

Key Senate Changes to H.R. 847

A bipartisan deal has been reached in the Senate on the James Zadroga 9/11 Health and Compensation Act. The new deal:

- **lowers the cost of the bill** to \$4.3 billion (from \$7.4 billion in House-passed version).
- **funds the health program for five years at \$1.5 billion** (rather than \$3.2 in the House-passed version). Funds not spent in the first five years may be expended in the sixth year.
- **reopens the Victim Compensation Fund (VCF) for five years at \$2.8 billion** (rather than the \$8.4 billion in the House-passed version).
 - Of the \$2.8 billion, \$.8 billion can be spent in the first five years and \$2.0 billion becomes available in year six. Claims will be paid in 2 installments—one payment in the first five years, and a second payment in the sixth year of the program.
- **limits those who can file claims to those who spent time on Ground Zero up until May 30, 2002** (rather than the August 30, 2002 date in the House-passed version).
- **prevents those who withdraw civil lawsuits to file VCF claims from reinstating their lawsuits** if their VCF claim is denied (the House-passed version allowed this).
- **caps attorneys' fees at a hard 10% and gives the Special Master the power to adjust this figure downward** if a 10% fee would be unreasonable (the House-passed version capped fees at 10% with the ability to adjust upward in cases where exceptional work was done).
- **replaces the payfor** in the House-passed version of the bill with (1) a two percent fee on government procurement from foreign companies located in non-GPA countries and (2) a one-year extension of H-B1 and L-1 Visa fees for outsourcing companies. These are estimated by CBO to collect \$4.59 billion over the 10-year scoring period for the bill.

The bill is not only fully paid for, but will reduce the deficit by \$450 million over the 10-year scoring period.

Other changes made in the bill to address Republican concerns are:

- requiring that the Centers of Excellence and national health providers report claims data to HHS so that costs and services can be fully monitored.
- specifying the non-treatment services that may be provided and funded under the health program (e.g. outreach, social services counseling, translation).
- authorizing the World Trade Center Program Administrator to designate the Veteran's Administration as a provider for WTC health services.
- directing the Special Master to develop rules to implement the VCF within 180 days of passage of the legislation.

SUMMARY OF NEW OFFSETS FOR 9/11 HEALTH

In the substitute amendment planned for H.R. 847, the James Zadroga 9/11 Health and Compensation Act, two offsets will replace the House-passed bill's "treaty swapping" provision. The offsets, described below, contain **no new taxes or fees** on the American taxpayers or American businesses. Furthermore, the substitute amendment is estimated to reduce the deficit by \$450 million over the 10-year scoring period.

1. Savings Generated by Reducing Future U.S. Government Procurement Payments by 2 Percent to Companies Located in non-GPA countries (\$4.6 billion over 10 years)

Every year, the United States spends between \$35 billion to \$40 billion per year on procurement of goods and services from foreign manufacturers and companies located abroad in countries that are not members of the Agreement on Government Procurement (GPA) instead of from American companies. The 9/11 rescue worker bill would impose a 2 percent excise fee on foreign manufacturers/companies located in non-GPA countries receiving government disbursements made pursuant to future procurement agreements. This proposal would both legally and practically operate to prohibit companies from raising their prices to offset the new fee.

Imposing this new fee will create short-term and long-term savings. In the short term, savings will materialize from competitive foreign contracts as companies offering substitute products and substitute processes will agree to digest all or some portion of the 2 percent fee decrease to attract/maintain lucrative U.S. procurement business. In the long term, foreign countries will be incentivized to sign the GPA and the U.S. will be incentivized to look to domestic sources to fill procurement needs. Even though the cost of procurement to the U.S. Government might initially increase when we purchase U.S. goods and services, net revenues to the government will increase when U.S. employees and U.S. companies pay taxes on the procurement contracts they receive (as opposed to foreign companies and employees receiving these contracts who pay less/no taxes).

2. One-year continuation of H-1B and L-1 Visa Fee for Outsourcing Companies (\$140 million over the one-year extension)

As part of the Emergency Border Security Appropriations Act of 2010, which passed the Senate unanimously in August 2010, fees were raised on H-1B and L-1 visas for companies who have more than 50 percent of their employees on these visas (this affects outsourcing companies such as: Wipro, Tata, Infosys, Satyam—but does not affect American companies such as: Microsoft, Oracle, Intel, Apple, etc). This fee was set to expire on September 30, 2014. This bill will extend this fee for an additional year to continue leveling the playing field between companies that follow the Congressional intent behind these visa programs and companies that use these visas to outsource American jobs.

SETTING THE RECORD STRAIGHT ABOUT PROCUREMENT OFFSET IN 9/11 HEALTH AND COMPENSATION ACT

What is the Procurement Offset?

A large portion of the 9/11 Bill (\$4.6 billion over 10 years) is being paid for by savings generated by reducing future U.S. Government procurement payments by 2 percent to companies located in non-GPA countries. Every year, the United States spends between \$35 billion to \$40 billion per year on procurement of goods and services from foreign manufacturers and companies located in foreign countries that are not members of the Agreement on Government Procurement (GPA). The 9/11 rescue worker bill would impose a 2 percent excise fee on foreign manufacturers/companies that are located in non-GPA countries and receive government disbursements made pursuant to future procurement agreements. This proposal would both legally and practically operate to prohibit companies from raising their prices to offset the new fee.

Myth – The Procurement Offset may violate trade laws

Fact – **No trade laws or international agreements are violated by this offset.**

The 9/11 Bill clearly and specifically says that the offset provision “shall be applied in a manner consistent with United States obligations under international agreements.” This covers *all* agreements: the WTO, the GPA, and any other agreement that governs trade/commerce between the United States and any other country. This language has been reviewed by trade experts at the Senate Finance Committee and the USTR. It is incorrect to suggest this offset may violate trade obligations when the law governing the offset specifically requires compliance with all agreements.

Myth – The Procurement Offset will raise costs to the U.S Government

Fact – **The Procurement Offset will reduce costs by requiring the Government to operate more like a business.**

In light of current economic times, businesses throughout the world are demanding, and obtaining, price breaks from their suppliers. The United States Government is the largest consumer in the world, and is currently not leveraging its purchasing power to obtain the best deals for U.S. taxpayers. This new fee will require companies to either lower their bids or else lose business to competitors in the United States. This offset would make economic sense as a stand-alone bill. It makes even more sense when it is going to be used to pay for the health care of people with cancer and severe respiratory illnesses who obtained these illnesses as a result of performing emergency rescue operations during the response to the 9/11 terrorist attack.

Myth – The Procurement Offset will encourage retaliation by foreign countries who buy American goods

Fact – Foreign countries are already severely disadvantaging American companies, and this fee is designed to combat these protectionist practices in order to create American jobs and reduce the federal deficit.

International trade experts that have reviewed this offset have indicated that any retaliation by non-GPA countries to this legislation will not provide any further barriers than already exist in these markets. Barriers to U.S. procurement in these markets are already exceedingly high. Trade experts believe it is much more likely that the net-effect of this policy will be positive by incentivizing these countries to sign the GPA. By encouraging signature of the GPA, this measure will open up new procurement markets to U.S. companies and thus, create American Jobs.

Myth – The U.S. federal government is already mostly prohibited under the Buy American Act from procuring from non-GPA countries.

Fact – This is not true. The Buy American Act only applies to certain goods and does not apply at all to services.

The Buy American Act fails to capture \$35-40 billion of foreign procurement each year. The Buy American Act specifically excludes from its requirements purchases for use abroad. Many government purchases for use abroad can and should be made in the United States, and this procurement offset encourages this and thus, creates American jobs and helps American businesses.

Additionally, the U.S. procures billions of dollars a year in IT services and other services from foreign companies simply because there are no incentives to encourage procurement from American companies. If this practice is going to continue, the U.S. government should at least be leveraging its purchasing power to obtain the best possible deals for U.S. taxpayers.