

VCF: Initial Payment Percentage Analysis

January 28, 2013

Overview

- Objective: establish a reasonable initial Payment Percentage to make funds available to all claimants within funding cap. Payment Percentage must be set now rather than at the end of the program so the September 11th Victim Compensation Fund (VCF) can distribute funds as required by statute.
- Evaluation of initial Payment Percentage: two estimation options considered for this purpose:
 - Option 1: Original Congressional Budget Office (CBO) estimate refined to include cancer claims and certain modified inputs
 - Option 2: CBO-based estimate assuming alternative Residents / Other claim filing rates and that the causation requirement in the Zadroga Act will limit cancer claims

Eligible Population

- The Zadroga Act provides that individuals are eligible if they were present at the September 11th crash sites at the time of the crashes or between September 11, 2001 and May 30, 2002 and suffered physical harm as a direct result of the crashes or debris removal.
- The crash sites are defined as the World Trade Center site, the Pentagon site, and the Shanksville, Pennsylvania site as well as the buildings or portions of buildings that were destroyed as a result of the terrorist-related airplane crashes of September 11, 2001, including the NYC Exposure Zone. (www.vcfgov/faq)

Potentially Exposed Population (NYC Site)	Population Estimate	Description of Population
Responders	123,102	FDNY, NYPD, Other Workers, and Volunteers
Residents / Other	558,153	Residents, People in Schools & Buildings
Total	681,255	

NYC Exposure Zone per Regulations



Diseases Covered

Initially the physical injuries, health conditions and diseases presumptively covered under the VCF excluding cancer are:

- Interstitial lung disease
- Chronic Respiratory Disorder - Fumes / Vapors
- Asthma
- Reactive Airways Dysfunction Syndrome (RADS)
- WTC-exacerbated Chronic Obstructive Pulmonary Disease (COPD)
- Chronic cough syndrome
- Upper airway hyper reactivity
- Chronic rhino sinusitis
- Chronic nasopharyngitis
- Chronic laryngitis
- Gastro-Esophageal Reflux Disorder (GERD)
- Sleep apnea exacerbated by or related to the above conditions
- Low back pain
- Carpal tunnel syndrome (CTS)
- Certain other musculoskeletal disorders defined as "a chronic or recurrent disorder of the musculoskeletal system caused by heavy lifting or repetitive strain on the joints or musculoskeletal system occurring during" the period between September 11, 2001 and May 30, 2002 or as determined by the Special Master
- Traumatic injuries

Cancers that are presumptively covered under the VCF are:

- lip, tongue, salivary gland, floor of mouth, gum and other mouth, tonsil, oropharynx, hypopharynx, and other oral cavity and pharynx.
- nasopharynx
- nose, nasal cavity, middle ear and accessory sinuses
- larynx, esophagus, stomach, colon and rectum
- liver and intrahepatic bile duct
- retroperitoneum, peritoneum, omentum and mesentery
- trachea; bronchus and lung; heart, mediastinum and pleura; and other ill-defined sites in the respiratory system and intrathoracic organs
- Mesothelioma
- soft tissues (sarcomas)
- skin (melanoma and non-melanoma), including scrotal cancer
- breast, ovary, urinary bladder, kidney, renal pelvis, ureter and other urinary organs
- eye and orbit
- thyroid
- blood and lymphoid tissues (including, but not limited to, lymphoma, leukemia, and myeloma)
- Childhood cancers
- Rare cancers

Diseases Covered & Awards

- Claimants who have a presumptively covered physical injury, health condition or disease (and representatives of individuals who have died as a result of such a presumptively covered physical injury, health condition or disease) that was caused as a result of September 11th and who are otherwise eligible may receive compensation from the VCF for economic and non-economic loss as defined in the Regulations.
- All awards will generally consist of the same three components and will be calculated as Economic loss plus Non-economic loss minus collateral source payments
- The methodologies for computing economic loss will be based on those from the original VCF, with certain updates in the components of the economic loss calculation assumptions as appropriate.
- On 9/12/2012 WTC Health program (based on NIOSH STAC recommendation) added certain cancers to the list of WTC-Related Health Conditions in 42 CFR 88.1

See <http://www.cdc.gov/niosh/topics/wtc/stac/cancer.html>
- Costs associated with compensating cancer conditions are not included in previous CBO or other estimates
- Additional cancers (and other diseases) could be added in the future

Source of Potential Claims: Responders

Category	Population
FDNY Responders /1	16,200
NYPD Responders /1	34,250
Other City Workers /1	7,842
Other Workers and Volunteers /2	
State Agencies	8,897
Federal Agencies	5,122
FEMA	3,499
Volunteer	26,480
Rescue / Recovery	20,397
Other	415
TOTAL	123,102

/1 - *Addressing the Health Impacts of 9-11: Report and Recommendations to Mayor Michael R. Bloomberg ("Booomburg Report")*, released February 2007, page 50. See <http://www.nyc.gov/html/doh/wtc/html/background/addressing.shtml>

/2 Detail from *Measuring and maximizing coverage in the World Trade Center Health Registry*, Joe Murphy et al ("RTI Study"), Table I. <http://www.nyc.gov/html/doh/wtc/downloads/pdf/wtc/wtc-article-20070207.pdf> Total for group ties to /1.

For purposes of determining the size of this population, a "Responder" is defined as an individual who performed rescue, recovery, demolition, debris cleanup or other related services at a 9/11 crash site in response to the September 11, 2001 terrorist attacks, regardless of whether the individual was a state or federal employee or member of the National Guard or performed the services in some other capacity. A person who performed the listed services through a private employer or on a volunteer basis is considered a Responder. Individuals who began performing cleanup or maintenance work in the NYC Exposure Zone months after the September 11, 2001 terrorist attacks are not considered Responders. (vcf.gov)

Note: the size of the eligible population from the Pentagon and Shanksville sites are not expected to be a limiting factor for the VCF and have not been explicitly accounted for in these calculations.

Source of Potential Claims: Residents / Other

Category	Population
Residents	
South of Canal	16,037
Chambers to Canal	26,028
Total Residents	42,065
Schools	
Public	9,233
Private	620
Preschool / Daycare	1,263
Total Schools	11,115
Building Occupants	
WTC Towers 1 and 2	17,565
Other WTC-area buildings	27,850
Subtotal	45,415
South of Chambers Buildings	169,044
Other Residents	290,513
TOTAL	558,153

Residents, Schools, and Building Occupants: post-duplicate "RTI Study" numbers

South of Chambers Buildings: "Bloomberg Report" Registry-eligible Residents, Businesses, and Schools less "RTI Study" Residents, Schools, and Building Occupants.

Other Residents: "Bloomberg Report"

For these purposes Residents / Other means: residents, individuals working or attending a school in the NYC Exposure Zone, including:

- The buildings or portions of buildings that were destroyed as a result of the terrorist-related airplane crashes of September 11, 2001.
- Buildings in the NYC Exposure Zone which consists of the area in Manhattan south of the line that runs along Canal Street from the Hudson River to the intersection of Canal Street and East Broadway, north on East Broadway to Clinton Street, and east on Clinton Street to the East River; and any area related to, or along, routes of debris removal, such as barges and Fresh Kills.

Note:

- *Other Residents – the total is uncertain. Data from the Bloomberg report describes this category as “residents within a 2-mile radius of the WTC site, including portions of Brooklyn and New Jersey, excluding residents who satisfy the WTC Health Registry criteria.” Some portion of this category will meet the VCF geographic requirements.*

Estimation Model: Steps

Steps:

1. Potentially Exposed Population: defined and categorized as those in the NYC Exposure Zone
2. Potentially Eligible Claimants: those who manifest disease in the *Exposed Population*
3. Eligible Claimants: those with proper documentation including the ability to establish presence at a site with records and qualified physical harm among *Potentially Eligible Claimants*
4. Filed Claims: those who file a claim among the *Eligible Claimants*
5. Estimated Claims Awarded: *Filed Claims* that meet VCF criteria
6. Total Estimated Cost of Eligible Claims: *Estimated Claims Awarded* * *Estimated Award Average*

Other costs evaluated

- Administrative costs
- WTC Captive Insurer Offset

Exposed Population

Step 1: Define and categorize potential Exposed Population at the NYC site

- Responders: assume 123,102 previously described
 - ▶ Includes FDNY, Police, other workers (NYC and non-NYC), and volunteers
- Residents / Other: assume 558,153 previously described
 - ▶ Includes residents south of Chambers, schools, and area building occupants south of Chambers
 - ▶ Includes other residents in 2-mile radius from WTC site*
 - ▶ Can be considered a proxy to include more transitory exposures, exposures along debris route, and Pentagon/Shanksville

* The geographic area that is eligible under the VCF is defined differently; the best available data incorporates a slightly different area and that data is used in this analysis.

Manifestation of Covered Claims

Step 2: Potentially Eligible Claimants are those who manifest presumptively-covered condition in the Exposed Population

- CBO estimated proportion of exposed population that may manifest a Title I disease excluding traumatic injury (defined based on Regulations issued August 2011)
 - ▶ 50,000 Responders (~ 41% of exposed population)
 - ▶ 230,000 Residents / Other (~41% of exposed population)
- CBO numbers were based on CBO review of studies of prevalence of Title I disease in affected areas including Morbidity & Mortality Weekly Report
- Baseline non-cancer Estimate based on CBO projections
- Cancer estimate assumes NIOSH estimates of incidence of listed cancers 2002-2016
 - ▶ Moderate estimate assumes excess incidence only (0.21x general population incidence) and incorporates latency assumptions
 - ▶ High estimate assumes no distinction assumed between baseline and excess incidence (1.21x general population incidence) and incorporates latency assumptions

Proper Documentation

Step 3: Eligible Claimants: Those with proper documentation including the ability to produce records and document physical harm relating to exposure among Potentially Eligible Claimants

- Claimant must document covered physical health condition(s)
- Claimant must have sought treatment
- Claimant must be able to produce medical records
- Claimant must establish a causal connection between exposure and condition(s)
- CBO assumed a subset of those in the potentially eligible population and manifesting diseases will otherwise qualify
 - ▶ 25,000 Responders (50% of Disease Manifestation)
 - ▶ 75,000 Residents / Other (~ 33% of Disease Manifestation)
- Baseline non-cancer Estimate based on CBO projection
- Cancer Estimate assumes same proportion as for non-cancer

Propensity to Claim

Step 4: Filed Claims: Those who file a claim among the Eligible Claimants

- CBO estimates 95% of Responders will file = 23,750 claimants
- CBO estimates 35% of Residents / Other will file = 26,250 claimants
- As CBO noted, propensity to claim estimates vary and are highly subjective; CBO assumed Responders and those enrolled in WTC Health program would have higher propensity to claim
- Propensity to claim could be higher than CBO estimates
 - ▶ Responders - could be ~ 98% due to heightened awareness and access to information
 - ▶ Residents / Other - based on experience with other compensation programs (i.e. Black Lung, radiation, etc.) – propensity to claim could be as high as 60%
 - ▶ High estimate adopts 98% filing rate for Responders and 60% for Residents / Other
- Propensity to claim could be lower than CBO estimates
 - ▶ VCF Claim Management System registrations to date at ~55% propensity to claim for Responders and ~9% propensity to claim for Residents / Other
 - ▶ Moderate estimate adopts 75% for Responders and 20% for Residents / Other

Award Rate

Step 5: Estimated Claims Awarded: Filed Claims that meet VCF criteria

- CBO estimates Responders ~84% = 20,000 claimants
- CBO estimates Residents / Other ~57% = 15,000 claimants
- CBO basis for award rate
 - ▶ CBO cites 2001 VCF and other compensation programs
 - ▶ CBO assumed Responders would more readily prove causality and presence at site
 - ▶ CBO assumed Residents / Other would have rates more consistent with other programs
- Responder award rates could be higher than CBO estimates
 - ▶ Responders could be closer to 85%-95% or average of 92.5%
 - ▶ Estimate adopts 92.5% award rate for Responders and 57% for Residents / Other
- Cancer Estimate assumes same proportion as for non-cancer

Award Values

Step 6: Total Estimated Cost of Eligible Claims: Estimated Claims Awarded multiplied by Estimated Award Average

- CBO assumed \$240,000 average award for Responders
- CBO assumed \$100,000 average award Residents / Other
- CBO based estimated Award Values on 2001 VCF all injury median value of \$109,000; CBO adjusted VCF 1 average for Responders to account for higher probability of serious injury
- Non-cancer award values could be higher than CBO estimate
 - ▶ 2001 VCF asthma/respiratory average award values \$410,000 after collateral offsets
 - ▶ 2001 VCF “responder” (EMT/Fire/Police/Port Authority) average award values were \$450,000 after collateral offsets
 - ▶ 2012 VCF claimants may be slightly older which would reduce economic loss; however Responders advise of increased disability rates which would increase economic loss
 - ▶ \$400,000 average award for Responders, \$100,000 for Residents / Other is used as a baseline
- Cancer award values based on 2001 VCF values for full economic loss
 - ▶ Responders 2001 VCF \$1.6 MM; Others 2001 VCF \$1.5 MM
 - ▶ Discount values to \$1.4 MM (Responders and Residents / Other) for assumed higher offsets, other factors

WTC Captive Insurer Offset

- WTC Captive Insurance Company, Inc. settled with certain potential claimants; such payments are offsets for purposes of the Fund and are to be deducted from any Fund Awards

The WTC Captive Insurance Company, Inc. (“WTC Captive”) and all of its insureds identified on the attached Exhibit A (“Insureds”), on the one hand, and all Primary Plaintiffs (as defined below) and Derivative Plaintiffs (as defined below) (collectively, “Plaintiffs” and singularly, “Plaintiff”) with Debris Removal Claims (as defined below) against the Insureds or any of them, on the other hand, hereby agree to the process set forth in this binding and enforceable World Trade Center Litigation Settlement Process Agreement, As Amended (“Agreement”) for settling Debris Removal Claims against the Insureds or any of them. For purposes of this Agreement, the WTC Captive, the Insureds, and Plaintiffs shall be referred to collectively as “Parties” and singularly as “Party.” This Agreement shall take effect on the day upon which the last counsel to a Party executes this Agreement (“Effective Date”). On the Effective Date, this Agreement will supersede the World Trade Center Litigation Settlement Process Agreement executed by the Parties on March 11, 2010.

- Based on information from the settlement, a reasonable assumption for the aggregate value of the offset from the WTC Captive litigation is \$579 MM.
 - Assume the population of WTC awards to Tiers 1-3 (lesser conditions) not eligible for VCF
 - WTC Captive litigation awards to Tier 4 (more severe conditions most likely to be VCF claimants) totals \$579 MM

Award Value Initial Estimates

	CBO	Refined CBO / High	Refined CBO / Moderate
Eligible Population	650,000	681,255	681,255
Disease Manifestation Non-cancer	~ 41%	~ 41%	~ 41%
Disease Manifestation cancer		NIOSH / 1.21x	NIOSH / 0.21x
Eligibility	~ 36%	~ 36%	~ 36%
Eligible Claimants	100,000	113,255	102,300
Claim Filing Rate			
Responders	95.0%	98.0%	75.0%
Residents / Other	35.0%	60.0%	20.0%
Filed Claims	50,000	78,394	34,447
Award Rate			
Responders	84.2%	92.5%	92.5%
Residents / Other	57.1%	57.4%	57.4%
Awards	35,000	54,471	26,475
Award Values			
Responders	\$240,000	\$400K - \$1.4 MM	\$400K - \$1.4 MM
Residents / Other	\$100,000	\$100K - \$1.4 MM	\$100K - \$1.4 MM
Award Totals			
Responders	\$4,800,000,000	\$12,211,491,973	\$7,356,813,953
Residents / Other	\$1,500,000,000	\$7,783,550,761	\$1,162,212,500
Total	\$6,300,000,000	\$19,995,042,734	\$8,519,026,453

Key differences between CBO and Refined CBO / High Estimate

- Claim-Filing Rate, particularly for Residents / Other
- Award Rate for Responders
- Award Values for Responders

Key differences between High Estimate and Moderate Estimate

- Moderate assumes cancer claims limited to estimated excess cancers, lowering eligible population
- Moderate assumes lower Claim-Filing Rates based on current registrations in VCF claim management system

Payment Percentage Estimates

	Refined CBO / High	Refined CBO / Moderate
Award Total Cost	\$19,995,042,734	\$8,519,026,453
Initial Funding	\$875,000,000	\$875,000,000
5-Year Admin Costs	\$80,000,000	\$80,000,000
WTC Captive Offset Est	\$579,400,035	\$579,400,035
Initial Available Funding	\$795,000,000	\$795,000,000
Initial Payment Pct	4.1%	10.0%
Total Funding	\$2,775,000,000	\$2,775,000,000
Total Admin Costs	\$96,000,000	\$96,000,000
Total Available Funding	\$2,679,000,000	\$2,679,000,000
Ultimate Payment Pct	13.8%	33.7%

Initial Payment Pct = Initial Available Funding / (Award Total Cost - WTC Captive Offset Est)
 Ultimate Payment Pct = Total Available Funding / (Award Total Cost - WTC Captive Offset Est)
 Initial Available Funding = Initial Funding less 5-Year Admin Costs

Initial Payment Percentage

- Initial payment percentage set to initial funding of \$875 MM
- Admin costs assumed at \$16 MM/year for 5 years (per CBO) = \$80 MM
- Accounts for WTC Captive offset
- Assumes all initial payments made in 5 years

Ultimate Payment Percentage

- Assumes full funding (\$2,775 MM) provided
- Admin costs assumed at \$16 MM/year (per CBO) for 6 years
- Accounts for WTC Captive offset

Given the inherent uncertainty of liability forecasts, the cost of resolving claims, and other uncertainties some of which are described in this review, actual experience may differ substantially from the information and statements in this review. Certain assumptions were provided by or made under the guidance of the VCF Special Master. Actual experience with claim filing, claim documentation, and claim awards should be used to update this analysis as that information becomes available.