Lockerbie Trial — Families Project website, and includes a wide range of information for victims and their families, including official messages from OVC, the Federal Bureau of Investigation (FBI), and other components of DOJ. The Lockerbie website also included daily updates of the trial associated with the case and a chatroom for the victims' families. It is possible that this website will include similar information.

Emergency Victim Fund. Within days after the attacks, OVC established a process for providing funds for emergency needs such as travel expenses for the victims' families, transportation of remains, and other critical needs. The number of requests was so great that OVC established a separate operations center in New York City to process these requests.

Other Services. OVC worked with the compensation and assistance programs of the states most impacted by the events of September 11 to discuss coordinating services and streamlining the application process. OVC also provided technical advice to New York City (to ascertain the process of issuing presumptive death certificates), funeral home directors (to provide advice and assistance in working with families where only partial remains are recovered), and federal agencies (to deal with trauma counseling needs).

Legislation in the 107th Congress

September 11th Victims Compensation Fund of 2001. On September 22, 2001 the President signed into law the September 11th Victims Compensation Fund of 2001 (P.L. 107-42, Title IV) creating a federal program to specifically compensate the victims of the September 11 terrorist attacks.²⁵ To be eligible for the compensation under the September 11th Fund, the claimant must be an individual or the personal representative²⁶ of an individual who was “present at the World Trade Center, Pentagon, or Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the crashes and who suffered physical harm ... as a direct result of the terrorist related airline crashes.”²⁷ Victims do not have to be a citizen or resident of

²⁵P.L. 107-42, Title IV; H.R. 2926/Young. The September 11th Victims Compensation Fund of 2001 is Title IV of the Air Transportation Safety and System Stabilization Act. Interim final regulations: CFR Part 104. *Federal Register*, v. 66, no. 246, December 21, 2001, pp. 66273-66291; 28.

²⁶Personal Representatives of the deceased will normally be the individual appointed by the court as the Personal Representative or the executor or administrator of the decedent's will or estate. When the personal representative is in dispute the dispute should be remedied by the state court, not by the Special Master.

²⁷28 CFR Part 104. *Federal Register*, v. 66, no. 246, December 21, 2001, p. 66282; “Immediate aftermath” is defined as from the time of the crashes until 12 hours after the crashes for individuals who were not rescue workers, and from the time of the crashes until

the United States to qualify for compensation from the September 11th Fund. The fund provides compensation only for losses caused by injury or death.²⁸ There is no compensation within the September 11th Fund for other losses such as property loss. The act authorized the Attorney General to appoint a Special Master to oversee both the creation of a victim compensation program and distribution of compensation awards. On November 26, 2001, the Attorney General appointed lawyer Kenneth R. Feinberg as the Special Master of the September 11th Fund.²⁹ The Special Master concluded that the families of deceased married victims with dependents should receive a combined total of at least \$500,000 from the September 11th Fund, other state and federal programs, life insurance policies and other sources of compensation. Similarly, the minimum for single decedents with no dependents should be \$300,000.³⁰ Typically, the amount of compensation from the September 11th Fund for deceased victims will tend to range from \$500,000 to approximately \$3 million, and will average approximately \$1.65 million, before the deduction of collateral sources.³¹ Additionally, victims who need financial assistance while the claims are pending will be eligible for immediate advanced benefits of \$25,000 for those seriously injured, and \$50,000 for the families of those killed.³² Only one claim may be filed for each victim, and Feinberg stated that he will follow state laws governing who is entitled to receive the money.

²⁷(...continued)

96 hours after the crashes for rescue workers.

²⁸The interim final regulations (*Federal Register*, v. 66, no. 246, December 21, 2001, p. 66276) state that Congress did not intend for the fund to compensate those who only suffered emotional harm, property damage or those who face a risk of future injury. Since the awards are for compensation for physical injury or death, the awards will be free from federal taxation.

²⁹For more information on Kenneth Feinberg, see “Lawyer Tapped to Direct Victim Fund,” *Associated Press*, November 26, 2001; and Wheatly Aycok, “Sorting Out the September 11th Fund” *Legal Times*, December 3, 2001, p. 15.

³⁰*Federal Register*, v. 66, no. 246, December 21, 2001, pp. 66274-66275.

³¹In the interim final regulations (*Federal Register*, v. 66, no. 246, December 21, 2001, pp. 66274-66275), Feinberg states, “[it] is our view, that absent of extraordinary circumstances, awards in excess of \$3 million, tax-free, will rarely be appropriate in light of individual needs and resources.” See [http://www.usdoj.gov/victimcompensation/loss_calc.html], *Presumed Economic and Non-Economic Loss Tables*, for average amounts of compensation from the September 11th Fund before deduction of collateral sources on the Department of Justice’s website. Also see Terry Freiden, *Terror Victims’ Families to get \$500,000 to \$3 Million*, CNN.Com, [<http://www.cnn.com/2001/US/12/20/rec.victims.compensation/index.html>], December 20, 2001; Milo Geyelin, “U.S. Details Payments for Attack Victims,” *The Wall Street Journal*, December 21, 2001, p. B2; and Diana B. Henriques and David Barstow, “Victims’ Fund Likely to Pay Average of \$1.6 Million Each,” *New York Times*, December 21, 2001, p. A1.

³²To be eligible for advanced benefits, the claimants must state facts establishing financial hardship, and must certify that they have not yet received \$450,000 in collateral source compensation if they are bringing a claim on behalf of a deceased victim with a spouse or dependent, \$250,000 in collateral source compensation if they are bringing a claim on behalf of a deceased victim who was single with no dependents, or an amount in excess of their lost wages plus out-of-pocket medical expenses if they are an injured claimant.

A claimant under the September 11th Fund must waive the right to sue in state or federal court for damages sustained as a result of the terrorist attacks,³³ and claims are to be decided and payments made within 140 days of application. It is expected that claimants would receive compensation much more quickly through this program than through a lawsuit, and will not have to prove fault. The compensation determinations are to be final and not subject to judicial review, and the amount of the compensation award is to be reduced by the amount of “collateral source” compensation the victim received or is entitled to receive (e.g., life insurance, pension funds, and payments by federal, state, and local governments). Money and services received from charities are not considered “collateral sources.”³⁴ The Congressional Budget Office (CBO) estimates that the September 11th Fund may cost \$4.8 billion.

Awards from the fund include payments for economic and non-economic loss. Claimants to the fund receive a base amount for non-economic loss of \$250,000 with an additional \$50,000 for the spouse and each dependent of the victim.³⁵ The amount of economic loss is calculated using a formula based on the age and income of the victim.

The victims or personal representatives of the victims can select one of two tracks for processing of the claims: Track A, Computation of Presumed Awards; or Track B, Hearing. Under Track A, a claimant files the required forms and is notified of eligibility and the *presumed award* within 45 days. The claimant may then accept the award as final and request payment, or request a review before the Special Master or one of his designees. A claimant who chooses to file under Track B is notified of eligibility within 45 days, and then proceeds to a hearing with the Special Master or one of his designees. The hearings are limited in time to 2 hours, and will be conducted in a non-adversarial manner. Under both tracks, if the claimant is deemed ineligible for compensation under the fund, the claimant may appeal the decision to the Special Master. Under the statute, claimants have the right to present witness statements and documents, and the right to obtain legal council. Mr. Feinberg states in the regulation that although he can not legislate the percent of the settlement paid

³³Claimants who have filed a civil action suit may not file a claim under the September 11th Fund unless they withdraw from the action no later than March 20, 2002.

³⁴The interim final rules provide that the following are not “collateral source” compensation: (1) The value of services or in-kind charitable gifts such as provision of emergency housing, food, or clothing; and (2) charitable donations distributed to the victims or families of victims.

³⁵The \$250,000 figure was chosen because it is roughly equivalent to the amounts received under existing federal programs by public safety officers who are killed while on duty, or members of our military who are killed in the line of duty while serving the nation. Additionally, the Special Master did not want to place a value on the suffering of victims by having to decide who suffered more: a victim who died instantly, one who was on one of the airplanes, or a victim who was trapped in a building and called home. Some groups, such as the Association of Trial Lawyers of America, feel that this amount is “unrealistically” low. See Leo V. Boyle, *Financial Rescue of Families Victimized by Terrorist Crimes Begins Today*, at [<http://www.atlanet.org/911dec20.html>].

to the lawyers, that it should be no more than 5% of the award from the September 11th Fund.³⁶

USA PATRIOT Act of 2001. The PATRIOT Act, signed into law on October 26, 2001, made several changes to the crime victims fund to help bolster its resources.³⁷ First, it allows donations directly to the fund from individuals and charities. Second, it specifies that the \$68.1 million appropriated to the CVF for use in response to the attack of September 11 would not be subject to the cap on the CVF. For FY2002, Congress has capped the CVF at \$550 million. Third, the PATRIOT Act increases the percentage of the CVF used for demonstration projects and financial support of services to victims of federal crimes from 3% to 5%. To counterbalance this increase, the percentage of the CVF used for state victims compensation and state victims assistance grants decreased from 48.5% to 47.5% for each grant program.³⁸ Fourth, it stipulates that up to \$50 million of the \$68.1 million allocated to the CVF from the \$40 billion emergency supplemental appropriations (P.L. 107-38) for use in responding to the attacks of September 11, may be set aside as part of the anti-terrorism reserve.³⁹ The PATRIOT Act also lowers the amount allowed in the anti-terrorism reserve from \$100 million to \$50 million. Additionally, the PATRIOT Act establishes that victims should receive compensation under the September 11th Fund before receiving compensation from the states.

H.R. 3375/Blunt. Introduced on November 29, 2001 and referred to the House Judiciary Committee, H.R. 3375 would make United States citizens who were victims of the United States embassy bombings in Kenya and Tanzania on August 7, 1998 eligible for compensation from the September 11th Fund.

H.R. 3194/Capuano. H.R. 3194, introduced on October 31, 2001 and referred to the Judiciary Committee, would make individuals who were diagnosed with anthrax between September 11, 2001 and December 31, 2001 eligible for compensation under the September 11th Fund.

H.R. 1092/Simmons. On March 19, 2001, Representative Simmons introduced H.R. 1092, which would amend VOCA to ensure that all sums in the CVF in a fiscal year are in fact obligated in the subsequent fiscal year. H.R. 1092 was referred to the Judiciary Committee.

³⁶On October 15, 2001, the Association of Trial Lawyers of America created Trial Lawyers Care, Inc., a non-profit corporation to provide free legal services to victims who choose to make claims under the September 11th Victims Compensation program. For more information see [<http://www.atlanet.org/911program.html>].

³⁷P.L. 107-56, Title VI.

³⁸The first \$10 million of the CVF is used for grants to prevent child abuse.

³⁹For more information on the emergency supplemental appropriations, see CRS Report RL31173, *Terrorism Funding: Emergency Supplemental Appropriations — Distribution of Funds to Departments and Agencies*, by James R. Riehl; and “Terrorism Emergency Supplemental,” by Larry Nowels, in the *CRS Electronic Briefing Book on Terrorism*, available at [<http://www.congress.gov/brbk/html/ebter25.html>].

Policy Analysis: Victim Compensation and Assistance After September 11, 2001

Crime Victims Fund

Each state administers its own compensation and assistance programs. Victims and families of victims are supposed to submit claims to the state where the crime occurred. Thus, Virginia's, Pennsylvania's, and especially New York's victims services have experience heightened demand as a result of the September 11 terrorist attacks, and this demand may continue for many years. Many victims service providers contend that one of the key lessons of the Oklahoma City bombing is that victims often require years of support before that can resume relatively normal lives.

Since as yet there is no formal coordination between the different states, there may be duplication of services as well as confusion among victims as to where they should apply for services and what documentation is required.

The September 11th Victims Compensation Fund

Several issues are raised by the September 11th Fund. The Special Master is not subject to congressional approval and is given considerable discretion under the law. Victims service providers have raised concerns about how effectively the Special Master can balance the interests of the victims with the interests of the taxpayers, as required under the law. There is no recourse for victims who disagree with the Special Master's ruling on compensation. Some programs with Special Masters, such as the National Vaccine Compensation Program, allow for an appeal of the Special Master's decision.

There is a 2-year limit on applying for compensation, and the definition of "physical harm" in the regulations excludes any person who was not treated by a medical professional within 24 hours of the injury having been sustained or within 24 hours of rescue. Thus, it is not clear if individuals whose injuries (e.g., possible respiratory ailments) do not appear until after the deadline has passed will be compensated.⁴⁰ The regulations state that Congress did not intend for the fund to compensate those who face a risk of future injury. Since participation in the September 11th Fund precludes claimants from recovering through litigation, those with latent injuries that later became manifest might be under-compensated if they

⁴⁰An article in the *New York Times* claims that a quarter of the 6,500 firefighters who have worked at ground zero have respiratory ailments, and 100 to 200 are exhibiting symptoms that are serious enough to allow the firefighters to retire on disability. Additionally, there have been reports of people who live and work near ground-zero experiencing respiratory infections, nosebleeds, sore throats, rashes, and racking coughs. The Environmental Protection Agency (EPA), which had monitored the air near ground-zero since September 11, has not found any evidence of problems with the air. Some doctors note that the symptoms may be caused by enhanced stress not by environmental factors. Tina Kelly, "At Least a Quarter of Ground Zero Firefighters Ill," *New York Times*, December 21, 2001, p. A1; Christine Haughney, "[In] N.Y. Taking a Breath of Fear," *Washington Post*, January 8, 2002, p. A1.

sought compensation now from the Fund before being able to fully assess their injuries. Conversely, those who recovered from the Fund for possible latent injuries that never manifest could be overcompensated if they recovered from the Fund. Congress may ultimately be asked to determine whether a program for latent harm caused by the September 11 attacks may be appropriate.

Additionally, others, most notably New York Attorney General Eliot Spitzer, have raised concerns that the definition of “physical harm” is unduly restrictive since it bars claims by those who deferred medical treatment for more than 24 hours, those who returned to work despite pain, and those who were treated without documentation at emergency triage centers on the day of the attacks.⁴¹

The September 11th Fund law limits the liability of the airlines, aircraft manufacturers, airport sponsors, and persons with property interests in the World Trade Center on September 11, for the attack to the amount of their liability coverage.⁴² If the victims think they would do better suing the airlines or the other parties just listed, this may create a “race to the courthouse” where those whose cases are heard early would receive compensation, but those whose cases are heard after the insurance liability coverage has been used up would receive nothing.⁴³ Victims who do not apply for compensation through the September 11th Fund may also sue other parties, such as security companies, flight training schools, and terrorist groups, and the liability of these other parties has no cap under federal law. Victims who submit a claim for compensation under the September 11 fund waive their right to sue anyone other than “any person who is a knowing participant in any conspiracy to hijack an aircraft or commit any terrorist act.” The Special Master has decided to cap the amount of foregone annual income that is used in award calculations at \$231,000. This has raised concerns that the fund will not adequately compensate victims with higher salaries, who may have no recourse but to try to recover losses through the courts.⁴⁴ Additionally, others have criticized the Special Master for taking advantage

⁴¹Diana Henriques and David Barstow, “Victims Fund Likely to Pay Average of \$1.6 Million Each,” *New York Times*, December 21, 2001, p. 3A. (Hereafter cited as Henriques and Barstow, “Victims Fund Likely to Pay Average of \$1.6 Million Each.”) Lena H. Sun and Jacqueline L. Salmon, “U.S. Sets Formula to Pay Victims,” *Washington Post*, December 21, 2001, p. A1.

⁴²For more information on the legal aspects of the September 11th Fund, see CRS Report RS31179, *The September 11 Victim Compensation Fund of 2001*, by Henry Cohen.

⁴³According to OVC, the average compensation award per person in an airplane crash when the airline settles is \$2.7 million. There is great disparity in awards when families sue. For example, awards in the Lockerbie case ranged from nothing to \$20 million.

⁴⁴The regulations state that “[claimants] should not expect awards grossly in excess of the highest awards listed on the Special Master’s presumed awards chart, as the individual circumstances of the wealthiest and highest-income claimants will often indicate that multi-million dollar awards out of the public coffers are not necessary to provide them with a strong economic foundation from which to rebuild their lives” (*Federal Register*, v. 66, no. 246, December 21, 2001, p. 66278).

of the victims' limited ability to collect in court and forcing the victims to accept "miserly" amounts from the fund.⁴⁵

Part of the controversy surrounding the fund comes from differing perceptions of the goal of the fund. Some view the fund as a mechanism to bail out the airline industry, noting that the fund was created as part of the Air Transportation Safety and System Stabilization Act.⁴⁶ Those who view the fund in this manner tend to feel that the fund should compensate the victims in a manner consistent with what would be expected from litigation. They also do not think that "collateral sources" should be deducted from the awards, as those who failed to plan ahead and purchased life insurance are being favored by the fund. Others contend that the fund is a painless, risk-free form of litigation. It is an unprecedented government disaster relief program, with the primary goal of stabilizing the families of the victims, and thus the awards should not be expected to mimic court awards. According to this point of view, the survivors should not be unnecessarily enriched at the taxpayers' expense. The Special Master stated that his goal was to provide a fast and efficient system with fair awards that minimize the disparities in the size of the awards.

There is some concern that the uniformed rescuers and those with higher incomes could receive nothing from the fund. The families of the firefighters and police officers who die in the line of duty receive relatively large pensions and life insurance awards which will be deducted from the money awarded by the September 11th Fund. Thus, if a victim family's calculated award from the September 11th Fund is \$2 million, and the family received \$2 million in life insurance and pension monies, the family will receive no money from the September 11th Fund. Mr. Feinberg has acknowledged this possibility and responded that he would reevaluate the rules of the Fund if victims were receiving nothing.⁴⁷

Charities

On November 6, 2001, the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce held a hearing entitled "Charitable Contributions for September 11: Protecting against Fraud, Waste, and Abuse."⁴⁸ Additionally, Congress is considering H.R. 3192, which would increase regulation of disaster charities by creating an advisory board to monitor the collection and allocation of relief funds of the charities.⁴⁹ The charities have received donations of approximately \$1.5 billion in response to the attacks. The amount of money collected by the charities has been unprecedented and there have been numerous charities

⁴⁵David Barstow, "Survivors Say Plan for Fund Is Stingy," *New York Times*, December 21, 2001, p. A1.

⁴⁶P.L. 107-42.

⁴⁷Henriques and Barstow, "Victims Fund Likely to Pay Average of \$1.6 Million Each," p. A3.

⁴⁸See [<http://energycommerce.house.gov/107/hearings/11062001Hearing414/hearing.htm>] for information on the hearing.

⁴⁹H.R. 3192 was introduced by Representative Gilman on October 31, 2001 and referred to the House Committee on Transportation and Infrastructure.

constructed to help the victims of September 11. The large amount of donations and the plethora of charitable organizations dealing with September 11, more than 240 separate organizations, has led to problems of distributing the aid. Equity questions have been raised where some families have received more money from charities than others, and some families may have received funds from more than one charity for the same purpose. The victims have had to apply to each charity individually, often needing different documentation for different charities and having to retell difficult stories over and over again. Additionally, some charities have had problems administering their funds due to the larger than normal amount of donations and the inexperience of the newer charities.⁵⁰ There have been reports of fraudulent charities soliciting and receiving donations, as well as people who lied to receive benefits.⁵¹ Another issue that has been raised concerning certain charities is the percentage of the donated money used not to aid victims, but for administrative costs.

To address some of these issues, a single database has been constructed by 13 of the largest charities. The families submit requests to a single place where they are entered into the database. In turn, the charities use the database to identify people who need assistance. Access to the database is limited to protect the confidentiality of the victims, but those who control the database will be in a position to identify gaps in aid and to ensure that the aid is distributed fairly. The database began operation at the end of December, but will take time to eliminate duplicate records and collect data from other charities.⁵²

Gay and Non-Married Partners

Governor Pataki of New York issued an executive order specifying that New York's victims services were to provide services to members of any household where the deceased was the primary wage earner. The effect of the order is to make surviving partners of gay or cohabitating couples in New York eligible for benefits. Under Virginia law victims assistance and benefits are limited to spouses, children, parents, grandparents, and siblings. In Pennsylvania, any person who pays burial costs is eligible to recoup those costs, but compensation is only available to the victims' legal dependents. Under the September 11th Fund, surviving partners of gay or cohabitating couples would receive payments only if they are named in a will or are from a state that recognized their relationship under the law. Nonetheless, some of the charities define families broadly and make gay and cohabitating partners eligible for aid. Additionally, to address the issue of gay partners, the Human Rights

⁵⁰David France and David Noonan, "Blood and Money," *Newsweek*, December 17, 2001, p. 52.

⁵¹For example, 12 employees of the Port Authority in New York and New Jersey were charged with stealing disaster relief money from the Red Cross after they falsely claimed that they had lost their jobs as a result of the terrorist attacks. Jane Fritsch, "A Nation Challenged: Notebooks; 12 Port Authority Workers Charged with Stealing Disaster Money," *New York Times*, November 9, 2001, p. B10.

⁵²David Barstow, "A Nation Challenged: Compensation; Victims' Families Lack Voice In Effort to Coordinate Relief," *New York Times*, December 14, 2001, p. A1; David Barstow, "A Nation Challenged: Compensation; Charities Pledge to Include Families' Input," *New York Times*, December 15, 2001, p. B10.

Campaign (HRC) has created a relief fund to help gay families impacted by the attacks. The money in the HRC fund will be divided equally among the surviving gay partners.

Fairness

There are several different issues of equity that surround the aid, both public and private, for the victims of September 11: (1) equity of compensation among all victims of the September 11 attacks; (2) equity of compensation among past and future terrorist victims and the September 11 victims; and (3) fairness of compensating the victims of September 11, but not victims of more typical crimes and accidents.

Equity Among the Victims of September 11. One controversy is the amount of aid that has been given to the uniformed rescue workers at the World Trade Center. Many funds have been established specifically to recognize their heroism, regardless of financial need. Others who also acted heroically, such as the World Trade Center security guards who accompanied the firefighters to open doors, are not as well compensated.⁵³ Another issue that has arisen is the needs of wealthier victims compared to others whose mortgages and lifestyles tend to require less money to maintain. For example, if a charity is offering to cover the victim's mortgage for several months, is it fair that families with larger mortgages receive more assistance?⁵⁴ When charities cover actual living expenses, poorer victims get less than more affluent ones. Nonetheless, others note that even affluent victims may be financially strained after the loss of the primary wage earner, and the purpose of the charity programs are to prevent the victims' families from financial stress at a time when they are grieving their loved ones. They also note that the legal system assigns monetary value to human lives, causing income-based disparity in awards. Also, those who survived the attacks but lost their livelihoods are receiving few of the financial resources given to the families of those who died.⁵⁵

Equity Among All Victims of Terrorist Attacks. Another issue often raised is that the victims of other terrorist attacks⁵⁶ did not receive government sponsored compensation or the outpouring of charity money given to the victims of September 11. This issue is especially salient among the victims of the embassy

⁵³Steven Greenhouse, "A Nation Challenged: Compensation; Survivors See Inequity In Aid to Families of Guards Who Died," *New York Times*, December 16, 2001, p. B7.

⁵⁴The Red Cross has announced that through its "family gift" cash grant program it will cover a full year's living expenses for the families.

⁵⁵Lena H. Sun and Jacqueline L. Salmon, "September 11 Funds Face Fairness Issues," *Washington Post*, December 10, 2001, p. A1.

⁵⁶Such as the Pan Am Flight 103/Lockerbie bombing in 1988, the first Trade Center bombing in 1993, the Oklahoma City bombing in 1995, and the embassy bombings in East Africa in 1998.

bombings in East Africa who have been lobbying Congress for compensation of \$1.5 million.⁵⁷ Al Qaeda was also responsible for that attack.

Equity Among All Victims of Crimes and Accidents. Some argue that it is unfair that the victims of September 11 are treated so generously while other equally innocent victims of accidents and crimes go uncompensated. Others contend that those who died in the September 11 attacks died in an attack against the United States, and, thus, the federal government should bear some of the responsibility to help the victims.

Options and Implications for U.S. Policy

Allocation of Funds. Although Congress recently made changes to the CVF, future congressional guidance could be provided concerning the allocation of possible supplemental funding to OVC and the state victims assistance and compensation programs. Some have called for additional resources to provide long-term services to victims. Funding could also eventually be increased, or the cap on the CVF raised to allow any excess funds to be fully obligated, or to specify that additional money is placed in the anti-terrorism emergency reserve fund. Some have called for the identification of conditions (such as a terrorist attack with a specific number of victims) under which OVC could access the money over the cap that is set-aside for future use.

Coordination of Efforts. Congress might also focus on approaches to prevent duplication of federally funded benefits to victims by calling for federal regulations, mandating coordination through the states; or mandating that OVC or the Special Master or some other federal entity handle all federal and state assistance claims for the September 11 attack, and for any future terrorist attacks. One of the goals of victims services is to create a system to help victims during a difficult time. Some have argued for a centralized location for requesting emergency funds for travel and burial costs, removing some of the confusion as to where to apply for what services.⁵⁸ Others have suggested standardizing the eligibility requirements for the state compensation and assistance programs so that victims and families of victims with similar circumstances and similar relationships to the victim are eligible for services in all states.

⁵⁷The victims chose the amount of \$1.5 million because it is the same amount paid by the U.S. government to the victims of the U.S. bombing of the Chinese Embassy in Yugoslavia.

⁵⁸ Congress set a precedent for such action in its response to the Cerro Grande fires in 2000 (P.L. 106-246).