



The following topics were discussed in the May 20, 2015 conference call with law firms representing VCF claimants.

- **Payments diverted by Treasury Department:** We are aware of approximately 20 claims where Treasury accessed VCF payments to pay a claimant's debts, including taxes and child support. VCF payments are exempted from Treasury's diversion program, so we are working with Treasury to correct these payments. We expect to recoup the funds and make the proper payments but it may take a little time to work through the Treasury process.
- **Clients terminating law firms:** We continue to be notified by claimants that they want to drop the law firm representing their VCF claim. We are preparing a form for claimants to complete, sign and submit when terminating their law firm. The form includes warning language that terminating the representation and changing their payment instructions does not remove the claimant's contractual obligation with the attorney. The form will be posted to the website once it is finalized. As part of our routine process, we will continue to notify you if a claimant has changed their payment instructions or asked that we change their legal representative information.

*Question raised on the call:* Will attorneys be notified when the claimant is paid? The Special Master will consider this request and will follow up with the law firms once an answer is available.

- **Reminders about Amendments:** Please keep the following important reminders in mind when filing amendments and note the differences based on the claim's current status. In general, once a claim is in an "end state" (a decision has been rendered for either eligibility or compensation), in order to trigger a re-review, you must file an amendment.
  - **If you have an Eligibility decision letter with a list of eligible conditions, and you want to add a new condition:** Please check to make sure the new condition was not already included in the previous eligibility determination. If it was not included in the letter, file an amendment to add the new condition. Uploading a WTC Health Program Certification letter does not trigger an amendment. You must also initiate the amendment for the VCF to review the new condition.
  - **If the new condition is approved as compensable and the loss calculation decision has not yet been issued:** The new condition will be considered in the initial loss calculation review as part of our normal process and you do not need to submit a separate compensation amendment.
  - **If the new condition is approved as compensable and the loss calculation decision has been issued:** You will need to file a compensation amendment. If the only request is for non-economic loss, you should select "Loss of Earnings" in the amendment section and indicate that you are only requesting non-economic loss.
- **WTC Health Program Certification Letters:** These letters are helpful but please do **not** upload them as a "Private Physician" document type. Please use the "Other Eligibility Document" type.
- **Pension Loss:** If you have a claimant who you know worked for an entity with a pension program, or who has a disability pension, we need certain documents in order to process the claim. We have posted a lot of information on our website regarding specific employers and unions who have provided us with details on the documents needed to support claims with pension benefits. We have also included generic guidance in [FAQ #6.41](#) for claimants whose employer/union is not listed. Please refer to the information on the website when compiling pension information to submit with your claims.

In reviewing these claims, the VCF is trying to determine two things: (1) if the claimant did not get a full pension because of his/her 9/11-related condition; and (2) if the disability pension is for a 9/11-related eligible condition. This distinction is important because the two types of pensions impact VCF claims in different ways:

1. **Lost pension:** This occurs when the claimant was not able to work to the point of maximum pension benefits and therefore lost some of the value of his/her pension. The lost value is considered as part of the economic loss calculation.
2. **Disability pension:** These are payments the claimant receives due to his/her disability due to an eligible condition. These payments are considered an offset to the claimant's economic loss.



If we are missing a needed document as outlined by the union, employer, or in the generic list, we will request that information. If we do not receive that information promptly, we will calculate the loss amount using default values for retirement benefits (i.e., a defined contribution plan benefit without the pension loss calculation).

If we don't have pension information, and we cannot confirm whether or not the claimant is receiving a disability pension for an eligible condition, we will issue non-economic loss only. If we don't have pension information but are able to confirm that the claimant does not have a disability pension for an eligible condition, we will use standard values to calculate pension loss. We do not want to have to reduce a previously-issued loss calculation if the disability pension should have been an offset and was not treated as one.

Our goal is to render decisions and issue payments in a timely manner. If you gather information after the decision is rendered, you may amend the claim.

- **When to seek Non-Economic Loss Only:** We have received questions about when it is best to seek non-economic loss only because the amount of the offsets would result in a smaller net loss calculation if economic loss is included. You really must examine the situation and assess factors such as whether the claimant has a relatively low income, how close the claimant is to retirement, and whether the claimant has large offsets. It is difficult to provide universal guidance on this topic but law firms can contact the VCF if you have claim-specific questions.
- **Update on WTC Health Program Disability Evaluation Process:** We have received many requests from law firms to evaluate claimants as candidates for the disability evaluation process. We evaluate each claimant to:
  - Determine if there is a probability that the claimant could be deemed disabled;
  - Confirm the claimant is a WTC Health Program member with a certified condition;
  - Confirm the claimant does not already have a disability determination; and
  - Assess if the candidate is still working and earning wages similar to what he/she was earning prior to the 9/11-related condition.

Once we complete the initial review and determine a claimant is a potential candidate for the process, we notify NIOSH and they confirm the claimant is being treated at a participating center (not by the National Program). Once NIOSH confirms back to us that the claimant is a candidate, we notify the claimant in writing with instructions on how to proceed. We will also notify you if one of your claimants is not considered a suitable candidate for the program.

Listed below are key points about the process. An overview of the process is provided on page 4 of these notes.

1. **Participant criteria:** This program is not for everyone. It is intended for claimants who have partial or full disability *due to an eligible condition* but do not have (or cannot get) a disability determination from one of the standard third party entities. Claimants who have a disability decision based on an ineligible condition may be candidates for the program if their eligible condition has become disabling.
2. **Identifying candidates for the program:** Claimants will be identified as prospective participants in the program during VCF review of the claim. If you believe a claimant is a suitable candidate and meets the criteria above, please notify the VCF. Please follow the guidance below for submitting claimants for consideration:
  - **If the claimant has already received a loss determination:** You will need to amend the claim through the online system. In the text field, enter a note requesting that the VCF evaluate the claimant as a candidate for the disability evaluation program. You may also upload a letter or other document in support of the request.
  - **If you are submitting a new claim:** When submitting the claim, upload a cover letter or similar note requesting that the VCF evaluate the claimant as a candidate for the disability evaluation program.
3. **Timing:** This is not expected to be a lengthy process once the appointment with the WTC Health Program physician is held. However, the clinics are solely responsible for the appointment schedule. The clinics are ready to do the evaluations and the only expected time constraints will be around scheduling the appointment. If the claimant schedules an



appointment and is a “no show”, the clinic will notify the VCF and we will render a decision on the claim without the disability evaluation.

- **Compensation for minors:** We have received some questions about what documents to submit for minor claimants specific to loss of future earnings. It is difficult to provide general guidance as this is very claim-specific. At a minimum, we will need medical information, documentation from the physician who examined the claimant, and a determination that the condition will not improve and that it prevents activity. Once we review the claim, we will provide more specific guidance.
- **Guidance if a PI claimant passes away:** We are developing illustrations for different scenarios and will post them to our website in the near future. Our intent is to provide guidance and examples for you to use to decide appropriate next steps for your client. If a claimant dies after filing a PI claim, the next steps depend on the specific claimant circumstances:
  - **Cause of Death:** If the death was due to an eligible condition, the PR should file a new deceased claim. If the death was not due to an eligible condition, the PR will need to be appointed for the PI claim. We will be updating the online system in the near future to allow you to submit an amendment to add or change a Personal Representative.
  - **If a new deceased claim is filed:** The deceased claim will be processed using standard procedures and in most cases, additional non-economic loss will be computed. There is generally no downside to filing the new claim.
    - **Status of PI Claim:** If the PI claim does not yet have a compensation decision rendered, the loss calculation on the new deceased claim will account for the pre-death losses. If a loss calculation decision was already rendered on the PI claim, the loss calculation on the new deceased claim will account for the previous loss amount, but the original loss will not be reduced or changed.
    - **Offsets:** Offsets will be deducted only if they were paid to beneficiaries of the VCF claim and only if paid as a result of the 9/11 related injury/death.
- **Issues with PR Appointments:** We are seeing some interesting issues specific to PR appointments. The Special Master is authorized to appoint someone as the PR for a VCF claim, but this is only done in extreme circumstances. We need to abide by state laws and a handwritten request from a claimant asking to be appointed is not sufficient. A PR has obligations under the statute and there may be limitations in the letters of administration. Please do not request the Special Master to appoint a PR simply to circumvent the normal process. We need to be sure the claim is protected and that we are not in violation of any restrictions.

If there are limitations in the letters of administration, we will ask you or your client to get a letter from the court allowing us to disburse the funds. We realize this can be a frustrating and difficult process but we need to be careful to ensure we pay the proper individual.

- **General housekeeping items:**
  - The online claims system will be down for a few days in June for maintenance. We will send an email in advance of the maintenance period and with more information about any changes that might affect users.
  - We will not hold scheduled law firm “office hours” during June, but Colleen King in our NYC office will be available at your convenience.

Please see the next page for an overview of the NIOSH Disability Evaluation Program Process.



### Overview of NIOSH Disability Evaluation Program Process

This overview is not intended to portray the process in detail. The finalized process will be posted to the VCF website in the near future.

1. **Claimant identified as a candidate for evaluation.** Claimant may be identified by VCF during claim review or the claimant or his/her attorney can “self-identify” as a potential candidate for VCF to consider.
2. **VCF confirms claimant is appropriate candidate for the process** and notifies NIOSH for planning purposes.
3. **VCF sends letter to claimant explaining the process** and inviting the claimant to make an appointment for the evaluation.
4. **VCF places claim “On Hold”** pending outcome of the disability evaluation.
5. **Claimant decides whether or not to proceed with the evaluation.**
  - a. **If yes** - Claimant contacts center to make appointment. Clinic will follow up with claimant directly regarding procedures.
  - b. **If no** - Claimant notifies VCF of decision not to participate. VCF will remove the claim from “On Hold” status and continue processing to render decision.
6. **Appointment held.**
7. **Clinic produces report**, including physician’s evaluation summary.
8. **Clinic sends report to claimant.**
9. **Claimant uploads the report to the online claim** using the document type “WTCHP Disability Evaluation” (or mails the report to the VCF).
10. **Claim is removed from “On Hold” to continue review** once VCF system recognizes the evaluation has been uploaded/received.