

Fact Sheets on HR 847, the 9/11 Health and Compensation Act, included in this packet:

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H.R. 847, the 9/11 Health and Compensation Act

What is the problem?

- Thousands of first responders and others exposed to the toxins of Ground Zero are now injured and need our help. These include firefighters, rescue workers, responders, police officers and EMTs, construction workers, cleanup workers, residents, area workers, and school children, among others. Their illnesses include a range of respiratory, gastrointestinal, and mental health conditions.
- Over 13,000 WTC responders are sick and receiving treatment. Nearly 53,000 responders are enrolled in medical monitoring. 71,000 individuals are enrolled in the WTC Health Registry, indicating that they were exposed to the toxins.
- At least 10,000 people came from around the country to help in the aftermath of the attacks. They hail from **every single state** in the Union and nearly every Congressional District. Many are sick and others are very concerned about their future health.
- Those who have economic losses because of their WTC-related illnesses need and deserve compensation, but have no alternative to the current litigation system. The WTC Contractors and the City of New York are being sued by over 11,000 people who are injured because of Ground Zero toxins. They face great financial loss because they were asked to help at Ground Zero in the country's time of need.

How H.R. 847 addresses the problem:

- Provides medical monitoring and treatment to WTC responders and survivors (area workers, residents, students) who were exposed to the toxins at Ground Zero.
- Builds on the existing monitoring and treatment program by delivering expert medical treatment for these unique exposures at Centers of Excellence.
- Reopens the 9/11 Victim Compensation Fund (VCF) to provide compensation for economic losses and harm as an alternative to the current litigation system.
- Provides liability protections for the WTC Contractors and the City of New York.

Status of H.R. 847:

- The bill is ready to go to the floor. The Energy and Commerce Committee and the Judiciary Committee have reported out their sections of the bill.
- The cost of the bill has been reduced from \$10.5 billion to \$7.7 billion to ensure that the bill is completely paid for and PAY-GO neutral.
- The offset targets "treaty shopping" where a foreign company in a country without a U.S. treaty routes income through a third intermediary company with a treaty to take advantage of the intermediary company's tax reductions.

**Key Provisions of H.R. 847,
The 9/11 Health and Compensation Act,
As reported by Energy & Commerce and Judiciary**

Thousands of first responders and others exposed to the toxins of Ground Zero are now sick and in need of treatment and compensation. H.R. 847 would build on the existing program to provide long-term, comprehensive health care and compensation for those in need. The bill would do the following:

Establish the World Trade Center Health Program, within the National Institute for Occupational Safety and Health (NIOSH), to provide medical monitoring and treatment for WTC-related conditions to WTC responders and WTC survivors, delivered through Centers of Excellence. The WTC Program Administrator is required to develop and implement a program to ensure the quality of medical monitoring and treatment, a program to detect fraud, and to submit an annual report to Congress on the operation of the program.

WTC Responder Medical Monitoring and Treatment Program:

If a responder is determined to be eligible for monitoring based on the monitoring eligibility criteria provided for in the bill, then that responder has a right to medical monitoring that is paid for by the program.

Once a responder is in monitoring, the patient can receive treatment only if their condition is on the list of Identified WTC-related conditions in the bill AND the physician determines that ‘exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the attacks is substantially likely to be a significant factor in aggravating, contributing to, or causing the illness.’ The physician’s determination must be evaluated and characterized through the use of appropriate questionnaires and clinical protocols approved by the NIOSH Director. A federal employee designated by the Program Administrator shall review the determination and provide certification for treatment if appropriate.

The program pays for the costs for medical treatment for certified WTC-related health conditions at a payment rate based on Federal Employees Compensation Act (FECA) rates (FECA rates are used in all federal compensation systems, like Energy Workers, Black Lung, Longshoremen, and compensation for Members of Congress). Treatment is limited to that which is medically necessary. The administrator reviews the determination of medical necessity and decides if payment will be made.

Workers’ Compensation and public or private insurance are primary payors, followed by the government, if there are no worker’s compensation benefits or private or public insurance.

As of March 31, there were more than 55,000 people enrolled in the current Responder Program. The bill sets a cap of 25,000 additional participants in the program, for a total cap of around 80,000 responders.

WTC National Responder Program: The program administrator will establish a nationwide network of providers so that eligible individuals who live outside of the New York/New Jersey area can reasonably access monitoring and treatment benefits near where they live. There are

more than 4,000 responders enrolled in the current National Responder Program, as of March 31, 2010.

WTC Survivor Program: The bill establishes a Survivor program to provide initial health screenings, medical treatment, and follow-up monitoring to eligible WTC survivors. It sets forth geographic and exposure criteria for defining the potential population who may be eligible for the program (i.e. those who lived, worked or were present in lower Manhattan, south of Houston Street, or in Brooklyn within a 1.5 mile radius of the WTC site for certain defined time periods). The criteria and procedures for determinations of eligibility, diagnosing WTC-related health conditions and certification are the same as for those in the responder health program.

For those WTC-related health conditions certified for medical treatment that are not work-related, the WTC program is the secondary payor to any applicable public or private health insurance. For those costs not covered by other insurance, the program pays for the costs for medical treatment for certified WTC-related health conditions at a payment rate based on FECA rates.

As of March 31, 2010, there were more than 4,000 individuals enrolled in the Survivor program. The bill sets a cap of 15,000 additional survivors, for a total cap of around 19,000.

There is a contingency fund of \$20 million per year established to pay the cost of WTC-related health claims that may arise in individuals who fall outside the more limited definition of the population eligible for the survivor program included in the revised bill.

Cost Share for the City of New York:

The City of New York is required to contribute a 10 percent matching cost share, but not more than \$500 million over 10 years.

Reopen the September 11 Victim Compensation Fund (VCF) and provides liability protections for the WTC Contractors to provide fair compensation for economic losses and harm as an alternative to the current litigation system.

Summary of H.R. 847, The 9/11 Health and Compensation Act

Thousands of first responders and others exposed to the toxins of Ground Zero are now sick and in need of treatment and compensation. H.R. 847 would build on the current WTC health programs to provide long-term, comprehensive health care and compensation for those in need. In order to bring the bill to the floor, the bill as amended would cost \$7.4 billion, which will be completely offset by closing a tax loophole on foreign companies, which will raise \$7.4 billion over 10 years. Specifically, the bill would do the following:

Title I - Health

Establish the World Trade Center Health Program, within the National Institute for Occupational Safety and Health (NIOSH), to provide medical monitoring and treatment for WTC-related conditions to WTC responders and survivors. The program will be administered by the Director of NIOSH or his designee. The bill would also establish the WTC Health Program Scientific/Technical Advisory Committee to review and make recommendations on scientific matters and the World Trade Center Health Program Steering Committees to facilitate the coordination of the medical monitoring and treatment programs for responders and the survivors.

The WTC Program Administrator is required to develop and implement a program to ensure the quality of medical monitoring and treatment and a program to detect fraud; to submit an annual report to Congress on the operation of the program; and to provide notification to the Congress if program participation has reached 80 percent of the program caps.

As amended the bill would limit the 10-year health program to \$3.5 billion, an amount that CBO estimates would sufficiently fund the program for 8 years.

Establish a medical monitoring and treatment program for WTC responders and a medical monitoring/screening and treatment program for the survivors to be delivered through Clinical Centers of Excellence and coordinated by Coordinating Centers of Excellence. The bill identifies criteria for designating the Centers of Excellence with which the program administrator enters into contracts, and provides for additional clinical centers and providers to be added.

In addition to monitoring and treatment, Clinical Centers of Excellence provide the following non-monitoring, non-treatment core services: outreach and education; counseling for monitoring and treatment benefits; counseling to help individuals identify and obtain benefits from workers' compensation, health insurance, disability insurance, or public or private social service agencies; translation services; and collection and reporting of data.

The Coordinating Centers of Excellence collect and analyze uniform data, coordinate outreach, develop the medical monitoring and treatment protocols, and oversee the steering committees for the responder and survivor health programs.

WTC Responders Medical Monitoring and Treatment Program: If a responder is determined to be eligible for monitoring based on the monitoring eligibility criteria provided for in the bill, then that responder has a right to medical monitoring that is paid for by the program.

Once a responder is in monitoring, the patient can receive treatment only if 1) their condition is on the list of Identified WTC-related conditions in the bill and 2) the physician determines that ‘exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the attacks is substantially likely to be a significant factor in aggravating, contributing to, or causing the illness.’ The physician’s determination must be evaluated and characterized through the use of appropriate questionnaires and clinical protocols approved by the NIOSH Director. If the physician diagnoses a condition that is not on the current list of identified conditions, but finds that it is substantially likely to be related to exposure at Ground Zero, then the program administrator, after review by an independent expert physician panel, can determine if the condition can be treated as a WTC-related condition in that individual. Additional conditions can be added to the list of conditions by regulations promulgated by the Program Administrator.

The program pays for the costs for medical treatment for certified WTC-related health conditions at a payment rate based on Federal Employees Compensation Act (FECA) rates (FECA rates are used in all federal compensation systems, like Energy Workers, Black Lung, Longshoremen, and compensation for Members of Congress). Treatment is limited to what which is medically necessary. The administrator reviews the determination of medical necessity and decides if payment will be made.

Workers’ compensation and public or private insurance are primary payors, followed by the government, if there are no worker’s compensation benefits or private or public insurance.

As of March 31, there were nearly 53,000 people enrolled in the current Responder Program. The bill sets a cap of 25,000 additional participants in the program, for a total cap of approximately 80,000 responders.

WTC Survivor Program: The bill establishes a survivor program to provide initial health screenings, medical treatment, and follow-up monitoring to eligible survivors. It sets forth geographic and exposure criteria for defining the potential population who may be eligible for the program (i.e. those who lived, worked or were present in lower Manhattan, South of Houston Street, or in Brooklyn within a 1.5 mile radius of the WTC site for certain defined time periods). The criteria and procedures for determinations of eligibility, diagnosing WTC-related health conditions, and certification process are the same as for those in the responder health program.

For those WTC-related health conditions certified for medical treatment that are not work-related, the WTC program is the secondary payor to any applicable public or private health insurance. For those costs not covered by other insurance, the program pays for the costs for medical treatment for certified WTC-related health conditions at a payment rate based on FECA rates.

As of March 31, 2010, there were more than 4,000 individuals enrolled in the Survivor program. The bill sets a cap of 15,000 additional survivors, for a total cap of around 19,000.

There is a contingency fund of \$20 million per year established to pay the cost of WTC-related health claims that may arise in individuals who fall outside the more limited definition of the population eligible for the survivor program included in the revised bill.

WTC National Responder Program: The program administrator will establish a nationwide network of providers so that eligible individuals who live outside of the NY area can reasonably access monitoring and treatment benefits near where they live. These eligible individuals are included in the caps on the number of participants in the responder and survivor programs. There are more than 4,000 responders enrolled in the current National Responder Program, as of March 31, 2010.

Cost Share for the City of New York:

The City of New York is required to contribute a 10 percent matching cost share, but not more than \$500 million over 10 years.

Provide for Research into Conditions: In consultation with the Program Steering Committee and under all applicable privacy protections, HHS will conduct or support research about conditions that may be WTC-related, and about diagnosing and treating WTC-related conditions.

Extend support for NYC Department of Health and Mental Hygiene programs: NIOSH would extend and expand support for the World Trade Center Health Registry and provide grants for the mental health needs of individuals who are not otherwise eligible for services under this bill.

Title II - Compensation

Reopen the September 11 Victim Compensation Fund (VCF):

The bill reopens the VCF until 2031, allowing individuals who did not previously file a claim, or who became ill after the original deadline, to be compensated for economic damages and losses stemming from their injuries. The purpose behind reopening the fund for over 20 years is to protect to the greatest extent possible those persons who were exposed during the rescue and recovery operations, but whose resulting injuries are latent and will manifest over the next two decades. As amended, the bill would cap the reopened VCF at \$8.4 billion; \$4.2 billion in the first 10 years and another \$4.2 billion in the remaining years. It would also limit attorney fees to 10% in most cases.

Provide liability protections for the WTC Contractors and the City of New York:

The bill provides protection from liability to the WTC Contractors that participated in recovery efforts and debris removal. The bill provides that their liability is limited to the amount of funds held by the World Trade Center Captive Insurance Company, the amount of available insurance coverage identified by the Captive Insurance Company, and the amount of insurance coverage held by certain other entities. The bill also provides that the liability of the City of New York is limited to the City's insurance coverage or \$350,000,000, whichever is greater.

The bill establishes a priority of funds from which plaintiffs may satisfy judgments or settlements obtained in civil claims or actions related to recovery and cleanup efforts. The priority requires exhaustion of amounts held by the Captive Insurance Company and identified insurance policies, followed by exhaustion of the amount for which the City of New York is liable, followed by exhaustion of the available insurance coverage maintained by the Port Authority and other entities with a property interest in the World Trade Center on September 11, 2001, followed by exhaustion of the available insurance coverage maintained by individual contractors and subcontractors.

Offset for Proposed Settlement:

There is currently a proposed settlement to resolve more than 11,000 lawsuits by responders and clean-up workers for illnesses and injuries from exposure to toxins at the World Trade Center site. In order to prevent the uncertainty of legislation from impacting the pending potential settlement, the amended bill will allow individuals who settled with the Captive Insurance fund and the other defendants to then go to the reopened VCF. Any future VCF award would be reduced or offset by the amount of the settlement award.

The provision would also limit the possible compensation for attorneys' fees to 10% of the total compensation paid out from both sources. Under the pending potential settlement, lawyers' fees are capped at 25%. Under a reopened VCF as reported by the Judiciary Committee, lawyers' fees will be capped at 10%. The amended provision that would allow those who received a settlement to file a claim from the VCF would also cap lawyers' fees at 10% of total compensation (settlement award +VCF).

Title III – Pay-for

Foreign company withholding tax provision

In order to raise \$7.4 billion over 10 years, the bill would prevent foreign multinational corporations incorporated in tax haven countries from avoiding tax on income earned in the U.S.

Known as “treaty shopping,” this occurs where a parent firm headquartered abroad routes its U.S.-source income through structures in which a U.S. subsidiary of the foreign multinational corporation makes a deductible payment to a country that is signatory to a tax-reducing treaty with the U.S. before ultimately sending these earnings to the tax haven country where the parent firm is located.

It does not violate U.S. tax treaties because the provision's restrictions would not apply where a tax-reducing treaty exists with a parent company's home country

Q&A on H.R. 847, the 9/11 Health and Compensation Act

Thousands of first responders and others exposed to the toxins of Ground Zero are now sick and in need of treatment and compensation. The 9/11 Health and Compensation Act would provide long-term, comprehensive health care and compensation for those in need.

Q: Who are we talking about?

A. New York firefighters, police officers and EMTs, construction workers, clean-up workers, volunteers from across the country, federal and state employees, police and firefighters from other states and jurisdictions, U.S. military personnel, residents, area workers, and school children, among others.

Q: What illnesses do they have?

A. Illnesses include respiratory and gastrointestinal system conditions such as asthma, interstitial lung disease, chronic cough, and gastroesophageal reflux disease (GERD), and mental health conditions such as post-traumatic stress disorder (PTSD).

Q: How many are sick?

A: Nearly 13,000 responders and more than 4,500 survivors are currently sick and receiving treatment. Over 53,000 responders are currently in medical monitoring. 71,000 individuals are enrolled in the WTC Health Registry, indicating that they were exposed to toxins.

Q: Where are they from?

A: Although most of these people live in the New York/New Jersey area, at least 10,000 people came from around the country to help in the aftermath of the attacks. They hail from every state in the Union and nearly every congressional district. Many are sick and others are very concerned about their health.

Q. Why is it important to provide care through Centers of Excellence?

A. Experts have testified to Congress that up to 40 percent of WTC Responders who went to see only their family doctor, but later came to a Center of Excellence, were being misdiagnosed and given the wrong treatment for the illnesses caused by the unique exposures associated with the World Trade Center site.

Q. Why does the bill create a new entitlement?

A. We know there are thousands of people that are now sick and will need care for years to come. We must provide stable support for ongoing treatment, just as we do for other federal health care programs.

Q. What about people's private health insurance?

A. People's private health insurance is the first payor if the illness is not work-related. Private insurance will not pay for work-related illnesses.

Q. What about workers' compensation?

A. When a workers' compensation claim has been approved, workers' compensation will pay for it, because workers' compensation is the first payor under the bill. However, since workers' compensation benefits often take a long time to be approved, the government can cover the expenses and then get reimbursed by workers' compensation.

Q. What about the responsibility and contribution of New York City?

A. New York City is required to pay a 10% matching share of the total cost of the entire health program.

Q. How can we be sure that only those who are legitimately sick receive treatment?

A. There are many checks and balances in determining eligibility for treatment. First, the responder must be certified for and receiving monitoring. Once a responder is in monitoring, the patient can receive treatment only if 1) the condition is on the list of Identified WTC-related conditions in the bill and 2) the physician determines that 'exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the attacks is substantially likely to be a significant factor in aggravating, contributing to, or causing the illness' in that patient. The physician's determination must be evaluated and characterized through the use of appropriate questionnaires and clinical protocols approved by the NIOSH Director. Last, a federal employee designated by the program administrator shall review the determination and provide certification for treatment if appropriate.

Q. Who would be served in the Survivor Program?

A. The Survivor Program serves individuals who live, work, or go to school within a geographic area established under the bill. The area includes areas of Manhattan that are south of Houston Street and the area in Brooklyn within a 1.5 mile radius of the World Trade Center site.

Q. Why should the federal government pay for survivors?

A. Survivors are people who were caught in the crossfire of an attack on our nation. The vast majority of them were living their lives, going to work, or going to school, just like we all do. They are sick from exposures from the exact same toxins that the responders breathed in.

In the aftermath of the attacks, it was the federal government who told them the air was safe to breathe and encouraged them to go back home, to work, and to open up Wall Street to stabilize the economy. The government misled them, and they are no less deserving than the Responders.

Q. What is the reimbursement rate for health care services?

A. The reimbursement rate for health care services is the rate provided for under the Federal Worker's Compensation Act. This is the same reimbursement rate that providers receive for treating work-related injuries and illnesses for federal employees, including members of Congress. The same rate is used for all federal compensation programs including the Energy Workers' Compensation Program, Black-Lung, and the Longshore and Harbor Workers' Compensation Act.

Q. Why is the program under NIOSH?

A. NIOSH administers the WTC Health program that is already underway. They have the ability and expertise to continue and expand the program under the bill. They routinely

administer monitoring programs and will have the ability to contract out other duties with which they have less experience.

Q. What was the original September 11 Victim Compensation Fund (VCF)?

A. In the immediate aftermath of the September 11th terrorist attacks the Congress created the Victims Compensation Fund (VCF) to provide compensation for victims of 9/11. This fund provided aid to the families of 9/11 victims and to individuals who suffered personal injury. Among other things, aid from the fund pays for medical expenses and lost wages. In return for accepting these funds, recipients relinquished rights to any future litigation. The fund had a deadline for applicants of December 22, 2003.

Q. Why does it need to be reopened?

A. Many of the disease we now see in WTC responders did not develop until after the application deadline for the VCF had passed. These individuals should not be denied compensation just because they got sick after the deadline.

Q: What about the WTC construction contractors who worked to clear debris?

A. They are facing lawsuits by some 10,000 people who are sick because of Ground Zero toxins. The federal government had told them that their liability would be taken care of. Now they face great financial loss simply because they were there in the country's time of need.

Q. How does the bill provide an alternative to the current litigation system?

A. Under the bill, just as under the original VCF, an individual can apply to the VCF or sue, but cannot do both. If one applies to the VCF, they give up their right to sue.

Q. What limits are there to size and growth of the programs?

A. Funding for the bill is capped in several ways: The healthcare spending is capped by the total dollars available, the number of patients who can get medical monitoring or treatment for their World Trade Center (WTC)-related injuries, and the total number of years the health program is administered. The Victim Compensation Fund also is capped by the total dollars available and the number of years the Fund operates.

Q. How much funding does this require?

A. The cost of the bill is \$7.4 billion over 10 years. The bill is PAY-GO compliant and will not add to the deficit. It is Capped mandatory funding that is offset completely.

Q. How will the bill be paid for?

The \$7.4 billion is offset completely by closing a loophole for companies incorporated in non-treaty foreign countries who do business in the U.S. Known as "treaty shopping," this occurs where a parent firm headquartered abroad routes its U.S.-source income through structures in which a U.S. subsidiary of the foreign multinational corporation makes a deductible payment to a country that is signatory to a tax-reducing treaty with the U.S. before ultimately sending these earnings to the tax haven country where the parent firm is located. The provision does not hurt U.S. companies.

Revenue source for the 9/11 Health and Compensation Act

The 9/11 Health and Compensation Act is PAY-GO compliant. It is offset completely by closing a loophole for companies incorporated in non-treaty foreign countries who do business in the U.S.

This proposal is estimated to raise the \$7.7 billion over 10 years as provided in the bill.

What is the foreign company withholding tax provision?

The bill would prevent foreign multinational corporations incorporated in tax haven countries from avoiding tax on income earned in the U.S.

Known as “treaty shopping,” this occurs where a parent firm headquartered abroad routes its U.S.-source income through structures in which a U.S. subsidiary of the foreign multinational corporation makes a deductible payment to a country that is signatory to a tax-reducing treaty with the U.S. before ultimately sending these earnings to the tax haven country where the parent firm is located.

The provision does not hurt U.S. companies as it targets only those corporations that are headquartered abroad.

It also does not violate U.S. tax treaties because the provisions’ restrictions would not apply where a tax-reducing treaty exists with a parent company’s home country.

Has this provision been used before?

This proposal matches two provisions that passed the House of Representatives in the 111th Congress as part of H.R. 3962 by a vote of 220 to 215 (Roll no. 887) and H.R. 4849 by a vote of 246 to 178 (Roll no. 182).

It is modified from a previous version approved by the House of Representatives as part of H.R. 2419 (110th Congress) by a vote of 231 to 191 (Roll no. 756), with 19 Republicans joining 212 Democrats in support. The modification ensures that foreign multinational corporations incorporated in treaty partner countries will not be affected by this provision.

Limitation on Treaty Benefits for Certain Deductible Payments

- **This provision will NOT hurt U.S. companies:** The provision does not apply to any company headquartered in the United States.
- **This provision does NOT violate U.S. treaties:** The United States enters into tax treaties with individual foreign countries to coordinate similar income tax systems. Tax treaties help to prevent double taxation of the same income. The U.S. reduces its withholding taxes on payments to the country with which it has a treaty and that country reduces its withholding taxes on payments to the United States. However, U.S. tax treaties are being manipulated by foreign corporations based in non-treaty countries in order to dodge U.S. taxes.
- **This provision does NOT target our major trading partners:** The vast majority of foreign multinationals would not be affected because they are based in developed countries with which the United States has an income tax treaty. The provision only applies to multinational corporations based in non-treaty countries that have little or no income tax and who avoid U.S. taxation on their actual earnings by siphoning off revenues through payments to parent corporations in tax haven hideaways.
- **This provision will NOT hurt foreign investment:** The bill has no effect on multinationals based in U.S. tax treaty countries. Overwhelmingly, foreign investment comes from tax-treaty countries with legitimate business structures that are not purposefully designed to avoid U.S. taxation.
- **This provision levels the playing field for U.S. corporations:** Ensuring foreign-owned companies pay their fair share is not just about tax fairness, it is also about creating a level competitive field for American companies that play by the rules. In a May 2002 report, the Office of Tax Policy within President Bush's Treasury Department stated: "The inappropriate shifting of income out of U.S. taxing jurisdiction represents an erosion of the U.S. corporate tax base. It provides an unfair competitive advantage to these companies relative to their U.S. counterparts that operate in a U.S.-based group. Moreover, it erodes confidence in the fairness of the tax system." The report also notes that inversions coupled with an increase in foreign acquisitions of U.S. multinationals, "are evidence that the competitive disadvantage caused by our international tax rules is a serious issue with significant consequences for U.S. businesses and the U.S. economy."
- **This provision closes a Treasury-identified tax loophole that costs billions:** A 2002 Treasury report concluded that, "An appropriate immediate response should address the U.S. tax advantages that are available to foreign-based companies because of the ability to reduce the U.S. corporate-level tax on income from U.S. operations." But five years later, Treasury has not acted, while billions in taxes continue to be lost. One indication that the problem persists is found in the President's FY 2008 Budget, which states "Under current law, opportunities are available to reduce inappropriately the U.S. tax on income earned from U.S. operations through the use of foreign related-party debt."
- **This provision is NOT a new idea:** Congress has been working to stop international tax abuse for years. Language to address the tax loophole corrected by the offset has been considered in the Ways & Means Committee and by the Senate.

Myth vs. Fact: Revenue Source for 9/11 Health and Compensation Act

Myth vs. Fact #1

Myth #1: The proposal would cause foreign governments to withdraw from bilateral tax treaties and would harm foreign investment in the United States.

Fact #1: The nonpartisan Joint Committee on Taxation states in their analysis of the economic impact of the proposal that “proximity to customers may tend to dominate the tax issues addressed in the legislation, thus providing incentives to interested foreign parties to restructure their offshore operations and/or work to extend or deepen the U.S. bilateral treaty network, rather than to withdraw or diminish their overall investment in the United States.”

Myth vs. Fact #2

Myth #2: The proposal would override existing tax treaties.

Fact #2: Over \$460 billion of annual payments are made from the United States to tax treaty partners. The proposal would affect 0.1% of these payments – 99.9% of payments to treaty partners would continue to enjoy the benefits negotiated under U.S. income tax treaties.

With respect to the 0.1% of payments that would be affected, the Model U.S. income tax treaty provides that “internal law principles of the source Contracting State may be applied to identify the beneficial owner of an item of income.” At its core the treaty proposal would simply modify internal law principles to provide that the direct recipient of a deductible related-party payment is not the beneficial owner if a foreign parent corporation that is located outside the U.S. treaty network controls the recipient.

Myth vs. Fact #3

Myth #3: The proposal would raise the cost to foreigners of investing in the United States.

Fact #3: The proposal would have no effect on direct investment in U.S. businesses. The rates of tax on dividends and capital gains from equity investments would not be affected. Loans from unrelated foreign corporations and related foreign corporations with corporate parents that are located within the U.S. treaty network would also not be affected by the proposal.

The proposal would only affect an extremely narrow class of deductible payments (e.g., interest and royalty payments) that are made to related entities that are owned or controlled by foreign parent corporations located outside the U.S. treaty network.

Myth vs. Fact #4

Myth #4: The proposal would harm some foreign-owned U.S. businesses.

Fact #4: The nonpartisan Joint Committee on Taxation states that the treaty proposal “has mixed effects on the relatively small amount of affected capital flows, in part because the provision generally would not affect a U.S. corporation that reinvests earnings from U.S. operations back into U.S. activity.”

Myth vs. Fact #5

Myth #5: The proposal is unnecessary because existing tax treaties contain provisions to prevent treaty shopping.

Fact #5: The Joint Committee on Taxation has estimated that the United States will lose more than \$7.7 billion in tax revenue over the next ten years unless Congress makes this change. The Bush Administration and the Obama Administration have put forth numerous legislative proposals that would combat earnings stripping by foreign corporations.

Myth vs. Fact #6

Myth #6: Congress should not legislate to address abuses of the tax treaty network and should instead step back to allow the Treasury Department to address any abuses through renegotiating tax treaties.

Fact #6: The United States is a party to over 60 tax treaties. Renegotiating and ratifying each of these tax treaties would take a significant amount of time. While these treaties are being negotiated, companies would be able to continue to avoid taxes. The House of Representatives has a responsibility to act swiftly to ensure that taxpayers are not abusing the tax treaty network to avoid taxes.

Myth vs. Fact #7

Myth #7: Taking legislative action to address abuses of the tax treaty network would be unprecedented.

Fact #7: Congress has enacted legislation as recently as 1997 to address problems with the tax treaty network. In 1997, Congress passed legislation denying tax treaty benefits to certain abusive hybrid entity structures.

The 9/11 Health and Compensation Act will not add to the deficit

The bill is PAY-GO compliant. The cost of the bill is \$7.4 billion over 10 years. The \$7.4 billion is offset completely by closing a loophole for companies incorporated in non-treaty foreign countries that do business in the U.S. It will not add to the deficit.

Funding for the bill is CAPPED. The healthcare spending is capped in three ways: the total dollars available, the number of people who can get medical monitoring or treatment for their World Trade Center (WTC)-related injuries, and the total number of years the health program is administered. The Victim Compensation Fund also is capped: the total dollars available and the number of years the Fund operates.

A fiscally responsible approach. Capped mandatory funding, which this bill provides, is the fiscally responsible approach; it is the only way to ensure that the program will be paid for with offsetting receipts. Leaving it to be paid for with discretionary funding does not guarantee it will not add to the deficit. The sponsors agree that the pay-for must be provided for the entire capped cost of the bill. In addition, the bill requires that New York City pay a 10% matching share of the total cost of the entire health program.

A fight for year-to-year appropriations will put the care for WTC responders at risk. A long-term health care program cannot be run effectively and efficiently without dedicated funding. If the funding is discretionary, the injured responders and survivors will have to battle each year for continued adequate funding. We need to take care of these heroes and survivors for years to come, but that fight will be harder and harder as the memories of 9/11 fade.

Under the new PAYGO law, only mandatory spending—not discretionary spending—is required to be paid for. In FY08 the WTC program received \$109 million, of which \$56.5 million (over 50%) was designated as emergency discretionary spending that was not paid for. This is the wrong approach.

Capped mandatory spending strikes the right balance between fiscal responsibility and moral responsibility to stand with those who helped our nation after we were attacked on 9/11.

Reimbursement Rate – The 9/11 Health and Compensation Act

Under the 9/11 Health and Compensation Act, the reimbursement for health services is set at the Federal Employee Compensation Act (FECA) rate, which is what the Federal government pays for services when federal employees are injured on the job.

The bill uses FECA rates, rather than Medicare or Medicaid rates, because the medical determinations under the World Trade Center (WTC) program are similar to those in workers' compensation cases where a causal relationship needs to be determined between the environmental exposures and an illness that emerges later. Under H.R. 847, doctors in the program are required to make and document a determination whether or not an illness is related to exposures at Ground Zero, which requires significant time and expertise. These WTC-related conditions are medically complex and many patients have multiple conditions which require even more time for document and management of their cases.

Under Medicare and Medicaid, there is no requirement to make a causal connection. Doctors can treat patients regardless of the cause of their condition.

In the WTC program, however, doctors can be reimbursed for treatment only if the condition is determined to be World Trade Center-related on a case-by-case basis.

The determination sets a high bar: the physician must determine that the 'exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the attacks is substantially likely to be a significant factor in aggravating, contributing to, or causing the illness.' The physician's determination must be evaluated and characterized through the use of appropriate questionnaires and clinical protocols approved by the NIOSH Director.

Based on the actual program experience, Medicare and Medicaid rates are not sufficient to cover the costs, and if they were used, the clinics could not provide the level of care necessary for the effective treatment of these complex medical conditions.

Why do we need the 9/11 Health and Compensation Act after Health Care Reform has become law?

Health Care Reform does not address major components of the 9/11 Health and Compensation Act: 1) compensation, 2) specialized care at Centers of Excellence, 3) medical monitoring, and 4) workers' compensation.

Compensation

Of the \$7.7 billion estimated to be spent, more than half has nothing to do with health issues; it goes toward providing compensation for injuries and economic loss. By reopening the September 11th Victim Compensation Fund, the bill provides an alternative to litigation for compensating sick 9/11 workers who have experienced economic losses because of their World Trade Center-related injuries. This will resolve many of the more than 11,000 lawsuits pending against the WTC construction contractors and the City of New York, and the thousands more that are expected to be filed.

Specialized care at Centers of Excellence

The WTC health program created by the bill is not an insurance program; it is a specialized monitoring and treatment program. In hearing after hearing, experts testified that being seen by any doctor does not necessarily mean proper care. In fact, there was expert testimony that 35-40% of those currently in the program had previously received the wrong diagnosis or treatment from a personal doctor who did not have expertise in WTC-related injuries. What is needed is specialized care at Centers of Excellence that treat WTC responders everyday.

Medical Monitoring

Health insurance does not cover the cost of ongoing medical monitoring for responders.

Workers' Compensation

Firefighters, police officers, construction workers, and many others were exposed to Ground Zero toxins *while at work*, and their injuries are supposed to be covered by workers' compensation. However, many employers continue to contest claims because injuries due to any environmental exposures have proved very difficult to attribute. At the same time, work-related injuries are not covered by the health insurance system. This means that responders often fall through the cracks, making the WTC health programs critical for their well-being. The health treatment costs are offset (reduced) by any workers' compensation payments that are received.

Health Care Reform

The effect of Health Care Reform on this bill has been taken into account in CBO's score. The health care law will reduce the bill's cost because, for those in the program who are sick with non-work-related injuries, health insurance is the first payer. To the extent that more individuals will have health insurance as a result of health care reform, this should reduce the cost of the bill. However, for the other reasons stated above, this does not cover the cost or eliminate the need for monitoring or treatment for a majority of individuals affected by WTC-related injuries.

Supporters of HR 847, the 9/11 Health and Compensation Act

First Responders

- Federal Law Enforcement Officers Association (FLEOA)
- International Association of Firefighters (IAFF)
- National Association of Police Organizations (NAPO)
- Captains Endowment Association of the NYPD
- Detectives' Endowment Association of the NYPD
- Lieutenants Benevolent Association of the NYPD
- Sergeants Benevolent Association of the NYPD

Labor

- AFL-CIO
- American Association of State, County and Municipal Employees (AFSCME)
- Laborers' International Union of North America (LIUNA)
- Transportation Trades Department, AFL-CIO

Construction

- American Council of Engineering Companies (ACEC)
- Associated Builders and Contractors (ABC)
- Associated General Contractors (AGC)
- Bovis Lend Lease
- Plaza Construction Company
- Tully Construction Company
- Turner Construction Company

Foundations

- Feal Good Foundation
- WTC Rescuers Foundation

Local Government

- Community Board 1 of the City of New York
- National Association of Counties (NAoC)