



October 23, 2020

Timothy Gribben
Commissioner
Bureau of the Fiscal Service
U.S. Department of the Treasury
3201 Pennsylvania Drive, Bldg. E
Landover, MD 20785

RE: Request for Exemption from Centralized Administrative Offset

Dear Commissioner Gribben,

On behalf of the Secretary of Health and Human Services (“HHS”), I am submitting this letter to request an exemption from the Department of the Treasury (“Treasury”) for centralized administrative offset for payments made by the World Trade Center (“WTC”) Health Program (“WTC payments”). The WTC Health Program, a non-means-tested program, was established by the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111-347, “Zadroga Act”) and reauthorized in 2015 by the Consolidated Appropriations Act of 2016 (Pub. L. 114-113) to provide medical monitoring and treatment to responders to and survivors of the September 11, 2001, terrorist attacks. Congress established the WTC Health Program in acknowledgement of the unprecedented nature and national impact of the terrorist attacks and the severity of the health effects, both physical and mental, experienced by the thousands of individuals exposed to the airborne toxins, hazards, and other adverse conditions that resulted from the attacks. The WTC Health Program is administered by the National Institute for Occupational Safety and Health (“NIOSH”) within the Centers for Disease Control and Prevention (“CDC”); the Centers for Medicare and Medicaid Services (“CMS”) serves as administrator for purposes of payment.

I. Background

A. WTC Payments

Monitoring and treatment are provided to WTC Health Program members through the Program’s Clinical Centers of Excellence (“CCEs”) and Nationwide Provider Network (“NPN”), which operate as contractors to the Program. The WTC Health Program makes payments for healthcare-related benefits through two processes. The WTC Health Program pays its CCEs, NPN, and other awardees for infrastructure (overhead, salaries, etc.) through contracts, grants, and cooperative agreements (“Category 1 Payments”). Direct healthcare services provided to WTC Health Program members via the CCEs and NPN are paid as fee-for-service claims through CMS (“Category 2 Payments”).

The WTC Health Program issues payments for direct care (Category 2 Payments) to more than 800 healthcare providers, contractors, and other entities that provide services or supplies on behalf of the Program. The Zadroga Act prohibits NIOSH from administering payments to providers for the healthcare benefits provided through the Program. As such, the Secretary of HHS delegated the

authority for administering payment of the WTC Health Program’s healthcare claims to CMS in 2011. Since the implementation of the WTC Health Program, CMS has issued these Category 2 Payments fee-for-service claims on behalf of the Program consistent with the way they make payments for care provided through Medicare and Medicaid. As noted above, WTC Health Program payments for infrastructure activities outside of the provision of WTC-related direct healthcare are made through contracts, grants, and cooperative agreements (Category 1 Payments). These Category 1 Payments are not processed through CMS, but are instead approved directly by CDC and sent to the Treasury for disbursement of payment.

B. Exemption Authority

In accordance with the Debt Collection Improvement Act of 1996, the Treasury’s Bureau of the Fiscal Service (“Fiscal Service”) and non-Treasury disbursing offices, such as CMS, are generally required to offset federal payments to collect delinquent non-tax debts, unless those payments are exempt by statute or by action of the Secretary of the Treasury. If requested by the head of a payment certifying agency, the Secretary of the Treasury may exempt certain classes of payments pursuant to 31 U.S.C. § 3716(c)(3)(B). The authority to exempt these payments has been delegated to the Fiscal Service Commissioner. Treasury determined that CDC is the payment certifying agency for the WTC Health Program for both Category 1 and Category 2 Payments, even though payments are technically dispersed through either the Treasury (Category 1) or CMS (Category 2) on behalf of CDC.

C. Exemption Standards

Treasury’s Fiscal Service published standards (the “Standards”) for determining whether payments should be exempt from offset. *See* Treasury Financial Manual (“TFM”), vol. I, sec. 3, Chapter 6200, “Exemption of a Class of Federal Payments from the Treasury Offset Program (“TOP”).”¹ The Standards set forth the criteria used by the Fiscal Service when determining whether to grant an exemption and, as required by statute, “give due consideration to whether administrative offset would tend to interfere substantially with or defeat the purposes of the payment certifying agency’s program.” 31 U.S.C. § 3716(c)(3)(B).

II. Analysis

An agency requesting an exemption must submit information to support the request, including a narrative statement that clearly identifies the class of payments for which an exemption is requested, the specific purpose of the program, whether the agency believes the program is means-tested or non-means-tested, and citations to the relevant statutes and regulations governing the program. I TFM 3-6270.20b. Requests for exemptions of non-means-tested payments must also include a detailed justification for the exemption pursuant to any applicable standards in subsection 6260.20. I TFM 3-6270.20d.

A. Applicable Standards of Subsection 6260.20

The requested exemption is justified under subsection 6260.20 of the TFM because the purpose of the WTC Health Program is clearly articulated in statute, the payments are earmarked for specific purposes, and any administrative offset of payments would substantially interfere with this purpose and substantially interfere with an important national interest.

¹ I TFM 3-6200, available at <https://tfm.fiscal.treasury.gov/v1/p3/c620.html>.

Is the program purpose clearly articulated, and has the agency demonstrated that offset would tend to interfere substantially with or defeat this purpose?

Section 6260.20a of the TFM provides that exemption from administrative offset may be warranted if the purpose of a program is clearly articulated and the agency has demonstrated that an offset would tend to interfere substantially with or defeat this purpose.

The Zadroga Act establishes the healthcare-related purpose of the WTC Health Program as providing medical monitoring and treatment benefits to eligible emergency responders and recovery and cleanup workers (including those who are Federal employees) who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon in Arlington, Virginia, and in Shanksville, Pennsylvania (WTC Responders); and initial health evaluation, monitoring, and treatment benefits to residents and other building occupants and area workers in New York City who were directly impacted and adversely affected by such attacks (WTC Survivors). 42 U.S.C. § 300mm(a). In addition to the healthcare services provided by the WTC Health Program, the Zadroga Act directs the Program to fund research into WTC-related health conditions. *See* 42 U.S.C. §§ 300mm(b)(5)-(6); 300mm-51 – 300mm-52. The WTC Health Program awards more than \$22 million each year in research projects designed to help answer critical questions about the physical and mental health conditions related to the 9/11 terrorist attacks.

The administrative offset will substantially interfere with the ability of healthcare providers, contractors, and other entities to be able to serve the WTC Health Program population. Examples of potential interference include, but are not limited to, the following: an inability to or delay in hiring necessary medical and administrative personnel to treat and manage the Program's membership of more than 105,000 WTC Responders and Survivors (Category 1 and/or 2 Payments); an inability to provide medically necessary treatment for WTC-related health conditions to Program members (Category 1 and/or 2 Payments); an inability to secure the necessary clinical space to serve the Program's growing membership (Category 1 and/or 2 Payments); and an inability to successfully implement the full scope of an awarded research project (Category 1).

Regarding the payments related to the provision of direct healthcare to WTC Health Program members (Category 2 Payments), the vast majority of these payments are for care that is ongoing. While the payments pay for care already received, any offset of those payments may result in WTC Health Program members being unable to receive continued care because the offsets may result in insufficient funds to provide appropriate treatment of the members' WTC-related health conditions. Any delay or interruption of care could have major health repercussions for the Program members, thus substantially interfering with Congress' intent to care for those individuals affected by the terrorist attacks.

Are the proceeds received from the government earmarked, by statute or regulation, for a specific purpose? If so, has the agency demonstrated that offset will interfere substantially with or defeat the program's purpose because the payment recipient would be unable to use the proceeds for the earmarked purpose?

Section 6260.20b of the TFM provides that exemption from administrative offset may be warranted if the recipient of the payment must use the payment for a specific purpose and an offset would interfere substantially with or defeat that purpose. With regard to payments for direct healthcare services, the payments must be used for only the provision of health care services (Category 2), including expenses ancillary to those services such as the administrative services provided by the CCEs and NPN

(Category 1). For example, the Zadroga Act directs that both the CCEs (42 U.S.C. §§ 300mm-3 to 300mm-4) and the NPN (42 U.S.C. § 300mm-23) must provide specific administrative services in addition to direct healthcare services. As such, these payments are effectively “earmarked,” and any offset would substantially interfere with the purpose of the payments.

Will administrative offset tend to interfere substantially with or defeat an important national interest?

Section 6260.20e of the TFM provides that an exemption from administrative offset may be warranted if the administrative offset would tend to interfere substantially with or defeat an important national interest.

As mentioned earlier, the WTC Health Program exists because Congress recognized the terrorist attacks as the first of their kind on U.S. soil, exposing thousands of individuals to an unprecedented volume and mix of toxins, hazards, and other adverse conditions. After initially providing for studies and monitoring through nine years of discretionary funding and supported by data demonstrating the severity of physical and mental health effects experienced by those individuals, Congress used mandatory funding to establish the WTC Health Program to provide the 9/11-exposed population with WTC-related healthcare benefits at no out-of-pocket cost. The WTC Health Program currently serves members in every state, and in all but one congressional district, for WTC-related health conditions including cancer, aerodigestive disorders, mental health conditions, acute traumatic injuries, and musculoskeletal disorders.

The payment of direct healthcare costs for WTC Health Program members’ WTC-related health conditions and the infrastructure support costs associated with such care (Category 2 and 1 Payments, respectively) are essential aspects of caring for those who responded to and were affected by the 9/11 terrorist attacks. Providing such care is within the national interest of supporting Americans who suffered illness and injury through no fault of their own. Offsetting payments for the WTC Health Program would reduce the funds available to provide medically necessary care to the thousands of members suffering from conditions related to their 9/11 exposures and would, therefore, substantially interfere with the national interest of redressing such harms through the provision of direct care, as demonstrated by Congress when they established the WTC Health Program.

III. Conclusion

Congress created the WTC Health Program in recognition of the September 11, 2001, terrorist attacks and the ongoing and lasting physical and mental health consequences experienced by WTC Responders and Survivors, and to provide care for those health consequences at no out-of-pocket cost to the individual. Congress directed the Program to research the effects of the terrorist attacks in order to appropriately treat the affected population and to learn from the attacks, in the unfortunate event of a similar future disaster. Offsetting payments made under the WTC Health Program would compromise the government’s ability to fulfill Congress’ intent to care for these victims of the attack and learn from them, as expressed when it passed the Zadroga Act in 2010 and when it reauthorized the Program in 2015, extending the authority and appropriations for the WTC Health Program through Fiscal Year 2090.

Thank you for your consideration of this exemption request. I appreciate the efforts of your staff who have collaborated with us in this effort. Please do not hesitate to contact me if you have any questions. I look forward to hearing from you soon.

Sincerely,

A handwritten signature in black ink that reads "Robert R. Redfield MD". The signature is written in a cursive style with a distinct loop at the end of the "field" and a separate "MD" at the end.

Robert R. Redfield, MD
Director, CDC