



SEVENTH ANNUAL STATUS REPORT and  
THIRD ANNUAL REASSESSMENT OF POLICIES AND  
PROCEDURES

SEPTEMBER 11<sup>th</sup> VICTIM COMPENSATION FUND  
FEBRUARY 2019

Rupa Bhattacharyya  
Special Master



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## 1. Introduction

As the Special Master for the September 11th Victim Compensation Fund (“VCF” or “Fund”), I respectfully submit this Seventh Annual Status Report describing the activities of the VCF. As with past annual reports, this report provides updated claims processing statistics and a recap of key activities during the 2018 calendar year. Listed below is a summary of the annual reports for prior years:

- **First Annual Status Report:** Published in October 2012, this report focused on the VCF’s start-up activities during the first year of operation. Such activities included developing the claim forms, deploying the online system used by claimants and VCF staff, and establishing the infrastructure and initial procedures for claims processing and the toll-free Helpline.
- **Second Annual Status Report:** Published in November 2013, this report focused on the progress we made in the second year of operation in all aspects of claims processing and the extensive outreach activities we undertook in connection with the October 3, 2013, VCF registration deadline.
- **Third Annual Status Report:** Published in October 2014, this report focused on our continued progress reviewing and rendering decisions on claims, described our outreach efforts related to the October 12, 2014, deadline for claimants diagnosed with a 9/11-related cancer, and included updated VCF program statistics.
- **Fourth Annual Status Report:** Published in February 2016, this report provided an update on the status of all claims, highlighted the substantial efforts of the VCF team in rendering nearly 6,000 compensation determinations in 2015, and noted the shift in efforts from preparing for the shutdown of the program to implementing the reauthorization of the VCF.
- **Fifth Annual Status Report:** Published in March 2017, this report focused on the Fund’s efforts immediately after the reauthorization of the Zadroga Act, including paying over 9,000 Group A claims in full, publishing updated regulations that reflect the reauthorized law, beginning to issue decisions and processing payments on Group B claims, and implementing a redesigned claim form and online claims system. This report was also the first to include a section with the required annual reassessment by the Special Master of the VCF’s policies and procedures to ensure the prioritization mandate required by the reauthorization is upheld.
- **Sixth Annual Status Report:** Published in February 2018, this report focused on progress made in the first full year of operation following the activities completed in 2016 to implement the reauthorization of the Zadroga Act. A major milestone noted was that 2017 saw the largest number of claims decided since the VCF began issuing award determinations in 2013, with 7,773 initial or revised decisions issued, and almost \$1.1 billion awarded. The report highlighted the commitment to processing claims with a focus on deciding the oldest claims first, along with unprecedented outreach to reach those who were exposed to the toxic elements resulting from 9/11, have gotten sick, and are either not aware that their illnesses may be connected, or not aware that compensation is available.

As detailed below, the past year has been an extremely productive time for the VCF. With more compensation awarded than in 2017, we also significantly increased over 2017 the number of helpline calls answered, hearings held, letters sent, documents processed, educational materials produced, and outreach events hosted and attended. As of the date of publication of this report, the VCF has compensated more than 21,000 claimants suffering as a result of their 9/11-related injuries in a total amount of \$5 billion.

We also remained committed to public transparency and ever-cognizant of the responsibility set by the law to periodically reassess the VCF’s policies and procedures for two reasons: 1) to make sure that



we prioritize claims for individuals who suffer from the most debilitating physical conditions, and; 2) that we do not exceed the \$7.375 billion in funds appropriated to the VCF. When an August projections analysis suggested the possibility that, following current policies and procedures, the VCF may exceed its available funding prior to the currently designated program end on December 18, 2020, I reached out to the public for input on how the remaining funds might be allocated, with priority given to those claimants with the most debilitating conditions. The official method for this was the publication of a Notice of Inquiry in the Federal Register on October 3, 2018, with a 60-day public comment period. These comments were carefully considered as I evaluated potential process and policy changes alongside the projections with updated data as explained in more detail in Sections 9 and 10 of this report. As explained in those Sections, I have determined, consistent with my statutory responsibilities, that the funding that remains from the total of \$7.375 billion appropriated by Congress is insufficient to continue to pay all pending and projected claims under the VCF's current policies and procedures. I encourage you to read Section 9: "Prioritization Mandate and Annual Reassessment of Policies and Procedures" and Section 10: "Notice of Inquiry and Determination of Funding Insufficiency," for further details on how I reached this determination and the plan that we are implementing to address it. The Department of Justice and the VCF also will work with the Administration and Congress to ensure every appropriate consideration is given to claims as soon as possible.

As we begin 2019, I remain unwavering in my dedication to serving the 9/11 community by providing a compassionate, efficient, fair claims process. It is rewarding to see the progress we have made in decreasing the length of time it takes to render a decision on a claim – once the claim form and all required documents are submitted – and to work with partners old and new to support this incredible community. I recognize that this will be a year of new challenges, and I look forward to facing them with a talented and dedicated team, and the sound structure in place to continue building on the significant success that is detailed in this report.

## **2. Background on the Victim Compensation Fund**

In 2001, Congress created the September 11th Victim Compensation Fund, which provided compensation for economic and non-economic loss to individuals, or the personal representative of individuals, who were killed or physically injured as a result of the terrorist-related attacks of September 11, 2001. As established by Congress, the VCF provides a no-fault alternative to tort litigation; any individual who chooses to seek compensation from the VCF waives the right to sue for damages for 9/11-related physical injury or death. The original VCF ("VCF1") closed in 2004, having paid over \$7.049 billion to surviving personal representatives of 2,880 people who died in the attacks and to 2,680 claimants who were injured in the attacks or the rescue efforts conducted immediately thereafter.

On January 2, 2011, President Barack H. Obama signed into law the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. Law No. 111-347) ("Zadroga Act" or "Act"). Title I of the Zadroga Act created the World Trade Center ("WTC") Health Program, which is operated by the National Institute for Occupational Safety and Health ("NIOSH") and provides medical treatment and monitoring for 9/11-related health conditions. Title II of the Zadroga Act reopened the VCF and expanded the eligibility criteria to include those who took part in the debris removal efforts during the immediate aftermath of the attacks. The Zadroga Act originally authorized the VCF to accept claims for five years, starting in October 2011, and ending in October 2016, with final payments to be made during a sixth year in 2016-2017. Unlike VCF1, which had no cap on funding, the Act, as amended, provided a limited appropriation – originally \$2.775 billion, with \$875 million available in the first five years – to provide compensation to claimants and to cover the Fund's administrative costs.

On June 21, 2011, Special Master Sheila Birnbaum issued proposed rules to implement the reopened VCF and reviewed and considered 95 comments on the proposed rules that were received during the 45-day public comment period. On August 31, 2011, the final rules governing the operation of the



VCF were published in the Federal Register. The rules took effect on Monday, October 3, 2011, which was the day that administrative funding for the VCF became available. That same day, the VCF's website ([www.vcf.gov](http://www.vcf.gov)) and toll-free Helpline were launched.

On December 18, 2015, President Obama signed into law a bill reauthorizing the Zadroga Act, which included the reauthorization of the VCF. Congress's decision to reauthorize the VCF affirmed the continuing needs of the 9/11 community and the importance and success of the Fund's ongoing work in providing compensation to those who suffered physical harm as a result of the September 11th terrorist attacks. The reauthorization extended the VCF for five years, allowing claims to be filed until December 18, 2020, and included important changes to the VCF's policies and procedures for evaluating claims and calculating each claimant's loss.

On June 15, 2016, Special Master Sheila Birnbaum published an Interim Final Rule to revise the existing regulations to implement changes required by the Reauthorized Zadroga Act. The Interim Final Rule took effect on the date of publication, but provided a 30-day period for public comment. The Department of Justice received 31 comments and the Special Master's office reviewed and evaluated each of these comments in preparing the Final Rule. After the issuance of the Interim Final Rule, but before publication of the Final Rule, Sheila Birnbaum stepped down as Special Master and I was appointed in her place by Attorney General Loretta Lynch effective July 21, 2016. The post-reauthorization final rule was issued by me and published on September 2, 2016.

### 3. Year Seven Accomplishments

Throughout our seventh year of operation, we continued to refine our policies and procedures and streamline the claims process. We held true to our guiding principles, adopting policies and procedures that are faithful to the statute, fair to claimants, and defensible to taxpayers.

The following are highlights of our significant accomplishments over the past year:

- **Decisions rendered:** We continued to build on the success of 2017's updated policies, streamlined processes, and realignment of our team to focus their expertise on specific types of claims, and began focusing on policy and process changes to support the increase in deceased claim filings. The results of these efforts can be seen in the almost 200% increase in the number of deceased claims for which an initial award decision was rendered in 2018. Although these claims take significantly more time to process, we ended the year having issued 8,619 compensation determinations, with initial or revised determinations on almost 7,000 claims, totaling almost \$1.5 billion in awards, which is the largest dollar amount awarded in any year since the VCF re-opened in 2011. In all, as of December 31, 2018, the VCF has awarded more than \$4.8 billion. Section 5 of this report includes detailed information on the status of all claims processing activity.
- **Reduced time to render decisions:** Our review process remains rooted in a commitment to processing claims in "first in, first out" order, with an ongoing goal of reducing the amount of time claimants wait for an award. As of December 31, 2018, less than 100 claims that were submitted before January 1, 2017, and that are ready for compensation review, remain to be decided, and in a true demonstration of the rate at which we have increased our decision speed, just over 3,700 claims remain that were submitted before January 1, 2018. We have thus eliminated the backlog of claims that existed when I assumed the role of Special Master in July 2016, and the vast majority of claims pending for review are claims filed last year, in 2018. The VCF's Sixth Annual Status Report, published in February 2018, indicated that we were on track to decide claims within 18 months of the day they were filed (assuming we had all information needed to decide a claim). We continue to shorten that timeframe; claims filed in the first half of 2017 are now receiving award decisions, while claims filed in the second half of 2017 are under review, and claims filed in early 2018 will come under review soon.



- **Continued refinement and publication of policy and procedural changes:** With input from an accomplished group of claim reviewers, our operational staff, and my leadership team, VCF policies and procedures were refined and revised to optimize efficiency, fairness, and transparency. We continued to identify policies and processes that could benefit from additional sunlight, and consider the best mechanisms for making that information available. To that end, we published three updates to our “Policies and Procedures” document. We also made it part of our routine practice to add customized language to our decision letters to address specific issues in a given claim, and the rationale for our decision. These efforts were intended to help claimants and counsel better understand the policies that govern and guide our claims process, how they apply in different circumstances, and which procedures will result in the most efficient resolution of the claim. The most notable policy and process changes made over the past year are described in Section 4.
- **Continuation and expansion of third-party information exchanges:** From the time the VCF was re-opened in 2011, we have worked hard to minimize the burden on claimants by establishing direct information exchanges with various entities that provide specific data in support of VCF claims. Our information sharing agreements are with organizations including the Social Security Administration, NIOSH (on behalf of the WTC Health Program), the Fire Department of New York (“FDNY”), the New York Police Department (“NYPD”), the Public Safety Officers Benefits program (“PSOB”), and, new this year, the Veteran’s Administration and the New York City Employees’ Retirement System (“NYCERS”). We continued to work with partners over the past year to improve the functionality and consistency of the information exchanges. Our collaborative efforts resulted in a significant reduction in backlogs and increased speed and regularity of our exchanges from the various entities. In 2018 we sent, and received responses to, nearly 30% more requests for information via our feeds than in 2017. We also initiated additional information sharing agreements with the Office of Personnel Management (which administers pensions for federal employees), the Department of Labor (which administers claims under the Federal Employees’ Compensation Act), and the Defense Finance and Accounting Services (which administers pensions for military members). These discussions are ongoing and we hope to be able to obtain information directly from these agencies on a claimant’s behalf, thereby reducing both the amount of information the claimant must submit and the overall time needed to process the claim.
- **Continued, robust relationships with 9/11-related organizations:** Our partnership with NIOSH and the WTC Health Program remains strong and critical to the success of our claim review process. We talk regularly to consider issues of mutual concern. We have continued to be a regular presence at monthly meetings of the WTC Health Program Responders Steering Committee, which offers the VCF an opportunity to present updated information about the Fund and respond to topics of concern. Vital relationships with other 9/11-related organizations remain strong, and have proven especially important in the outreach efforts conducted this year. We have met regularly with the WTC Health Program Survivors Steering Committee, Voices of 9/11, 9/11 Environmental Action, 9/11 Health Watch, and The FealGood Foundation, all in an effort to provide training and resources to their staff or support their efforts to educate the broader community about the VCF. Section 7 of this report provides additional details about our collaborative efforts.
- **Expanded outreach:** During our seventh year of operation, we continued our strategic efforts to provide basic information about the Fund and eligibility requirements to communities affected by September 11th. Because the VCF’s funding is structured in such a way that all operational and administrative costs – including outreach activities – come from the same funding available to pay claimants, we are extremely sensitive to any costs involved in these activities and we once again sought to limit our costs by leveraging our partnerships with the



WTC Health Program and 9/11 advocacy groups, piggybacking on their planned outreach events. This partnership also proved beneficial as we received important feedback from these partners about our standard presentation, which led us to restructure our materials with the intention of providing enough basic information about the Fund to encourage potential claimants to register, without an overpowering amount of detail. Our outreach efforts to inform those who may be eligible for compensation about the VCF were greatly expanded and included articles in that reached over 40,000 federal law enforcement members. Described in greater detail in Section 7, our efforts resulted in unprecedented outreach via community events, media events, webinars, and small group meetings.

- **Updates to VCF website:** We continued to expand and enrich the VCF website ([www.vcf.gov](http://www.vcf.gov)) to make it easy to navigate, informative, and thorough. We posted timely information about upcoming and ongoing events, and strived to ensure that information related to the claims process is accessible and presented in an easy-to-understand format. In addition, in 2018 we: revised the information on the foreign language pages (Spanish, Polish, and Mandarin) to make it easier to find critical documents; created and posted a new step-by-step guide on [How to Register](#) a claim; updated our FAQs based on feedback from our Helpline and questions we receive from claimants and their representatives; created and posted a new [Monthly Report](#) which highlights key program statistics reflecting program activity to date and progress made in the prior month; and introduced a new "[Events, Outreach Materials, and 9/11 Resources](#)" page that features events of interest, links to information from partner organizations, and information about the VCF Claimant Assistance Clinics that were held this year in partnership with New York Law School. Section 7 includes additional detail about website updates during 2018.
- **Continued routine operations:** Our public messaging and statistics are focused on the activities that result in issuing awards and reporting on claims processing. This focus has the unintended result of leaving the public without a true appreciation for the breadth of activity that goes into processing each claim. In addition to the significant number of determinations issued, in 2018 we also processed over 21,000 pieces of incoming mail, generated over 120,000 outgoing letters, answered almost 38,000 Helpline calls, processed over 5,880 payments, designed and deployed nine sets of enhancements to the online system, and conducted over 380 appeal hearings, an increase of nearly 30% over 2017 appeals. We also continued to respond to the increase in requests for expedited claims processing, which is reserved for those individuals who are either terminally ill or facing extreme financial hardship. In 2018, we successfully processed 451 claims through expedited review, getting payments to these individuals in as little as three weeks from the time we approve the request to expedite the claim.
- **Prompt action to address scam targeting 9/11 community:** In April, the VCF became aware of calls being made to VCF claimants by unknown persons claiming to be the VCF. These callers asked questions about the status of an individual's VCF claim, stating that the individual may be entitled to money, and/or asking for personal information in order to mail a claim package or file a claim on the individual's behalf. The VCF took quick action, contacting authorities at seven different offices and agencies, working through channels to ensure proper awareness of the situation, and providing details of every reported call. We posted a warning on our website directing claimants not to provide information to any caller they suspected may not be VCF staff and to report the call to the Federal Trade Commission, and sent an urgent email to all law firms who represent VCF claimants. We also fielded questions to the Helpline, and updated Helpline policies for validating a claimant's identity, communicating to the public that the VCF would never ask for full Social Security Numbers.



#### 4. Significant Changes to Policies and Processes

Throughout 2018, we regularly analyzed and assessed our claim review policies and processes to ensure that they are both as efficient as possible, and clearly aligned with our guiding principles. The more significant policy changes implemented over the past year, all of which also required the implementation of corresponding process changes, are highlighted below. These changes are detailed in regular updates to our [“Policies and Procedures”](#) document, and we continue to receive positive feedback about the usefulness of these updates.

- **Further clarification of policy related to timeliness of registration:** Registration is the first step in the claim filing process, and the registration must be timely in order for the claimant to be eligible for compensation. The Zadroga Act requires that an individual register with the VCF within two years of the date on which the claimant knew or reasonably should have known: (1) that the victim suffered a physical harm as a result of the terrorist-related aircraft crashes of September 11, 2001, or debris removal in the immediate aftermath, and (2) that the claimant was eligible to file a claim with the VCF. See Section 405(c)(3)(A)(i) of the Zadroga Act. This means that a claimant must know (or reasonably should know) both of the physical injury or condition and that there is a causal connection between the injury or condition and 9/11-related exposure. In 2016, the VCF clarified its “timeliness” policy by explaining that, for personal injury claimants who are being treated through the WTC Health Program, the starting date of the two-year registration period, i.e., the “Registration Start Date,” is based on the earlier of two dates: (1) the date of the letter from the WTC Health Program indicating that the individual’s 9/11-related physical injury or condition has been certified for treatment, or (2) the date on which another government entity determined that the physical injury or condition was 9/11-related. This clarification focused on the statutory requirement that the claimant be aware that his/her condition was 9/11-related, as to which there is a clear, objective, easily identifiable date from which to evaluate when this criterion is met.

As our outreach efforts increased over the past year, we heard repeatedly from claimants that they had not been aware of the VCF, and therefore, did not submit their registration until after the two-year period had lapsed, making them untimely and therefore ineligible for compensation. This was particularly true among those in the survivor community and, surprisingly, the federal law enforcement community, who did not know of the VCF’s existence, or mistakenly believed that only local first responders qualified for compensation from the VCF. For this reason, we reinforced our messaging to focus on the reasonableness of a claimant’s knowledge that he or she was eligible to file a VCF claim. Our message was updated to make clear that if a claimant has a credible reason why he or she did not timely register, he or she should still go ahead and register the claim. Although we are clear in telling these claimants that the claim will likely be denied upon initial review, we explain that the denial is not the end of the process, but is instead an opportunity to appeal the decision and present testimony at a hearing about the unique facts and circumstances of the claim. The Special Master has discretion to consider equitable exceptions to the statutory timeliness requirement on a case-by-case basis – both for personal injury and wrongful death claims – and has exercised that discretion where the circumstances presented are sufficiently credible and compelling to support an exception on equitable grounds.

We are committed to hearing these cases on appeal so that individuals who are otherwise eligible for the VCF, but who missed their registration deadline for valid reasons, can still qualify for compensation for their 9/11-related illness.

- **Expansion of resources dedicated to the eligibility review process:** This year we increased the resources directed to our preliminary review process, and also increased the staff focused on substantive eligibility review, both of which have resulted in claims moving



through the claims process more quickly. For that reason, we instructed claimants and law firms to wait to submit the claim form until they are ready to provide the required supporting documents at the same time. As explained in the [“VCF Claim Review Process”](#) posted to our website, if a claim does not contain the minimally required supporting documents when it is assigned for preliminary review, we will send a letter to the claimant requesting the missing information, and then place the claim in “Inactive” status for 60 days. Once those 60 days have passed, the claim may be denied if the missing information necessary to move the claim to substantive review has not been received. The letters sent in this situation explain how to reactivate the claim once the claimant is ready to submit the required documents. We know this process works based on the number of claims that have successfully come back into the review cycle following a denial for “failure to respond” to a request for information.

- **Further narrowing of criteria to qualify for the WTC Health Program Disability Evaluation Process:** The WTC Health Program Disability Evaluation process was designed in the early stages of the VCF in an effort to provide a mechanism for a limited subset of claimants to obtain a disability evaluation through the WTC Health Program in order to support a VCF economic loss claim, namely those claimants who did not already have – and did not have the ability to obtain – an occupational disability determination for an eligible condition from a third-party entity. For many years, claimants who retired from the FDNY, the NYPD, or NYCERS due to an ineligible condition qualified for consideration for the WTC Health Program Disability Evaluation process (assuming other criteria was met), based on the assumption that those claimants could not reclassify their retirement for an eligible condition. Over the last year, we had a series of discussions with NYCERS leadership in an effort to learn more about their policies and processes, and to educate them about the impact that their disability retirement determinations have on VCF claims. Following these discussions, NYCERS and the FDNY changed their WTC reclassification policies such that members who retired for a WTC-related condition are now able to seek reclassification of that disability retirement for a different, eligible WTC-related condition. This change recognizes that if the original retirement was for a mental health condition, which is not compensable by the VCF, but the member is approved for reclassification for an eligible physical health condition, he or she may be eligible for a VCF economic loss award. This places NYCERS’s and FDNY’s reclassification policies in line with the New York City Police Pension Fund’s long-standing reclassification policy for NYPD members.

We are very pleased that our discussions resulted in such a meaningful change for these members. As a result of these changes, we further narrowed the criteria for a claimant to be eligible for the WTC Health Program Disability Evaluation process. Because FDNY, NYPD, and NYCERS members who had already been determined to be disabled for ineligible conditions through their respective pension funds now have the opportunity to reclassify their disability retirement for an eligible condition, there is no need for an alternative mechanism for these members to seek a disability evaluation of their eligible conditions, and they are longer eligible for a WTC Health Program Disability Evaluation. The WTC Health Program Disability Evaluation process remains an option on a very limited basis, and only in cases where there is no other avenue for the claimant to seek an occupational disability determination.

- **Application of stricter scrutiny for non-economic loss awards for obstructive sleep apnea (“OSA”) and CPAP usage:** For many years, OSA with CPAP usage was considered a “presumptively severe” condition for purposes of determining an individual’s non-economic loss award. This meant that a claimant using a CPAP machine would receive a non-economic loss award of \$90,000, which is the statutory maximum allowable amount for non-cancer conditions. As a point of reference, this is the same amount of non-economic loss awarded to individuals with Interstitial Lung Disease, including those needing lung transplants.



Over the course of the past year, we became increasingly concerned about reports from the WTC Health Program Clinical Centers of Excellence of what appear to be claimants requesting sleep studies solely for purposes of increasing their VCF awards, and not due to medical necessity. We also grew concerned about an increase in the number of claim submissions made to the VCF that show isolated periods of CPAP use documented for what appears to be the sole purpose of increasing the individual's award. Neither of these activities is consistent with the VCF's statutory obligation to prioritize funding to claimants with the most debilitating conditions. In addition, given advancements in sleep medicine, the general consensus is that the CPAP machine is no longer as disruptive to one's quality of life as it was years ago, and many users attest to the device having a positive impact on their overall well-being. As a result, we implemented a change in late 2018 resulting in stricter scrutiny of non-economic loss claims associated with the condition of obstructive sleep apnea. The highest level awards available under the Zadroga Act for non-cancer conditions are reserved for those claimants with the most debilitating conditions. As applied to sleep apnea, this means that \$90,000 will be awarded only with proof showing that a claimant's OSA has a debilitating effect on a claimant's daily life at a level relatively similar to that experienced by claimants with the other conditions that the VCF considers to be presumptively severe.

- **Improvements to the processing of Personal Injury-to-Deceased (“PI-to-Deceased”) Claims:** One of the sad realities for the VCF is that we have many claimants who begin with a personal injury claim and then pass away at some point after the claim was submitted. Where the victim's death is due to a 9/11-related eligible condition, the family of the decedent can seek wrongful death losses through the filing of a deceased claim. These claims, referred to as “PI-to-Deceased,” are very complex and require additional documentation showing that the individual filing the claim on the deceased victim's behalf is authorized to do so and that the victim's death is related to his/her eligible condition in order for the VCF to process the claim. In the past, these claims would often remain in an “On Hold” or other inactive status while waiting for the documentation needed to allow the VCF to validate the proper Personal Representative (“PR”) and continue review of the claim.

As these claims continued to increase in number, we decided that we needed to address the common issues that arise in PI-to-Deceased claims on a broader level and, to that end, convened an internal working group tasked with identifying and implementing changes to our processes for handling these claims, and to update the functionality in our claims system to accommodate the nuances of these claims. The changes were made with several key goals in mind: (1) stop the personal injury claim at the earliest point possible to minimize the risk of action being taken on the claim when not appropriate to do so; (2) identify who needs to take action on both the PI claim and the deceased claim, and what actions to take; (3) treat the deceased claim as the primary claim to move forward and ensure both claims show the proper status in the online system; and (4) make sure our communications with the family and the Personal Representative are clear about what we are doing, why we are doing it, what they need to do, and what they can expect to happen next. We also set a very important goal of paying any amount possible on the PI claim if the victim had been notified of the award amount prior to death. To capture these changes, we also made significant updates to the website materials regarding PI-to-Deceased claims, as well as updates to the relevant sections in our “Policies and Procedures” document.

- **Change in the processing of deceased claims seeking wrongful death losses:** As referenced above, when a claim is filed on behalf of a deceased individual and the Personal Representative (“PR”) seeks losses associated with the victim's death, the VCF's eligibility review of that claim includes confirming that the cause of death is the result of an eligible 9/11-related condition, and that the claim was timely filed by the applicable registration date.



In the past, if the VCF determined that the claim was not timely registered (i.e., it was registered more than two years from the date of death and the victim had not previously filed a timely personal injury claim), or that the victim's cause of death was not clearly related to an eligible condition, we would automatically convert the claim to a claim for personal injury losses only and process it as such. We recognized over the past year, as an increasing number of deceased claims were filed, that converting the claim to a PI claim without first providing an opportunity for the PR to challenge our assumptions resulted in more work later in the process. We frequently saw that once the PI award was issued with an option to appeal, the PR would often successfully appeal the cause of death or timeliness decision, resulting in the need for the VCF to re-open the claim for review and recalculate the award to include wrongful death losses.

As a result of this realization, we implemented a change in our process and we no longer automatically convert these claims to PI claims. Instead, we now treat and process these claims as wrongful death claims and issue an eligibility denial in those situations where the claim for wrongful death losses is untimely or because the cause of death does not appear related to an eligible condition. This allows the PR an opportunity to appeal that decision before we calculate the award, or to specifically request that we convert the claim to one for personal injury losses only. If the claimant appeals and we determine post-appeal that the claim is a valid claim for wrongful death losses, we will proceed to calculate the award based on that finding. If the appeal results in a finding that the claim cannot properly proceed as a wrongful death claim, we will convert the claim to a PI claim and calculate the applicable award.

These changes have resulted in a more efficient process overall as we have removed the need to calculate the award twice (once for personal injury losses and a second time for wrongful death losses), leveraged our standard processes already in place for eligibility denials, and reduced confusion among claimants that often led to unnecessary amendments and appeals.

- **Adoption of policy to address claims for loss of pension benefits at death:** With the increase in the number of deceased claims over the past year came an increase in questions about how the VCF evaluates and calculates compensation in these claims. The most common question was whether, and to what extent, the VCF would compensate for the loss of pension benefits that terminated upon the victim's death. After much consideration and review of claims that posed this issue, we concluded that the loss of pension benefits, which terminated at death because benefits were maximized while the individual was alive and no survivor pension option was selected, is a choice made by the victim and is not a loss of future income compensable by the VCF. That said, we recognized an exception to that policy for first responders who had retired prior to September 11, 2001, but voluntarily responded to the NYC Exposure Zone in the wake of the attacks, and therefore do not qualify for Line of Duty death designations from their former employers because they were not officially deployed to the response effort. In those particular instances, and based on the circumstances of the specific claim, I will exercise my discretion as Special Master to include a flat \$250,000 in economic loss as part of the overall award, in addition to any other economic loss awarded on the claim.
- **Compensation for VCF2 claimants who were paid in VCF1:** The VCF continues to receive more claims than originally expected from those who received compensation under VCF1. If a claimant received an award in VCF1, he or she can amend the claim and qualify for additional compensation if there is evidence that the VCF1-eligible injury or condition has substantially worsened or that the individual has a new physical injury or condition that he or she had not suffered at the time of the VCF1 claim filing or that was not compensable at the



time of VCF1; and the claimant was not already fully compensated for his or her losses in VCF1.

This past year, the VCF further clarified our policy regarding whether and when additional compensation will be awarded on these claims. Specifically, in evaluating whether additional compensation is warranted, the VCF considers: the types of conditions compensated; the type, nature, and amount of compensation awarded in VCF1; and the basis and timing of any lost earnings awarded in VCF1. A claimant will be considered to have been fully compensated if the compensation he or she received in VCF1 exceeds the amount of compensation he or she is eligible to receive in VCF2 based on the eligible conditions and the circumstances of the claim. For that reason, even if a claimant's eligible condition has worsened since VCF1, he or she may not qualify for additional losses.

- **VCF claimants who file claims with the U.S. Victims of State Sponsored Terrorism (“USVSST”) Fund:** The VCF received a number of questions this year about the intersection of VCF and the USVSST Fund, and how the filing of a claim in one program impacts the filing of a claim in the other. To address these questions, the VCF posted a new FAQ on our website, and updates to the relevant information in our “Policies and Procedures” document. We also expanded our collaboration with the USVSST Fund by identifying a VCF liaison who is available as a resource to the USVSST team for questions related to VCF claims.

There are very specific guidelines for individuals with claims with both the USVSST Fund and the VCF. The USVSST Act includes a specific provision that explicitly addresses the situation where a USVSST Fund claimant, or the claimant's immediate family members, has an eligible final judgment and also has received an award or award determination for the VCF. That provision dictates that even if an individual is eligible to receive compensation under USVSST criteria because of a qualifying final judgment, the “receipt” of a VCF1 or VCF2 award or award determination will preclude him/her or their immediate family members from recovering any additional compensation from the USVSST Fund. The USVSST Fund has stated that it will not adjudicate a claim if it knows a VCF claim is pending. Therefore, individuals who have claims with both funds need to take action to decide how to proceed. Because of the nuances of the statute governing the USVSST Fund, we have worked hard to ensure claimants understand their options specific to their VCF claim and are aware of the actions that will – or will not – be taken depending on their decision of which claim to pursue.

## 5. Status of Filed Claims

In 2018, we increased our public reporting, providing new Monthly Statistics updates as well as our more extensive public updates posted to our website in April, July, and September. We also continued to post detailed program statistics to our website each Tuesday. The statistics in this section of the report represent activity through December 31, 2018.

As of December 31, 2018, the VCF has found 22,323 claimants eligible for compensation. The VCF has made initial award determinations on 20,981 of those claims, and has issued revised awards on 5,603 claims due to an amendment or appeal. The total amount awarded through December 31, 2018, is \$4,800,506,670.50.

### ***Eligibility Claims***

As shown in Table 1 on page 13, the VCF has received 43,100 Eligibility claims. The VCF has found 22,323 claimants eligible for compensation review (84% of eligibility decisions made).

There are 11,853 claims that have not yet been decided and are either under substantive review by a claim reviewer or have been screened for completeness of the original submission and are now in queue awaiting assignment for substantive review. There are an additional 4,768 claims that cannot be processed. This includes 1,155 claims that have been identified as duplicate or superseded claims



for the same victim or where the claim has been withdrawn, and 3,613 that have been deemed inactive. A claim is placed in inactive status for one of the following reasons: (1) there is a discrepancy in key data needed to process the claim, such as a discrepancy in the Social Security Number or date of birth, and the VCF is awaiting clarification from the claimant; (2) the claim appears to be a duplicate claim for the same victim and the VCF is attempting to determine which claim to move forward for review; (3) the claim does not include proof of an eligible 9/11-related condition and the VCF is waiting for the claimant to be certified for treatment by the World Trade Center (“WTC”) Health Program; or (4) the claim is missing one or more minimum documents required for the VCF to begin substantive review (i.e., review to determine eligibility).<sup>1</sup>

The VCF has also rendered 9,210 revised eligibility decisions on 7,365 claims where eligibility was previously decided and the claimant either appealed a prior eligibility denial or filed an eligibility amendment seeking a revised determination based on new information or to add a new condition. Because a claimant can amend his or her claim multiple times, it is common for the VCF to review and render decisions on more than one amendment per claim. The VCF is also reviewing 1,708 claims with a pending eligibility amendment or appeal.

It is worth noting that the count of ineligible claims (those claims that have been denied) in Tables 1 and 2 may decrease from one report to the next. The count of denied claims includes those claims that have been found ineligible for failing to respond to requests for required information. These claimants are encouraged to amend their claim once they are ready to provide the missing information. If the information is sufficient to support the claimant’s eligibility, the claim is approved and is removed from the count of denied claims and added to the count of claims with eligibility approved. We believe that this decrease continues to demonstrate the effectiveness of our increased efforts to educate claimants about the availability of our amendment process through which they can supplement and request reevaluation of a previously denied claim.

Comparison data for the period ending December 31, 2017, is taken from the [Sixth Annual Status Report](#) and is provided for those statistics where comparison data is available.

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<sup>1</sup> The minimum documents required in order for the VCF to begin substantive review of a claim are: the claim form, the Claim Form Signature Page (or the equivalent sections from Part IV of the original VCF 2 claim form), Exhibit A – Authorization to Release Medical Information, Exhibit C (if represented by an attorney and the law firm does not already have an Exhibit C on file with the VCF), documentation to support presence at a 9/11 site (for those whose employer or other affiliated organization does not have an existing relationship with the VCF allowing for the exchange of this information); and for deceased claims, Exhibit F or Appendix A, and Letters of Administration and original or certified death certificate. These documents must be submitted and sufficiently complete for the VCF to begin substantive review of a claim.



**Table 1: Status of Eligibility Forms Received**

<b>ELIGIBILITY FORMS</b>	<b>As of December 31, 2018</b>	<b>As of December 31, 2017</b>	<b>Year-to-Year Change</b>
<b>Total Eligibility Claims</b>	<b>43,100</b>	<b>32,689</b>	<b>10,411</b>
<b>Eligibility Decisions</b>			
<b>Eligibility Decisions – Approved</b>	<b>22,323</b>	<b>18,024</b>	<b>4,299</b>
Personal Injury Claims	21,447	17,595	3,852
Deceased Claims*	876	429	447
<b>Eligibility Decisions – Not Eligible</b>	<b>4,156</b>	<b>4,082</b>	<b>74</b>
Denied	1,197	1,045	152
Ineligible due to failure to respond to requests for required information	2,959	3,037	(78)
<b>Eligibility Claims Processing</b>	<b>11,853</b>	<b>6,329</b>	<b>5,524</b>
Eligibility Claims not yet in Substantive Review	11,097	5,700	5,397
Eligibility Claims in Substantive Review	756	629	127
<b>Eligibility Claims – Unable to Process</b>	<b>4,768</b>	<b>4,254</b>	<b>514</b>
Duplicate, Superseded, or Withdrawn Claims	1,155	709	446
Inactive Claims	3,613	3,545	68
<b>Revised Eligibility Decisions due to Amendment or Appeal</b>			
<b>Count of Claims with at least one Eligibility Amendment or Appeal Submitted</b>	<b>9,073</b>	<b>7,980</b>	<b>1,093</b>
Count of unique Claims with at least one Revised Eligibility Decision rendered (due to amendment or appeal)	7,365	5,889	1,476
Unique Claims pending review for a Revised Decision	1,708	2,091	(383)
<b>Total number of Revised Eligibility Decisions Rendered (may be more than one revised decision per claim)</b>	<b>9,210</b>	<b>7,017</b>	<b>2,193</b>

\* The count of deceased claims includes only those claims filed for a victim who died of causes related to an eligible 9/11 condition. The claim type is initially determined based on answers to claim form questions and may change once the claim begins substantive review.

Table 2 below provides information on the categories of conditions associated with the eligibility decisions. The breakdowns are based on conditions certified or verified by the WTC Health Program.

**Table 2: Eligibility Claims by Category of Condition**

<b>ELIGIBILITY FORMS</b>	<b>TOTAL</b>	<b>Claims with Cancer as the only Condition</b>	<b>Claims that do not include Cancer as a Condition</b>	<b>Claims with both Cancer and Non-Cancer Conditions</b>
<b>Eligibility Decisions – Approved</b>	<b>22,323</b>	3,929	14,302	4,092
<b>Eligibility Decisions – Not Eligible*</b>	<b>868</b>	150	657	61

\* This table does not include the 3,288 claims found not eligible where the VCF was unable to make a determination as to whether the claimant suffered from a 9/11-related condition, including those claims where eligibility was denied for failure to respond to a request for information.



## Compensation Claims

Once a claimant has been deemed eligible, the VCF begins review of the claimant's compensation claim to determine how much compensation the claimant may receive from the Fund. As of December 31, 2018, the VCF has received 39,562 compensation claims, of which 22,000 (56%) are from claimants who have been deemed eligible. Of those with eligibility approved, the VCF has rendered initial decisions on 20,981 (95%) claims.

An additional 11,830 individuals whose eligibility review is still in process have also submitted compensation claims. If the claimant is deemed eligible, the compensation claim will be prioritized for review based on the date the compensation form was first submitted.

The VCF has also rendered 8,197 revised decisions on 5,603 claims for which the claimant appealed the award decision or submitted an amendment to seek additional loss once the initial award determination had been rendered. Claimants may submit more than one amendment for review once the initial award has been issued. In addition, there are 2,125 claims with a previously-issued award decision that are now pending review of a compensation amendment or appeal, and 491 claims where an amendment was dispositioned without substantive review.

The statistics in Tables 3 through 6 represent activity through the end of the day on December 31, 2018. Comparison data is shown where available from the same period last year.

**Table 3: Status of Compensation Claims**

COMPENSATION CLAIMS	As of December 31, 2018	As of December 31, 2017	Year-to-Year Change
<b>TOTAL Compensation Claims (claims for which an Eligibility Form was also submitted)</b>	<b>39,562</b>	<b>28,611</b>	<b>10,951</b>
Claims with In-Process Eligibility Review	11,830	6,183	<b>5,647</b>
Claims deemed Denied, Duplicate, Superseded or otherwise halted Eligibility review	5,732	4,933	<b>799</b>
TOTAL Compensation Forms <i>from claimants who have been deemed Eligible</i>	22,000	17,495	<b>4,505</b>
<b>Compensation Decisions Rendered – Initial Award Decisions</b>	<b>20,981</b>	<b>15,296</b>	<b>5,685</b>
Personal Injury Claims	20,369	15,098	<b>5,271</b>
Deceased Claims*	612	198	<b>414</b>
<b>Compensation Claims Processing</b>	<b>1,004</b>	<b>2,199</b>	<b>(1,195)</b>
Compensation Claims not yet in Substantive Review	571	1,598	<b>(1,027)</b>
Compensation Claims in Substantive Review	433	601	<b>(168)</b>
<b>Compensation Claims – Unable to Process**</b>	<b>15</b>		
<b>Revised Compensation Decisions due to Amendment or Appeal</b>			
<b>Count of Claims with at least one Compensation Amendment or Appeal Submitted</b>	<b>8,219</b>	<b>6,577</b>	<b>1,642</b>
Count of unique Claims with at least one Revised Compensation Decision rendered (due to amendment or appeal)	5,603	4,315	1,288
Count of unique claims for which an amendment was dispositioned without Substantive Review***	491		
Unique Claims pending review for a Revised Decision	2,125	2,262	(137)
<b>Total number of Revised Compensation Decisions Rendered or Amendments Dispositioned (may be more than one revised decision per claim)</b>	<b>8,197</b>	<b>5,263</b>	<b>2,934</b>

\* The count of Deceased claims includes only those claims filed for a victim who died of causes related to an eligible



9/11 condition. The claim type is initially determined based on answers to claim form questions and may change once the claim begins substantive review.

- \*\* Includes claims for deceased victims for which Eligibility has been approved, but the compensation claim has been deactivated because the claim is missing information regarding proof of cause of death or life insurance (a statutorily required collateral offset). Effective December 2017, the VCF changed its policy regarding proof of cause of death and now requires the submission of cause of death documentation prior to rendering an eligibility determination.
- \*\*\* This occurs when an amendment is filed without any supporting information, or in cases where the claimant has already received a non-economic award at the statutory cap and the newly claimed condition does not change that award.

**Table 4: Initial Compensation Decisions by Categories of Conditions**

INITIAL COMPENSATION DECISIONS	TOTAL	Claims with Cancer as the only Condition	Claims for only Non-Cancer Conditions	Claims with both Cancer and Non-Cancer Conditions
Compensation Decisions Rendered	20,981	3,617	14,159	3,205
Total Dollar Value	<b>\$4,291,381,834.60</b>	\$1,250,682,068.91	\$2,028,546,003.59	\$1,012,153,762.10

**Table 5: Revised Compensation Decisions by Categories of Conditions\***  
(count of unique claims with revised compensation decisions)

REVISED COMPENSATION DECISIONS	TOTAL	Claims with Cancer as the only Condition	Claims for only Non-Cancer Conditions	Claims with both Cancer and Non-Cancer Conditions
Claims with a Revised Compensation Decision – due to Amendment or Appeal	5,603	410	3,830	1,363
Dollar Value of Revised Decisions	<b>\$509,124,835.90</b>	\$76,595,995.40	\$257,550,445.12	\$174,978,395.38

\* The table does not include 491 claims for which an amendment was received but was dispositioned without substantive review.

**Table 6: Compensation Decisions Rendered**

COMPENSATION DECISIONS RENDERED	Dollar Value
<b>Total Decisions Rendered</b>	<b>\$4,800,506,670.50</b>
Personal Injury Claims	\$4,408,575,405.21
Deceased Claims	\$391,931,265.29
<b>Highest Amount</b>	<b>\$4,133,466.00</b>
Personal Injury Claims	\$4,133,466.00
Claims for Deceased Individuals	\$3,687,255.65
<b>Lowest Amount*</b>	<b>\$458.13</b>
Personal Injury Claims	\$458.13
Claims for Deceased Individuals	\$4,124.70
<b>Mean Dollar Value</b>	<b>\$240,470.20</b>
Personal Injury Claims	\$227,375.08
Claims for Deceased Individuals	\$682,807.08

\* The \$458.13 in the table represents the lowest amount for any claim for which the calculated award was greater than \$0. Note that there are also claims submitted by claimants who were fully compensated in VCF1 (the original VCF that operated between 2001 and 2004) and do not have any new conditions. These claimants do not receive any compensation and the associated dollar value for these claims is therefore \$0. There are also a number of claimants whose offsets exceed the total amount of their combined economic and non-economic loss, resulting in a \$0 award as required by the reauthorization statute.



### Information by Claimant Categories

The information in Table 7 below is based on the category identified by the claimant at the time the Eligibility Form was submitted. The number of claims with award decisions reflects only those claims for which an award has been rendered. The remaining claims are either pending review, inactive, or were determined to be ineligible. The associated dollar value reflects the current total award (initial award and any subsequent revised amounts due to an amendment or an appeal) associated with all compensation decisions made on the claims. The data in the table is current as of December 31, 2018.

**Table 7: Claim Information by Self-Reported Claimant Category**

CLAIMANT CATEGORY	Number of Claims Submitted	Number of Claims deemed Eligible	Number of Claims with Award Decision	Dollar Value
Responder – NYC	27,805	17,449	16,525	\$3,849,021,080.56
Responder – Pentagon	112	34	30	\$8,970,012.20
Responder – Shanksville	27	9	7	\$1,441,017.56
Non-Responder NYC – cleaning or maintenance work	1,114	727	693	\$80,939,483.54
Non-Responder NYC – other capacity	9,903	2,902	2,671	\$634,886,384.95
Resident within NYC Exposure Zone*	1,882	513	471	\$102,953,949.11
Attend school/childcare/adult care facility	61	37	35	\$10,754,643.81
NYC – Other Capacity	946	178	164	\$40,725,194.90
Non-Responder – Pentagon	60	15	15	\$3,623,901.41
No Response	1,190	459	370	\$67,191,002.46

\* The "NYC Exposure Zone" is defined as "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 the routes of debris removal, such as barges and Fresh Kills landfill. <https://www.vcf.gov/nycExposureMap.html>

Listed below are the definitions for those claimant categories that benefit from additional clarification:

- **Responder:** an individual who performed rescue, recovery, demolition, debris cleanup, or other related services at one of the sites 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. Therefore, the victim may be considered a Responder even if he or she performed the listed services through a private employer or on a volunteer basis.
- **Non-Responder NYC – other capacity:** an individual who, through ordinary employment, was in the exposure zone during the period from September 11, 2001, through May 30, 2002.
- **NYC – Other Capacity:** a visitor, tourist, and any other individual who was in the exposure zone during the relevant time period and is not included in another category.

### Registration Information

An individual must timely register his or her claim based on deadlines set forth in the Zadroga Act and implementing regulations. By registering, an individual preserves his or her right to file a claim any time before the VCF closes for submissions on December 18, 2020.

Registration does not create an obligation or commitment to file a claim, and the Special Master expects that a large percentage of registrations will not result in claims being filed as they are either duplicates or were created by individuals who will eventually decide not to file a claim.



As of this report, 81,404 unique registrations (based on the victim’s Social Security Number) have been submitted with the VCF. This number does not include incomplete registrations.

**Table 8: State-by-State Claim Distribution as of December 31, 2018**

State		All Registrations	Submitted Claim Forms	Award Determinations
<b>OUTSIDE US</b>		413	175	85
Alabama	AL	133	57	26
Alaska	AK	15	<10	<10
Arizona	AZ	321	156	96
Arkansas	AR	23	18	<10
California	CA	617	219	86
Colorado	CO	163	80	35
Connecticut	CT	812	322	136
Delaware	DE	159	89	52
District of Columbia	DC	62	13	<10
Florida	FL	4,049	2,306	1,256
Georgia	GA	510	244	120
Hawaii	HI	21	<10	<10
Idaho	ID	12	<10	<10
Illinois	IL	133	51	17
Indiana	IN	108	26	<10
Iowa	IA	14	<10	<10
Kansas	KS	13	<10	<10
Kentucky	KY	48	15	<10
Louisiana	LA	43	17	11
Maine	ME	66	30	14
Maryland	MD	430	140	51
Massachusetts	MA	245	100	43
Michigan	MI	85	39	12
Minnesota	MN	32	<10	<10
Mississippi	MS	16	<10	<10
Missouri	MO	73	35	13
Montana	MT	16	<10	<10
Nebraska	NE	21	<10	<10
Nevada	NV	174	90	44
New Hampshire	NH	75	36	23
New Jersey	NJ	8,614	3,981	1,695
New Mexico	NM	79	31	12
New York	NY	75,783	32,346	15,881
North Carolina	NC	1,005	529	306
North Dakota	ND	<10	<10	<10
Ohio	OH	186	84	33
Oklahoma	OK	39	18	<10
Oregon	OR	48	21	<10
Pennsylvania	PA	1,561	783	397
Puerto Rico	PR	27	14	<10
Rhode Island	RI	45	20	10



State		All Registrations	Submitted Claim Forms	Award Determinations
South Carolina	SC	617	379	216
South Dakota	SD	<10	<10	<10
Tennessee	TN	157	65	29
Texas	TX	375	154	82
Utah	UT	42	16	<10
Vermont	VT	45	21	10
Virginia	VA	736	258	84
Washington	WA	68	21	<10
West Virginia	WV	51	22	<10
Wisconsin	WI	37	14	<10
Wyoming	WY	12	<10	<10

## 6. VCF Operations

This section highlights the VCF’s operational activities over the past year. For detailed information on the VCF’s claim filing process and claim review procedures, including the methodology for calculating awards, please see the “Policies and Procedures” document, which can be found under “Forms and Resources” on the VCF website. The website also includes detailed information on [how to file a claim](#), and a simplified [overview of the claim review process](#).

- Expansion of the Claim Review Support Team as an integral part of the overall review process:** As noted in last year’s Annual Report, we implemented a new “Pre-Screen” process in 2017 focused on identifying missing information earlier in the process, thereby speeding up claim review by only moving claims forward if they have the information needed to evaluate the claim. The addition of this process has achieved the desired results and proven very successful from both a claimant perspective and in its impact on our internal operations. Pre-Screen review is completed by our Claim Review Support Team, and we spent much of 2018 identifying additional ways this team can support overall claim review. In fact, this team has become such a critical part of our success that we doubled the size of the team in 2018 as more responsibilities were added to their workload. This team now handles a wide range of activities, including: completing pre-screen for both Eligibility and Compensation review; handling review of all documents that are submitted on claims that are not actively under review and determining appropriate next steps; facilitating all information exchanges with our third-party partners, such as FDNY, SSA, and NIOSH; monitoring claims to be sure they are moving through the process as expected and if not, taking action to make sure they are properly assigned and in the correct status; completing specific quality checks at various points in the process; entering all award determinations into the system; and taking on special projects and research efforts that further support our overall claims processing.
- Updates to outgoing correspondence:** Over the course of a claim’s review, we send many different types of letters, and we continually focus on ensuring that our letters are easy to understand, set forth a sufficient explanation of the basis of the determination, and provide clear instructions as to next steps. In an ongoing effort to ensure transparency, we continued over the past year to revise and customize letters to reflect policy and process changes and to better explain the nuances of our review of the specific claim. We also introduced dozens of new letters, including multiple letters related to the new PI-to-Deceased process, letters specific to the revised process for handling deceased claims that are untimely or where the cause of death does not appear to be 9/11-related, and letters associated with the changes in the online system to the workflow and statuses associated with validation of the Personal



Representative in claims for deceased victims. In 2018, our Correspondence Team generated, quality checked, mailed, and uploaded over 120,000 letters, which is an incredible accomplishment for a team of two individuals.

- **Increased appeals-related activity:** We handled a 31% increase in the number of hearings this past year, holding 380 hearings in 2018, compared to 289 hearings in 2017. Although the total number of hearings increased last year, the proportion of eligibility and compensation hearings remained the same as in 2017, with 115 (30%) eligibility hearings and 265 (70%) compensation hearings.

We continued our outreach efforts to claimants and counsel to ensure that only those claims and issues that are ripe and appropriate for appeal proceed to a hearing. As a result of these efforts, along with the clarification of policies throughout the year as set forth above and expanded explanations in eligibility and compensation determination letters regarding the basis of the decision, the percentage of appeal requests that resulted in a hearing increased to 78%, up from 67% in 2017.

In 2018, the VCF rendered determinations on 343 appeals (88 eligibility and 255 compensation) for hearings held in 2017 and 2018. (Although this is a decrease from the number of post-appeal determinations rendered in 2017 (476), the significant number of post-appeal determinations issued in 2017 included a focused and successful effort to clear the backlog of appeal determinations pending when I was appointed as Special Master.) Of note, over two-thirds (69%) of eligibility denials were reversed after a hearing, consistent with our public messaging that we often need additional information and/or testimony to create a more robust record regarding a victim's eligibility for compensation (particularly on issues of timeliness and presence). Approximately one-half (53%) of compensation determinations were revised after a hearing.

In an effort to address and timely hear the increased number of appeals, in 2018 we dedicated an additional hearing day per week in the Fund's New York Office. We also continued to expand the Appeals Team, going from 17 members in 2017 to 26 members in 2018. The Appeals Team includes a specialized group of attorneys and staff responsible for preparing pre-hearing materials, coordinating hearings, participating in hearings, advising Hearing Officers, presiding as Hearing Officers, and preparing post-hearing recommendations to the Special Master. In 2018, as three esteemed Hearing Officers who had served *pro bono* for many years resigned from the program, we selected six of our most experienced, highly regarded claim reviewers to serve as Hearing Officers. These duties are in addition to their other claim review responsibilities, and allow them to apply their extensive claims and legal experience and knowledge to preside over hearings and offer recommendations for the Special Master's consideration. These appointments also provide greater flexibility in the scheduling and handling of appeals.

- **Continued "Fast Track" process and policy of rendering decisions based on information available at the time the claim is reviewed:** Our "Fast Track" review process remained in place for those claims seeking only non-economic loss. "Fast Track" simply means we have one reviewer assess eligibility and non-economic loss at the same time, rather than as two distinct and separate reviews. These claims are able to move more quickly through the review and approval process as they do not include evaluation of the more complex economic loss component of other awards. In 2018, 70% of the awards issued were on Fast Track claims, and they moved through the process, on average, 21% faster than economic loss claims.

We also continued our practice of waiting 30 days for a response to a request for missing information before issuing a determination based on the information contained in the claim file



at that time. This allows the claim to move forward and provides the claimant with the benefit of a determination without an extended period in which the claim is “On Hold.” This practice continues to be very successful as it supports our ability to issue decisions on claims, and claimants continue to react positively to this approach. If the claimant submits the additional information at a later date by amending his or her claim, the VCF will re-evaluate whether there is sufficient support for additional eligible loss.

- **Increased payment processing:** The number of members on our payment team increased this year by almost 20%, which is directly reflected in the increase in the number of awards issued and payments processed. In 2018, the team processed 5,887 payments, which is a 51% increase over 2017, and continued to meet our statutory obligation to authorize all payments within 20 days once the claim reaches the payment processing stage.

This activity would not be possible without our close partnerships with the Civil Division’s Budget Office, the Justice Management Division (“JMD”), and the U.S. Department of the Treasury. Processing VCF payments is a collaborative effort, requiring coordination across the multiple offices and agencies that support the process. Early in the year, we worked closely with our counterparts to update the payment process and associated reporting to reflect implementation of the new DOJ financial management system. One benefit of this effort is a new daily report that provides our team with more detailed, near-real-time information to track each payment, allowing us to identify potential issues early in the process, as well as receive confirmations of payment transactions within just a day or two of the claim being paid. This has the added benefit of allowing us to send claimants their “Payment Confirmation” letter shortly after the claim is confirmed paid, without the delay we experienced in the past while waiting for the confirmation report.

This collective team also works together to ensure our payments on expedited claims – those with terminal illnesses or extreme financial hardship – are made within just a day or two of the payment being authorized. Although these situations are sad ones, we continue to hear from claimants, their family members, or their attorneys about the closure and sense of relief these payments bring during an otherwise stressful time

- **Continued enhancements to the claimant and administrative portal:** Our online system continues to serve as a critical tool for both our claimants and our internal team as claims move through the review process. We continued to identify enhancements to both the internal “Admin Portal” and the external “Claimant Portal,” with many changes made based on feedback from users, our Helpline team, and our own usability findings.

This past year was our first year fully embracing an Agile approach to system development, which allows for more frequent deployments. As a result, our systems team was able to complete nine system deployments, each of which resulted in some level of new or enhanced functionality for our users.

Significant changes to the claimant portal over the past year include: revamped Amendments functionality, including new options for both eligibility and compensation amendments, additional logic to prevent inappropriate amendments based on claim status, and updated text across all amendment screens to clarify instructions and information regarding documentation needed to support certain amendments; new functionality for claims where the claimant is not the victim, including new, discrete claim statuses associated with Registration to provide insight into the steps involved in validating the Personal Representative (“PR”) for the claim, logic to prevent a claim from inappropriately moving forward in the review process before the PR is validated, and functionality that reinforces the need for a PR amendment before other activity can be taken on the claim in situations where a claimant passes away after filing a personal injury claim. Updates were also made to the claimant portal to reflect more accurate



claim statuses when a claim is made inactive during compensation review, and additional error messages were implemented to better inform users when their actions are not allowed by the system.

In addition, changes were made to the Administrative portal to support all aspects of claim management and review. We continued our efforts this year to enhance the system, including major workflow changes to support the PR validation process; enhanced querying and search capability; application of complex logic and rules to support automated claim routing, assignments, and prioritization; generation of new compensation worksheets with pre-populated claimant data to support claim review; changes to improve the handling of claims that reactivate for review after previously being denied or deemed inactive; and updates to the “Claim Overview” screen that provides key information about the claim “at a glance” for our team. These changes had a significant positive impact on the efficiency of our internal processes.

## 7. Public Communications and Partnerships

### ***Continued Expansion of Public Resources for Information and Support***

The success of the VCF rests, in large measure, in providing claimants with both appropriate compensation and a full understanding of the process by which claims are reviewed and awards are calculated. This year we paid particular attention to ensuring that claimants had easy access to straightforward information about their claims and about the review process, from registration through to a final decision. A significant amount of effort is expended by our toll-free Helpline in this process, and is supported by frequent updates and enhancements to our website.

In 2018, our toll-free Helpline and website continued to serve as multi-lingual resources to claimants, potential claimants, and the general public.

- **Website:** The public face of the VCF is our website, [www.vcf.gov](http://www.vcf.gov). It continues to be a tremendous resource for the dissemination of information about our program, policies and procedures, along with pertinent information about activities and events of interest to the 9/11 community at large. Information about the VCF, instructions for filing a claim, FAQs, claimant resources, as well as other website content, are available in English, Spanish, Polish, and Mandarin.

We worked extensively this year to ensure that the website continues to provide critical timely information, and is thorough, easy-to-navigate, and straightforward. To support this, as noted in Section 3, we: created a new page that has links to events, outreach materials, and resources available through some of our partner organizations; reformatted pages to make it easier for visitors to find critical documents; created step-by-step materials to simplify processes; and updated information in response to questions received by our Helpline. Finally, to support our commitment to transparency, in August we began posting a Monthly Report to provide key program statistics, activity to date, and progress made in the prior month.

As shown in the chart on the following page, visits to the VCF website averaged over 60,000 per month, demonstrating that the website continues to be an extremely useful resource to the 9/11 community.

- **Helpline:** Our toll-free Helpline is the VCF’s main contact point for claimants, their representatives, and the general public. Our Helpline staff is trained to assist callers in using the online system, and to answer just about any question the caller may have about the VCF and the claims process. The Helpline is open Monday to Friday from 8:30 a.m. to 5:00 p.m. ET, except Federal holidays. After hours, callers can choose to listen to recorded information or leave a message, which will be returned the next business day. We continue to offer foreign language support through bilingual representatives and skilled interpreters working



with the Helpline. In 2018, our Helpline worked with interpreters to handle 161 calls in languages other than English and Spanish, representing eight different languages.

Claimants can call the Helpline to complete their registration by phone, set appointments to get step-by-step help filing a claim, request access to their claim in the online system and get assistance using the system, get support and answers to questions about any aspect of the claim filing process, or to request status updates on their claim. We also continued our highly successful outreach program, proactively contacting claimants who are not represented by an attorney to provide assistance in understanding the status of their claims and the information required to complete their claims. This includes routinely calling claimants to follow up on letters sent by the VCF, making sure they understand the missing information that is needed in order to continue review of their claim.

The chart below shows the approximate number of visitors to the VCF website and callers to the Helpline each year since the VCF re-opened in 2011.

	10/3/2011 – 9/30/2012	10/1/2012 – 10/31/2013	11/1/2013 – 9/30/2014	10/1/2014 – 12/31/2015	1/1/2016 – 12/31/2016	1/1/2017 – 12/31/2017	1/1/2018 – 12/31/2018	Total
<b>Website Visitors</b>	73,000	282,500	245,749	414,303	458,583	912,080	<b>723,114</b>	<b>3,109,329</b>
<b>Inbound calls to Helpline</b>	5,600	32,900	33,439	49,836	37,817	37,221	<b>37,903</b>	<b>234,716</b>

We continued our regularly scheduled conference calls with attorneys from various law firms representing multiple claimants. These calls have proven to be a good method for updating counsel on key policy changes, soliciting their feedback, and incorporating that feedback into our claims processing activities when appropriate. We held two calls in 2018 and both were followed by summarized notes that are posted on our website. We also continued to email updates to the law firms as new information about the claims process is posted to the website. This year, we also held a series of very productive and informative face-to-face meetings with law firms to discuss the VCF’s Notice of Inquiry. We also continued our very successful “law firm liaison” activity where two of our most experienced team members serve as points of contact for law firms, not just for incoming requests but also to help facilitate resolving open issues on claims as identified by our broader team. Our liaisons also hold regularly scheduled conference calls during which attorneys can meet with us to discuss their claims.

**Community Outreach**

In our seventh year, as we continued our extensive outreach efforts in the 9/11 community, we refined our written materials and oral presentations to ensure that the information we present is easy to understand, and not complicated by legal terminology or unnecessary details. We continued to cultivate important relationships within the 9/11 community, and paid particular attention to the vast federal workforce that may be eligible for compensation but is unaware of both the connection of their illness to 9/11, and the existence of the VCF. We also maintained regular contact with current claimants, many of whom talk with our Helpline frequently, and continue to collaborate with a wide range of government, health, legal, and civic groups that interact with this community as we fulfill the promise of the Fund. Examples of our outreach efforts over the past year include:

- **September 11 Anniversary Events:** The pinnacle of this year’s outreach efforts came on September 7 as I was joined by FBI Director Christopher Wray and a host of honored guests including the Assistant Attorney General for the Civil Division of the U.S. Department of Justice, Joseph H. (Jody) Hunt, and the U.S. Attorney for the Southern District of New York,



Geoffrey S. Berman, at an event at the National September 11 Memorial and Museum in New York. The public forum was designed specifically to reach federal law enforcement officers who responded to the attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania. We have learned over the past year that this group is underrepresented in our claimant population, despite their 9/11 exposure, and in need of information about the VCF and the World Trade Center Health Program.

Director Wray's comments to the audience of over 120 officers and agents were a resounding call to register with the VCF and enroll in the WTC Health Program. He was followed by a retired FBI Supervisory Special Agent who talked about becoming sick years after her 9/11 exposure, and failing to connect the two until being invited to an FBI/VCF information sharing event in October 2017. She noted that both programs have been instrumental in her health management, and encouraged her fellow agents to participate. The audience also heard from a retired FDNY first responder who was a rookie in 2001 and spoke of his 9/11 experience and the illnesses that followed. He, too, encouraged audience members to enroll with the WTC Health Program, and register with the VCF, commenting that the programs had saved his life.

The public forum, which was covered by over 35 news outlets, also included representatives from the WTC Health Program, DOJ's Bureau of Justice Assistance (which administers the Public Safety Officers Benefit program), the FealGood Foundation, 9/11 Health Watch, the FBI Agents Association, and the Federal Law Enforcement Officers Association.

The anniversary also afforded me the honor of participating on an information panel at the [Voices of 9/11 17th Annual Day of Remembrance Information Forum](#) to increase awareness and answer questions regarding the VCF.

- **Pro-bono claimant assistance:** In January, we worked with New York Law School to train a group of law student volunteers who then staffed two free clinics to assist individuals in filing VCF claims, with VCF staff on-hand to address any questions that arose. The clinics were offered to provide one-time assistance to individuals who were unable or reluctant to complete the claim form on their own or through an attorney. Because the clinics were set up solely for purposes of filing a claim and not for ongoing legal assistance, after the clinics were held, our Helpline conducted proactive outreach with these claimants in an effort to ensure that the claim was complete and continued to move through the review process.
- **Community events in conjunction with the WTC Health Program:** This year, we continued to expand our efforts to identify and connect with those who may be eligible for compensation but had not been aware of the VCF, through forums established in conjunction with our partners at the WTC Health Program. We participated in ten general information sessions about how the VCF works, answering questions, and providing contact information for the Helpline and website. These sessions included presentations at the Mt. Sinai Clinical Centers of Excellence in both Staten Island and Manhattan, and at the Nationwide Providers Network facility in Somerville, MA. We also held our second Town Hall Meeting hosted by the Manhattan Borough President, conducted two information sessions at the Alfred E. Smith House – a public housing development in the New York Exposure Zone – and met with the New York chapter of the Civil Service Employees Association.
- **Relationship with the WTC Health Program:** We are tremendously grateful for the ongoing support from, and collaboration with, NIOSH, the WTC Health Program, and the Clinical Centers of Excellence (“CCEs”). Over the course of the past year we provided multiple training sessions for WTC Health Program and CCE employees, including benefits counselors and social workers who are in a position to pass accurate information to potential claimants. We also co-hosted a number of public outreach events, mentioned in the



community events section, above, where we were able to clear up ongoing confusion about how our two programs work together but remain separate and require separate registration and enrollment. We appreciate the opportunity to participate in the monthly meetings of the WTC Health Program Responder Steering Committee and meetings of the WTC Health Program Survivor Steering Committee, allowing us to stay current with their policies and procedures, and evolving trends within their programs. These are also opportunities for us to provide updates on VCF activities and progress, and to address questions or concerns relating to how our programs impact each other. We also participated in the WTC Health Program's second "Research to Care" community engagement event, a unique opportunity for the public to hear about new developments in 9/11 health research and learn how to maintain good health. We continued to benefit from the coordination of our outreach efforts and the willingness of the WTC Health Program and NIOSH to allow us to "piggyback" on their planned events.

- **Ongoing coordination with government agencies and 9/11 interest groups:** We continued to cultivate the critical, well-established, relationships we have with key personnel at the New York City agencies most affected by the 9/11 attacks, including FDNY, NYPD, and NYCERS, as well as various state and federal agencies, including the New York State Workers' Compensation Board and the Social Security Administration. Of particular note, this past year, representatives from the Workers' Compensation Board presented a comprehensive training for our claim review team, tailored to address the significance of their policies and procedures that impact our evaluation of claims. We also implemented a data exchange and continued an ongoing dialogue with NYCERS, New York City's largest pension fund, in an effort to accelerate the processing of VCF claims for NYCERS members. These relationships are invaluable as they minimize the burden to claimants, facilitate the VCF's verification and review of information that is necessary and relevant to the evaluation of claims, and can be leveraged to reach individuals who may not be aware of the VCF. We greatly value and appreciate their cooperation and collaboration on behalf of claimants and the entire 9/11 community.

We also presented information about the VCF to representatives from the New York State Police, as well as members of the Civil Service Employees Association ("CSEA"). In addition, we met with the leadership of StuyHealth, an advocacy group representing young adults, many of whom were students at Stuyvesant High School and were impacted by the events of 9/11 and the resulting clean-up, and plan to coordinate efforts in 2019 to share information about the VCF with their members.

- **Coordination with the Federal Bureau of Investigation ("FBI") and the Federal Law Enforcement Officers Association ("FLEOA"):** Our relationship with the FBI took a giant step forward in 2018. In addition to the general acknowledgement that FBI agents are sorely underrepresented in the VCF claimant population, we redoubled our efforts to disseminate critical information about our program and the WTC Health Program. The FBI was fully supportive of our efforts, and hosted several information sessions for its employees. We also continued our collaborative relationship with representatives from FLEOA, communicating with them on a regular basis, presenting information about the VCF to their members, and providing an article about the VCF for their publication. To assist in getting important information flowing between our organizations, we identified a VCF claim reviewer to serve as our FBI and FLEOA liaison, taking primary responsibility for answering questions and addressing any potential issues as claims move through the review process.
- **Posting detailed program statistics:** This year, we began posting a new "short" statistics report each month, and reduced the number of detailed public reports from quarterly to three times per year. Launched in August 2018, the new [Monthly Report](#) includes the statistics of



most interest to the public – related to all aspects of claims processing – along with associated definitions. We also continue to post detailed program statistics to our website each Tuesday. Our more expansive “VCF Program Statistics” reports, now posted three times each year, include data that reflects the enormous progress that the VCF continues to make in rendering eligibility and compensation determinations, and provides statistics of interest such as the breakdown of claims for cancer vs. non-cancer conditions, claims filed based on claimant type, and information on the number of amendments filed after an initial determination has been rendered.

- **Media events:** This year, more than any prior year, media interest in the VCF was particularly high. Over the course of several days around the anniversary, I participated in press interviews with The Wall Street Journal, New York City’s The Chief Leader, NY1 News, the editorial board of New York Daily News, Newsday, WCBS News Radio, 101 WINS News Radio, WCBS-TV, WNBC, PIX 11, WPIX 11 News Facebook Live, Fox, Antena 3 TV Spain, The Hill TV’s Rising, and Epoch Times.

I also taped an interview with Fox News Channel in Washington, DC, and a podcast for the FBI’s Office of Public Affairs, and was interviewed for a feature on the VCF posted to AARP’s website, which receives over 12.9 million unique views each month.

- **Publications:** This year we fortified critical relationships with both the Federal Bureau of Investigation Agents Association (“FBIAA”) and the Federal Law Enforcement Officers Association (“FLEOA”). Each organization published a customized article about the VCF entitled “The Top Ten Things to Know about the VCF,” reaching a combined readership of over 40,000 members.
- **Mailings:** As part of our ongoing efforts to ensure the broadest dissemination of information to potential claimants, we sent letters and emails to Federal agencies and departments; local law enforcement in the New York area, as well as near the Pentagon and Shanksville sites; New York and New Jersey State Offices and Borough Presidents, associated Unions, and 9/11 Community Groups.
- **VCF Speaker Series:** As our team has continued to expand, we realized that many of our team members were too young on 9/11 to remember that day and its aftermath. We also strongly believe that it is important for our team to hear directly from our partners in the 9/11 community rather than hearing only the synopsis of meetings and events from VCF staff who attend. To address the desire for broader awareness and education across our team, we initiated a “VCF Speaker Series” this year to enrich relationships with important partners, promote cross-team interaction and morale, and reinforce to all the value of the work we do – and the reasons why it is so critically important to those we serve. The series has met with tremendous success. The inaugural event was a panel of doctors from the WTC Health Program who work with first responders, talking with the entire VCF team about their personal experiences on 9/11 and their connections to our claimants and our process. In the spring, we had a similar event with four of our distinguished Hearing Officers, all extremely accomplished legal minds who volunteer their time to preside at appeal hearings for VCF claimants. Over the summer, we were honored to host Jon Stewart, John Feal of the FealGood Foundation, and retired FDNY officer and VCF claimant Michael O’Connell, all of whom were essential to passage of the Zadroga Act. In the fall, we welcomed the doctors and administrator charged with leading the WTC Health Program’s survivor program. And to round out the year, we were treated to a virtual tour of the National September 11 Memorial and Museum by a senior staff member with his own personal connection to 9/11, who was accompanied by a member of the Mayor’s Office of Emergency Management who shared his personal account of 9/11 and the lingering impact on his life. We are looking forward to hosting additional events in our series in 2019.



## 8. Administrative Costs

Administrative funding for the VCF became available in Fiscal Year 2012, and comes from the VCF's total appropriation. The total appropriation is the same capped pool of funds available for awards. As such, I am committed to keeping administrative costs to only what is reasonably necessary to minimize the burden placed on claimants and their representatives, while maximizing claims processing speed and efficiency.

As of December 31, 2018, the VCF has expended \$130.6 million, which is 2.7% of total awards issued.

There are three categories of administrative costs for the Fund:

1. Recurring costs associated with VCF operations
2. System development and maintenance costs
3. Labor and contractor support costs

The first category, recurring costs associated with operations, totaled approximately \$16.5 million, or about 13% of total administrative costs. These costs include rent for office space in Washington, DC, and in New York City. Costs also include equipment and services such as phone lines, printers and copiers, office supplies, furniture, and internet access.

The second category, system development and maintenance, includes the development of enhancements to the claimant portal and the system used by VCF staff to process claims and the ongoing maintenance of the system. As of December 31, 2018, costs associated with creating and maintaining the VCF's Claims Management System ("CMS") totaled approximately \$37.2 million, or about 28% of total administrative costs.

The third category, labor and contractor support costs, is ongoing and relates to the number of claims received and processed. As of December 31, 2018, labor and contractor support costs associated with the VCF operation totaled approximately \$76.9 million, or about 59% of total administrative costs. These costs include salaries for staff necessary to run VCF operations, answer calls to the Helpline, and work with claimants to complete unfinished and inactive claims. This category also includes attorneys in my office who review claims for eligibility and compensation and make recommendations for determinations.

### ***Expanded VCF Staff***

The most significant portion of our administrative costs over the past year continues to be staffing. We ended 2018 with 172 team members, as compared to 170 at the end of 2017. The number does not include ten new claim reviewer positions for which we just began recruiting. These positions were added based on the increase in monthly claim filings we have seen in the last three months of 2018, and we anticipate these individuals joining our team in early 2019.

The VCF's Washington, DC, office is the hub of our claim review activity and the various activities that support end-to-end claims processing. The VCF's New York Office is the primary location of our appeals process and outreach activities, and continues to serve a critical role in maintaining a strong VCF presence where so many of our claimants still reside. The size of our team and the plans for expansion also necessitated the need for additional space in our Washington, DC, office, which resulted in an increase in our rent costs, and costs for some isolated construction that was needed in order to build-out one of the new spaces to better meet our needs. As has been done since the VCF re-opened in 2011, we continue to focus on ways to reduce our facilities costs, such as purchasing used furniture and placing multiple team members in shared offices.

In addition to the claim review team, the VCF has teams that handle document intake, file management, correspondence, various post-decision activities, and payment processing. Our Helpline team works closely with claim reviewers, making it easier to provide callers with the most



current information about their claim. Our payment team and quality review teams continue to ensure that award determinations are accurate, complete, and consistent within and across claims. And, our Claims Management System team is dedicated to the development, testing, maintenance, and enhancements of the online claims system used by claimants and VCF staff. This team also oversees all requirements related to security of our systems and data.

The chart below shows the current breakdown of staff across the different teams. The numbers in parenthesis indicate members of that specific team who are included in the total count and are located in our New York office.

VCF Team	Staff Count Dec. 2018
Special Master	1
Deputy Special Master	1
Deputy Special Master and Director of New York Office	1 (1)
Claim Review Team (includes Hearings Team and Claim Review Support Team)	70 (3)
Document Intake Team	22
Helpline Team	9
Payment Team	13
Quality Review	8
Correspondence Team	2
Hearing Officers and Support Team	(9)
Program Support	11
Claims Management System ("CMS") Team	25
<b>Total</b>	<b>172</b>

We continue to assess our resources against the volume of claim submissions and will consider whether to further expand the team in 2019.

### 9. Prioritization Mandate and Annual Reassessment of Policies and Procedures

An important component of the Reauthorized Zadroga Act is the requirement that the Special Master prioritize claims for victims who are determined by the Special Master to be suffering from the most debilitating physical conditions, and that the VCF does not exceed its available appropriation. As noted in the reports issued over the past two years, I have interpreted the prioritization mandate to mean that the available funds should be prioritized for those with the most debilitating conditions. Therefore, for example, non-economic loss awards for such claims have historically been at the higher end of the range of awards and non-economic awards for those with less serious conditions have historically been at the lower end of the range of awards.

In order to ensure that these mandates are upheld, the Act also includes the following requirement: *“Beginning 1 year after the date of enactment of the James Zadroga 9/11 Victim Compensation Fund Reauthorization Act, and each year thereafter until the Victim Compensation Fund is permanently closed under section 410(e), the Special Master shall conduct a reassessment of the agency policies and procedures developed under clause (i) to ensure that such policies and procedures continue to satisfy the requirements under subclauses (II) [total expenditures do not exceed the amount of available funds] and (III) [prioritization of claims for those suffering from the most debilitating physical conditions] of such clause. If the Special Master determines, upon reassessment, that such agency policies or procedures do not achieve the requirements of such subclauses, the Special Master shall*



*take additional actions or make such modifications as necessary to achieve such requirements.*” This annual reassessment is intended to identify, as early in the VCF’s operations as possible, whether or not adjustments need to be made to VCF policies and procedures in order to ensure that the VCF’s limited funding is prioritized for those with the most debilitating illnesses and that the VCF does not exceed its available funding.

The first year after the date of enactment ended on December 18, 2016, and the Annual Report published in March 2017 was the first report that included the required reassessment. The reassessment was then updated as part of the Annual Report published in February 2018. As explained in those reports, I have interpreted the statutory mandate to mean that each year, the VCF shall estimate, to the extent possible, the total awards for claims that have been submitted but not yet decided, as well as the projected population of future claims to be submitted and their corresponding estimated awards. The VCF must also estimate the total administrative costs through the end of the program. These projections, together with the total amount awarded to date and the total administrative costs to date, must be compared to the total VCF funding to assess whether or not the available funds will be sufficient to cover the anticipated total awards and administrative costs.

As explained in the following sections, after conducting the required reassessment with updated data, I have concluded that the available funding will not be sufficient to cover future awards and operational costs under the VCF’s current policies and procedures. As a result, I am required under the statute to reassess those policies and procedures in an effort to reduce the likelihood that the funds will be exhausted before all claims are paid, and to increase the availability of funds to those individuals with the most debilitating physical conditions. My reassessment and the plan devised to address it are detailed in Section 10 of this report.

### ***Estimates and Projections***

This report is the third annual reassessment under the reauthorization. In preparing this year’s estimates, we followed the same overall methodology that was used to calculate the estimates and projections provided in last year’s report, with one change. In past reports, we have based our projections on historical data through the end of the prior calendar year. In preparing this year’s estimates, however, we could not ignore the trends we were seeing in our most recent data. We therefore decided to use data through January 31, 2019, as the basis for our historical projections unless otherwise noted, as we believe the most recent data provides a more realistic picture of projected claim activity.

We have also added trend-based projections in certain steps of the methodology, along with an explanation of the assumptions and trends that led us to generate the trend-based estimate instead of relying strictly on data derived from the historical performance of the VCF. This is modeled after the approach used in the first annual reassessment, which was published as part of the [March 2017 VCF Annual Report](#). Using both the historical data and the trend-based adjustments, the reassessment identifies a range of total awards for future claims that have been submitted but not yet decided, as well as the projected population of future claims to be submitted and their corresponding estimated awards. The two methodological approaches are labeled in the applicable parts of the discussion below, with the [historical data-based projections](#) identified in **blue**, and the estimates derived after adjusting for more recent trends (“[trend-based adjustment](#)”) identified in **red**.

As noted last year, it is still worth cautioning that future claims activity is subject to numerous factors, many of which we can neither predict nor control. So, while our methodology and the results generated are set forth in this section of the report, we continue to keep a very close eye on both the data and trends so that we can identify, at the earliest possible stage, areas where future activity may begin to diverge from what is projected here.

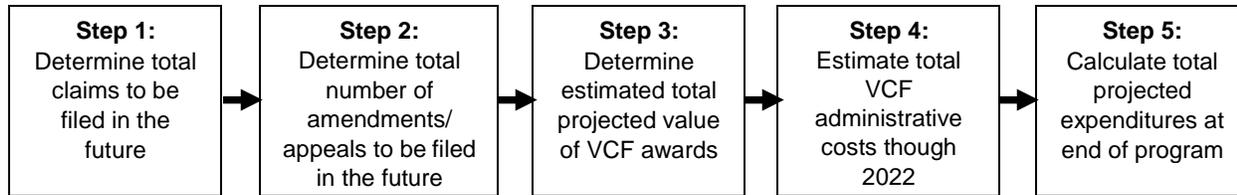
***The Starting Point.*** Given the significant research already completed by the WTC Health Program into the population of individuals impacted by 9/11, and because the populations we serve overlap



extensively, we continued with our approach of leveraging its data and analysis as a starting point for our estimates.<sup>2</sup> One important distinction between the two programs is that the WTC Health Program makes a distinction in its services and statistics between responders and survivors,<sup>3</sup> whereas the VCF does not make a distinction between the two “categories” of claimants in the application process or in the calculation of awards. Similar to prior years, we therefore reviewed the WTC Health Program data in aggregate for the entire potential population of its members and our claimants.

### Methodology

The methodology used to estimate the VCF’s total expenditures at the end of the program includes five high-level steps:



Each step and the corresponding sub-steps are explained on the following pages. Where useful, we have included a chart that shows a summary of the calculation completed in that step, along with the estimates published in the March 2018 report, and the current projections based on historical data through January 31, 2019, and trend-based adjustments where noted. *All numbers and calculations have been rounded to make it easier to read and verify the approach taken and the outcome of each step.*

### Step 1: Determine total number of VCF claims to be filed in the future.

#### a. Projected enrollment of WTC Health Program (“WTCHP”) members with a physical condition

The reports published in prior years used the WTC Health Program’s enrollment projections as the starting point for this step of the methodology. The projections are received each year from the WTC Health Program and include updates to the previously provided data for prior fiscal years. This year, when we decided to use VCF data through January 31, 2019, rather than through the end of December 2018, we realized that comparing our data to Health Program data through the end of the last fiscal year (September 30, 2018) would not provide a sufficiently accurate projection. We requested a subset of data from the WTC Health Program through December 31, 2018, and are very appreciative that our colleagues at the Health Program were able to provide the data. With the additional data, we began our projections with the WTC Health Program total current enrollment of 93,028 as of December 31, 2018. Because the VCF only compensates for eligible physical conditions,

<sup>2</sup> The use of WTC Health Program data, historical data of VCF program activity to date, and a slightly different methodology, means that the projections described here differ somewhat from previous projections generated by the Congressional Budget Office and the VCF. For reference, those projections (and the assumptions they incorporate) are available at <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/s928ltr.pdf>, and <https://www.vcf.gov/pdf/ZadrogaFund2013-0128.pdf>, respectively.

<sup>3</sup> The WTC Health Program defines a member as an individual who is enrolled in the WTC Health Program as a responder, certified-eligible survivor, screening-eligible survivor, or eligible family member of an FDNY responder. Responders are defined under Section 300mm-21(a) of the Zadroga Act as individuals who “performed rescue, recovery, demolition, debris cleanup, or other related services in the New York City disaster area in response to the September 11, 2001, terrorist attacks, regardless of whether such services were performed by a State or Federal employee or member of the National Guard or otherwise” and otherwise meet eligibility criteria set forth by the WTC Health Program Administrator. Responders are eligible for services that include preventive monitoring and treatment at a range of WTC Health Program Clinical Centers of Excellence (“CCEs”), whereas survivors, who are defined under Section 300mm-31 of the Zadroga Act as an individual who is not a WTC responder, are only eligible for treatment once symptoms of illness are evident and are treated at a limited number of CCEs. The VCF makes no distinction between responders or survivors when evaluating a claim.



we reduced the current total enrollment by 3.21% (compared to 3.14% as reported last year), which is the current percentage of WTC Health Program members with only a psychological condition as reported by the Health Program. This resulted in 90,042 current members who either have a certified physical condition, or are not yet certified, as well as those who may never be certified.

From here, we focused on the WTC Health Program's estimate of its projected total enrollment of WTC Responders and Screening- and Certified- eligible Survivors. Although the WTC Health Program provided us with information on their enrollment projections through FY2023, for our projections, we used their data through FY2020 and added an estimate for the first quarter of FY2021 (October 1, 2020, through December 31, 2020) as our claim filing deadline is December 18, 2020, making these estimates the closest comparison for our purposes. It should be noted that when compared to the WTC Health Program projections used in our March 2017 report, which is the first year we completed these projections, the WTC Health Program has increased its projected enrollment by over 13,300 members.

We then adjusted the estimated total enrollment number by 3.21% (the percentage of WTC Health Program members with only a psychological condition) to determine the projected enrollment of members who will either be certified for at least one eligible physical condition, or who may never be certified at all. This number is used as the basis for the projections of total VCF claims to be filed before the deadline of December 18, 2020.

It is important to note that the WTC Health Program enrollment figures include WTC Responders who are enrolled for monitoring purposes only and do not currently have a health condition that is determined to be related to their 9/11 exposure. These individuals may be certified at a future date, although some will never be certified and will remain only in the monitoring program. In 2018, per WTC Health Program statistics, 48% of Responder enrollees did not have a certified condition and so presumably were enrolled for monitoring only.<sup>4</sup> We continue to believe that the adjustments made below in Steps 1.b. and 1.c. – to account for the percentage of WTC Health Program enrollees who do not register with the VCF and to account for the percentage of VCF registrants who ultimately do not file a claim – appropriately reduce the VCF future claims projection to account for the enrolled members of the Health Program who have no 9/11-related illnesses and are only being monitored, but if that proportion changes, it may be that our projection would also need to be adjusted. We will monitor this ratio for future reports.

**b. Projected number of WTC Health Program Members who will register with the VCF**

Our next step was to determine how many WTC Health Program members are likely to file VCF claims. Given that the majority of the VCF's claimant population are also members of the WTC Health Program, we compared our number of unique registrations as of December 31, 2018, to the WTC

Step 1-a: Projected Enrollment of WTCHP members with a Physical Condition		
	2019 Report	2018 Report
WTCHP Total Current Enrollment as of December 31, 2018	93,028	82,190
Members with only Psychological Condition	<u>-2,986</u>	<u>-2,581</u>
<b>Total Current WTCHP Members <u>except</u> those with only a Psychological Condition (as of December 31, 2018)</b>	<b>90,042</b>	<b>79,609</b>
Projected Total WTCHP Enrollment as of December 2020	103,775	101,911
Projected Members with only a Psychological Condition	<u>-3,331</u>	<u>-3,200</u>
<b>Total Projected WTCHP Members by December 2020 <u>except</u> those with only a Psychological Condition</b>	<b><u>100,444</u></b>	<b><u>98,711</u></b>

<sup>4</sup> As of December 31, 2018, the WTC Health Program reported that 74,102 of its total 93,028 enrollees were Responders, and that 38,396 of those Responders (52%) had at least one certified physical or mental health condition.



Health Program’s count of members as the best analogous proxy for estimating our total future registrations.<sup>5</sup>

To estimate this number from the historical data, we first determined the total number of unique VCF registrations (based on the victim’s Social Security Number) submitted as of December 31, 2018. This number, 81,404, was then compared to the WTC Health Program’s actual enrollment as of December 31, 2018, to determine the estimated percentage of WTC Health Program members who have registered with the VCF based on the historical data. The enrollment percentage was calculated to be 90.4% (compared to 84% used in last year’s report).

We then applied the 90.4% enrollment percentage, based on historical data, to the estimated projected WTC Health Program enrollment by December 2020, to determine the projected total number of unique VCF registrations expected to be submitted by

December 2020. This number, 90,801, accounts for the expected total VCF registrations from 2011 through 2020, based on historical data, including registrations for claims already submitted and those that have already been decided.

Step 1-b: Projected number of WTCHP members who will Register with the VCF		
	2019 Report	2018 Report
Total Current WTCHP Members <u>except</u> those with only a Psychological Condition	90,042	79,609
Total unique VCF Registrations as of December 31, 2018	81,404	66,858
Enrollment Percentage	90.4%	84%
<b>Total Projected WTCHP Members by December 2020 <u>except</u> those with only a Psychological Condition</b>	100,444	98,711
Enrollment Percentage	90.4%	84%
<b>Projected Total VCF Registrations as of December 2020</b>	<b><u>90,801</u></b>	<b><u>82,917</u></b>

**c. Projected total VCF claims to be filed between 2011-2020**

Many individuals who register with the VCF do not file a claim. When preparing last year’s report, the data showed that historically, 47.4% of registrations had turned into actual claim submissions based on VCF data from 2011-2017. With our updated data through January 31, 2019, the percentage has increased to 57.21%, which results in a projection of 51,947 total cumulative claims to be submitted by December 18, 2020 (57.21% of the total projected registrations).

Our final step in generating a historical data-derived estimate was to subtract the 47,351 VCF Eligibility forms that have already filed (as of January 31, 2019) from the 51,947 total estimated claims to be filed to determine the estimated number of claims remaining to be filed in the future: 4,596. It is important to note that this estimate is based on Eligibility submissions as an indicator of a claim filing, regardless of whether the claimant has also filed a corresponding Compensation form.

**Trend-Based Adjustment:** The methodology used to this point is based on historical data and does not account for recent trends that suggest a significantly different projection of future claim filings. As an example, the total number of new claim filings in 2017 was 7,371. When preparing the projections published in the February 2018 report (with data through December 31, 2017), we noted the number of claims to be filed in the future seemed low, and we explained that we assumed that new claim filings in the VCF would level off and begin to decrease as the program progresses towards the December 18, 2020, filing deadline. This assumption has not held true as evidenced by the 10,411 total claims filed in 2018, which is a 41% increase over the total claims filed in 2017. In addition, when

<sup>5</sup> Some individuals who file claims with the VCF and receive an award are not enrolled in the WTC Health Program. As of December 31, 2018, 19% of the VCF’s awards were made to claimants who did not have a WTC Health Program certified condition; these include claimants whose conditions were verified by the VCF through its Private Physician process, see <https://www.vcf.gov/privatephysicianprocess-forms.html>, such as deceased victims who did not receive treatment in the WTC Health Program before their deaths.



looking at data for the month of January 2019, the VCF received 4,251 new claims in just one month.

In looking at recent trends, the VCF received 8,108 new claim forms between October 3, 2018, when the Notice of Inquiry (see Section 10) was published, and January 31, 2019. We do not expect this volume of claims to continue as we know that many claimants sought to get their claims submitted following the publication of the Notice of Inquiry. We do believe, however, that some trend-based adjustment is needed as the estimate of 4,596 claims calculated using only historical data is unrealistic.

We therefore looked at claim filing data for the first ten months of 2018 (January 1 through September 30), prior to publication of the Notice of Inquiry, and calculated an average of 728 new claim filings per month. We multiplied the 728 average by 23 months (February 1, 2019, through December 18, 2020, which represents the number of remaining months available for claim filings), to estimate that 16,744 new claims will be filed. We then assumed that the deluge of claims filed in January were front-loaded as a response to the Notice of Inquiry, but would not ultimately increase the total number of claims expected to be filed. As a result, we next calculated the number of claims we would have expected to receive (based on the 728 claims per month historical average) for the

Step 1-c: Projected total VCF claims to be filed between 2011-2020			
	2019 Report - Historical Data-Based	2019 Report - Trend-Based Adjustment	2018 Report
Projected VCF Registrations as of December 2020	90,801		82,917
Percentage of VCF Registrations with a claim filed (as of January 31, 2019)	57.21%		47.4%
<b>Projected total VCF Claim Filings as of December 2020</b>	<b>51,947</b>	<b>58,897</b>	<b>39,303</b>
Less Claims already Filed as of January 31, 2019	-47,351	-47,351	-32,689
<b>Projected new VCF claims to be filed through December 2020</b>	<b>4,596</b>	<b>11,546</b>	<b>6,614</b>

four month period of October 1, 2018, through January 31, 2019. This number, 2,912, was then subtracted from the 8,108 total claims actually received in the four month period, which is a difference of 5,196. We then subtracted the 5,196 from the 16,744 total estimated claims to be filed between February 1, 2019, and December 18, 2020, which resulted in 11,546 estimated new claims to be submitted. Dividing this number by 23 months results in an average new claim filing of 502 claims per month between now and the program's end.

Our final step was to add the estimated future claim filings of 11,546 to the 47,351 claims already filed as of January 31, 2019, which results in a total of 58,897 total claims at program end.

**Step 1 Output: Estimated number of new VCF claims to be filed in the future:**  
**Based on Historical Data: 4,596**  
**Trend-Based Adjustment: 11,546**

**Step 2: Determine total number of amendments and appeals (revisions) to be filed in the future.**

A claimant may amend – or revise – a claim at any time if the victim is certified for a new condition, has a new loss associated with an eligible condition, or if a claimant who previously submitted a Personal Injury claim passes away from an eligible condition. The VCF also considers any change to the award following an appeal as a revised decision on the claim.

With this in mind, our next step was to calculate the historical percentage of claims for which an



amendment or appeal was filed on the claim after the initial award decision was rendered. Using historical data through January 31, 2019, we calculated that 29.28% (compared to 28% in last year's report) of claims have been amended or appealed and received a revised award as a result.

We then applied these percentages to the estimated total number of claims expected to be filed through FY2020 based on historical data, which includes pending claims and the estimated future filings, to determine the expected number of future amendments/appeals. For purposes of this specific calculation, all future claim filings are assumed to result in an initial award; in other words, this count was not adjusted for expected denials and \$0.00 award claims as those claimants will have the right to amend or appeal.

Our final step was to subtract the number of current pending amendments/appeals (as of January 31, 2019) and the number of revised awards already issued to determine the projected numbers of amendments/appeals yet to be decided.

Step 2: Estimated number of future Amendments and Appeals (revisions)			
	2019 Report - Historical Data-Based	2019 Report - Trend-Based Adjustment	2018 Report
Projected VCF Claim Filings as of December 2020	51,947	58,897	39,303
Percentage of Revisions	29.28%	29.28%	28.0%
<b>Projected VCF Revised awards as of December 2020</b>	<b>15,210</b>	<b>17,245</b>	<b>11,005</b>
Current pending Revisions	-2,410	-2,410	-2,262
Revisions already Decided	<u>-5,682</u>	<u>-5,682</u>	<u>-4,026</u>
<b>Projected Number of Future Revisions to be filed through December 2020</b>	<b><u>7,118</u></b>	<b><u>9,153</u></b>	<b><u>4,717</u></b>

**Trend-Based Adjustment:** Using the trend-based estimate in Step 1.c. of new claims to be filed by 2020, we applied the 29.28% historical percentage of revisions to the 58,897 total claims at program end, which includes pending claims and the estimated future filings, to determine the trend-based adjustment of future amendments/appeals. We believe the 29.28% is an appropriate percentage to be used as it has remained relatively consistent over the past several years (28% in both the March 2017 and February 2018 reports).

**Step 2 Output: Estimated number of revisions to be filed in the future**  
**Based on Historical Data: 7,118**  
**Trend-Based Adjustment: 9,153**

**Step 3: Determine estimated total projected value of VCF awards.**

**a. Estimated number of claims needing an initial determination**

Our next step was to determine the projected total dollar value of all awards at the end of the program when the VCF closes. We started by focusing on initial determinations, meaning the claimant's first award from the VCF.

In generating our historically-derived estimates, we began with the 51,947 total claims calculated in Step 1. This total includes claims that have already been filed (with and without an award determination already issued) and future expected claim filings. Recognizing that some number of these claims will be denied or will be approved for eligibility but will have a \$0.00 award determination, we calculated the historical percentages for both of these scenarios. To calculate the percentage of denied and \$0.00 claims, we used data from January 1, 2017, to January 31, 2019, as we expect that period of activity to be most indicative of the future denial percentage as 2017 was the first full year in which our policies specific to Inactive claims was implemented. As noted in Section 5, Inactive claims are moved to "Denied" status when we lack the required information needed to review the claim. Our data shows that 18.96% of claims are denied (compared to 20.2% in last year's report) and 7.94% of



eligible claims result in a \$0.00 award (compared to 9.71% in last year’s report). These percentages were then used to determine the total number of claims that will not receive an award, and the numbers were then deducted from the total projected claim filings to determine that 38,755 claims will receive an award.

From here, we subtracted the 21,317 total number of claims with initial awards already issued as of January 31, 2019 (including \$0.00 awards), to determine that 17,438 claims remain for which an award will need to be determined in the future.

**Trend-Based Adjustment:** Using the same percentages for denied claims and claims with \$0.00 awards, we completed the same calculations using the 58,897 trend-based estimated claim filings to determine that 22,623 claims will need an initial award determination under our trend-based approach.

Step 3-a: Estimated number of claims needing an initial Determination			
	2019 Report - Historical Data-Based	2019 Report - Trend-Based Adjustment	2018 Report
Projected VCF Claim Filings as of December 2020	51,947	58,897	39,303
Percentage of Denied Claims	18.96%	18.96%	20.2%
Count of Denied Claims	-9,849	-11,167	-7,939
<b>Remaining Claims with Awards</b>	<b>42,098</b>	<b>47,730</b>	<b>31,364</b>
Percentage of \$0.00 Award Claims	7.94%	7.94%	9.71%
Count of \$0.00 Award Claims	-3,343	-3,790	-3,045
<b>Projected total number of Claims that will receive an award</b>	<b>38,755</b>	<b>43,940</b>	<b>28,319</b>
Claims with Awards Issued as of January 31, 2019	-21,317	-21,317	-15,296
<b>Projected Number of claims still needing an Initial Award Determination</b>	<b>17,438</b>	<b>22,623</b>	<b>13,023</b>

We believe this trend-based estimate is important to consider because we have already exceeded the 13,023 claims needing an initial award determination that were projected in our 2018 report. That number was intended to include all claims on hand or projected to be filed that would need an initial award determination from January 1, 2018, through December 18, 2020.

**b. Estimated dollar value of future initial award determinations**

There are two main factors that influence the amount of a VCF award: (1) whether or not economic loss is awarded; and (2) whether the claim is a Personal Injury (“PI”) claim or a claim for a victim who died of a 9/11-related eligible condition (“Deceased” claim). In order to account for these factors in our projections, we calculated the historical percentages shown below by category across all claims with awards issued between August 1, 2016, and January 31, 2019, which represents the period of time specific to Group B claim determinations. We believe this time period is more indicative of future activity than using historical data since the VCF’s inception because the Group B methodology is the current methodology used to calculate awards.

1. PI claims with Economic Loss awarded: 16.86%
2. PI claims with Non-economic Loss only: 77.62%
3. Deceased claims with Economic Loss awarded: 4.50%
4. Deceased claims with Non-economic Loss only: 1.02%

In developing our historical data-based estimate, we applied these percentages to the projected number of future claims for which an initial award decision will be rendered in the future (as calculated in Step 3-a above) to calculate the count of future claims by category. We then calculated the average award by category based on all Group B claims decided to date (August 1, 2016, through January 31, 2019) and multiplied the average award by the count of claims expected to fall within each category to determine the total estimated awards by category as shown in Table 9 on the following page.



**Table 9: Estimated Value of Future Initial Award Determinations by Category**  
**Historical Data-Based**  
*based on 17,438 total projected claims needing an initial award determination*

	Average Award	% of Claims	Estimated count of Future Claims	Estimated total Future Initial Awards
PI claims - Economic Loss awarded	\$641,500.51	16.86%	2,940	\$1,886,011,499.40
PI claims - Non-economic Loss only	\$119,853.79	77.62%	13,535	\$1,622,221,047.65
Deceased claims - Economic Loss awarded	\$744,952.26	4.50%	785	\$584,787,524.10
Deceased claims - Non-economic Loss only	\$353,245.96	1.02%	178	\$62,877,780.88
<b>TOTAL</b>	N/A	<b>100.00%</b>	<b>17,438</b>	<b>\$4,155,897,852.03</b>

As noted earlier, the first set of projections required by the Reauthorized Zadroga Act were published in the VCF’s March 2017 Annual Report. The projections in that report were based on two different modes of analysis – one historical data-based (data through December 31, 2016) and one trend-based – that yielded two set of estimates and projections of the characteristics of the future claimant pool. We took that approach because when we reviewed the historical data as of December 31, 2016, we quickly came to the realization that relying on historical data alone was insufficient to support a reasonable projection of future claim activity because of the significant changes in the program over the years, including the enactment of the reauthorization. Accordingly, where applicable, we identified trends evidenced in more recent data available at that time, including data accumulated between December 31, 2016, and the time the report was published in March 2017, and adjusted the estimates and projections derived from the historical data in an effort to provide what we believed would be a more realistic picture of future projected claim activity.

The trend-based estimates in that report assumed that the number of deceased claims<sup>6</sup> would increase beyond what the historical data demonstrated at the time for several reasons: (1) as a consequence of the passage of time as we get farther from the events of September 11 and claimants suffering from serious conditions succumb to those illnesses; (2) data provided by the WTC Health Program and other sources suggested that rates of serious illnesses, and particularly cancers, within the populations served by the Program and by the VCF were increasing; and (3) some of the most serious health conditions potentially associated with environmental exposure to toxins at the WTC site have long latency periods before the diseases begin to manifest (mesothelioma, for example, tied to asbestos exposure, has a latency period of 15 to 20 years). Based on these reasons, the trend-based estimates in the March 2017 report assumed that deceased claims would account for 6.5% of overall claim filings by December 2020.

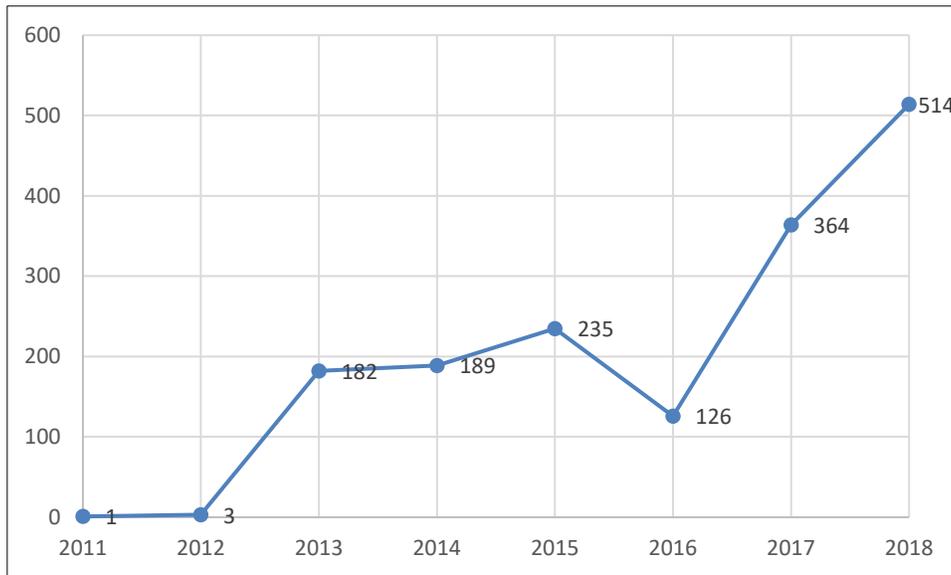
When preparing the projections to be published the following year (with data through December 31, 2017), we noted in the February 2018 report that the data at that time showed our trend-based analysis had proven true, and the February 2018 report therefore only included projections based on historical data. The historical data as of December 31, 2017, showed that the percentage of deceased claim determinations as a percentage of all claim determinations had increased significantly, from 0.48% to 3.06% – an increase of over 530%. Given the significant increase already shown by the data at that time, we did not adjust the percentages further, but did note that we would be keeping a close eye on this trend.

<sup>6</sup> As noted above, only those claims filed for a victim who died of causes related to an eligible 9/11 condition are properly categorized as deceased claims. The claim type is initially determined based on answers to claim form questions but it may change once the claim begins substantive review. A deceased claim may include an award both for personal injury losses (before death) and wrongful death losses (on account of death).



**Trend-Based Adjustment:** Over the past year, we have reported on the increase in awards issued on deceased claims, but we do not include statistics in our public reporting showing the number of deceased claims filed. In determining whether a trend-based adjustment was needed for these projections, we reviewed our data on deceased claim submissions and noted a significant increase in 2018 when compared to prior years. Figure 1 shows deceased claim form submissions each year since the VCF re-opened in 2011. It should be noted that in 2016, the VCF did not accept claims prior to August 1, 2016, when the new claim form became available post-reauthorization.

**Figure 1: Deceased Claim Form submissions by Year**



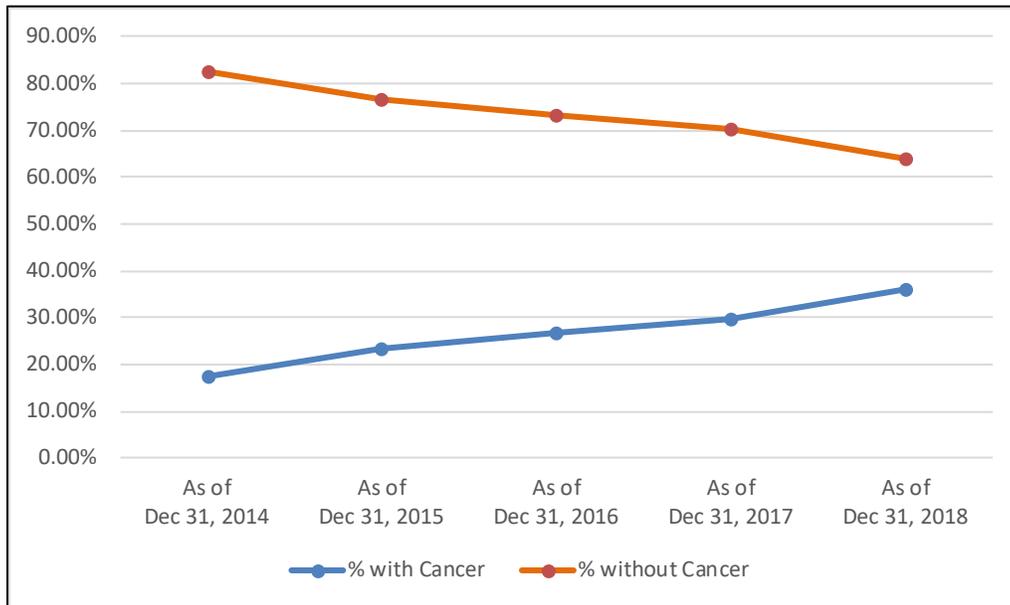
Although this figure clearly shows an increase in deceased claim filings, it does not include the number of deceased claims filed thus far in 2019. From January 1, 2019, to February 8, 2019 (six weeks), the VCF received 430 new deceased claims. When compared to the total number of claims submitted during the same timeframe, the deceased claims comprise 9.6% of claims filed.

In addition to the increase the VCF has seen in the submission of deceased claims and the percentage of overall award determinations issued for deceased claims, the WTC Health Program has seen a similar increase in the percentage of its members who have been certified for at least one cancer. Current WTC Health Program statistics through September 30, 2018, show that 10,078 living members are certified for at least once cancer, which is a 34.6% increase over last year (7,486 as of September 30, 2017). In addition, the WTC Health Program has identified 583 deceased members with at least one cancer certification, which is a 109% increase over last year's data (279 as of September 30, 2017).<sup>7</sup> Although the WTC Health Program does not provide data as to whether it was the cancer condition that caused the death, the marked increase in cancer certifications is mirrored in the VCF's data showing a marked increase in awards for claimants with cancer conditions, as shown in Figure 2 on the following page. This data further supports a trend-based adjustment to the VCF's estimation of future award amounts.

<sup>7</sup> <https://www.cdc.gov/wtc/atagance.html#memberZadroga>. It is important to note that VCF awards do not turn on the number of certifications. Thus, while WTC Health Program data shows that 52% of its members with certifications are certified for 3 or more conditions, *id.*, multiple certifications, even if, for example, for multiple cancers, do not appreciably increase a VCF award. Economic loss awards turn on a determination of occupational disability, not on the number of eligible conditions that might be disabling. Similarly, non-economic loss awards are based generally on the severity of the victim's condition(s) and the effect of the condition(s) on the victim's ability to maintain normal activities of daily living, not on the number of certified conditions.



**Figure 2: Percent of VCF Awards Issued for a Cancer Condition**



Lastly, when thinking about trends in deceased claim filings, we were reminded of the news articles that appear each year around the 9/11 anniversary and highlight a sad fact: the number of people who are dying from illnesses relating to the September 11 attacks is nearing the number of those who were killed on that day, and experts predict that the number of people dying from the toxic exposure to the World Trade Center debris and wreckage will exceed – by 2021 - the nearly 3,000 people who died on September 11th. Advocates for 9/11 victims estimate that someone dies of a 9/11-related illness an average of every 2.7 days. Given these statistics, we believe the percentage of deceased claims that will receive awards from the VCF before the program ends on December 18, 2020, will be much greater than any of our prior projections.

To calculate the trend-based percentage, we began with the assumption that 3,000 total individuals will die of a 9/11-related illness by December 18, 2020. This number was derived based on the fact that 2,977 individuals lost their lives on that day, and the statements made regarding the number who will die of the aftermath. We next subtracted the 685 deceased claims for which an initial award has already been issued as of January 31, 2019. This resulted in an estimated 2,315 deceased claims for which an award will need to be determined. To determine the estimated percent of overall initial awards that will be issued on deceased claims, we divided the 22,623 estimated count of claims still needing an initial award determination as calculated in our trend-based projections described in Step 3.a. by 2,315 to determine that 10.23% of initial awards issued at program end will be awards for deceased claims. We assume these awards will be evenly divided between claims for economic loss and those for non-economic loss only, and we adjusted the overall percentage distribution of claim type in Table 10 based on these assumptions.

Table 10 on the following page shows the estimated value of future initial awards by category, using the 22,623 total claims needing awards as calculated in the trend-based adjustments in Step 3.a., and percentage breakdown as described above. The award values used in the table are the same values used in the historical data-based estimates shown in Table 9 on page 35.



**Table 10: Estimated Value of Future Initial Award Determinations by Category**  
**Trend-Based Adjustment**  
*based on 22,623 total projected claims needing an initial award determination*

	Average Award	% of Claims	Estimated count of Future Claims	Estimated total Future Initial Awards
PI claims - Economic Loss awarded	\$641,500.51	13.47%	3,047	\$1,954,652,053.97
PI claims - Non-economic Loss only	\$119,853.79	76.25%	17,250	\$2,067,477,877.50
Deceased claims - Economic Loss awarded	\$744,952.26	5.15%	1,165	\$867,869,382.90
Deceased claims - Non-economic Loss only	\$353,245.96	5.13%	1,161	\$410,118,559.56
<b>TOTAL</b>	N/A	<b>100.00%</b>	<b>22,623</b>	<b>\$5,300,117,873.93</b>

**c. Estimated dollar value of future revised award determinations**

Our final input is the calculation of the number of amendments and appeals remaining to be decided that will result in an increased award and the estimated dollar value of those awards. To determine this number, we started by calculating the historical percentage of revisions that resulted in a \$0.00 increase using data from January 1, 2017, through January 31, 2019. This percentage, 39.23% (compared to 51.05% in our February 2018 report), was then applied to the count of remaining revisions to be filed (7,118 as calculated in Step 2) to determine that 2,792 claims will file an amendment or appeal but will not receive an award increase, leaving 4,326 amendments or appeals that will result in an award increase.

We then calculated the average award amount of revised decisions by category, using the same categories as shown in Table 10, with one change: for purposes of this table, as done in prior years, we collapsed the deceased economic and non-economic revised awards into one row because: (1) these claims rarely require amendments as all information needed to calculate the loss is generally available at the time the claim is initially filed; and (2) revisions in these claims will generally consist of determinations issued following a correction or an appeal, not efforts by the claimant to seek additional losses for new injuries. We based the average revised award amount on Group B revisions decided between August 1, 2016, through January 31, 2019, where an increase in the award was greater than \$0.00, as all future revised award determinations will be based on the Group B calculation methodology.

**Table 11: Estimated Value of Future Revised Award Determinations by Category**  
**Historical Data-Based**  
*based on 4,326 projected future revised awards as of FY2020*

	Average Revised Award Amount	% of Revisions	Estimated count of Future Revisions	Estimated Total Future Revised Awards
PI revisions - Economic Loss awarded	\$385,024.52	46.41%	2,008	\$773,129,236.16
PI revisions - Non-economic Loss only	\$69,997.76	51.48%	2,227	\$155,885,011.52
Deceased revisions	\$452,772.68 <sup>8</sup>	2.11%	91	\$41,202,313.88
<b>TOTAL</b>	N/A	<b>100.00%</b>	<b>4,326</b>	<b>\$970,216,561.56</b>

**Trend-Based Adjustment:** To calculate the trend-based adjustment for future revised awards, we applied the same percentage of \$0.00 revisions as the historical-based calculations, but applied it to the trend-based count of remaining revisions to be filed (9,153 as calculated in Step 2) to determine

<sup>8</sup> The Average Revised Award Amount for deceased claims represents economic loss awards only as there have not been any revised awards issued on these claims for non-economic loss only.



that 3,591 claims will file an amendment or appeal but will not receive an award increase, leaving 5,562 amendments or appeals that will result in an award increase. We also adjusted the percentage distribution of claim types we expect to see on amendment. The deluge of claims in the last four months was tilted significantly higher to non-economic loss only claims than has historically been the case, and we believe that some of these claims will be amended in the future to seek economic loss. To account for this expected shift in the categories of amendments, we increased the percentage of economic loss amendments by the 10% increase in original submissions for non-economic loss only claims through January 31, 2019, compared to historical data, and adjusted the Personal Injury categories accordingly.

Table 12 below shows the trend-based calculations.

**Table 12: Estimated Value of Future Revised Award Determinations by Category**  
**Trend-Based Adjustment**  
*based on 5,562 projected future revised awards as of FY2020*

	Average Revised Award Amount	% of Revisions	Estimated count of Future Revisions	Estimated Total Future Revised Awards
PI revisions - Economic Loss awarded	\$385,024.52	56.41%	3,138	\$1,208,206,943.76
PI revisions - Non-economic Loss only	\$69,997.76	41.48%	2,307	\$161,484,832.32
Deceased revisions	\$452,772.68	2.11%	117	\$52,974,403.56
<b>TOTAL</b>	<b>N/A</b>	<b>100.00%</b>	<b>5,562</b>	<b>\$1,422,666,179.64</b>

It should be noted that although we are using the historical average revised award amounts by category for the trend-based projections (the same amounts used in the historical-based calculations), we believe it is worth noting that we have seen an increase in the average award amount on revised claims. This is a direct result of the submission of economic loss amendments, which are higher value awards, on personal injury claims that were initially filed seeking non-economic loss only. As a result of this practice, the average amount of amended awards on personal injury claims is increasing. When compared to the historical-based projections published last year, this year's historical-based projections show an estimated total increase of over \$513 million in these awards. We did not make any additional changes to the trend-based projections to account for any change to the average award values, but will continue to monitor the impact of revised awards on award values overall.

**d. Calculate total estimated projected awards at the end of the VCF**

Using the outputs from the previous steps, our final calculation was to add the estimates for future initial and revised awards together with the total actual awards (initial and revised) issued as of January 31, 2019, to calculate the total projected dollar value of all awards at the VCF's program end.

Step 3-d: Total projected Awards at the end of the VCF Based on Total Awards (Initial and revised)			
	2019 Report - Historical Data-Based	2019 Report - Trend-Based Adjustment	2018 Report
Total Awards Issued as of January 31, 2019	\$4,937,683,725.91	\$4,937,683,725.91	\$3,331,949,029.10
Total projected Future Initial Awards	\$4,155,897,852.03	\$5,300,117,873.93	\$3,240,911,496.47
Total projected Future Revised Awards	\$970,216,561.56	\$1,422,666,179.64	\$458,652,738.88
<b>Estimated Total Value of all awards at Program end</b>	<b>\$10,063,798,139.50</b>	<b>\$11,660,467,779.48</b>	<b>\$7,031,513,264.45</b>



**Step 3 Output: Estimated total value of all awards at end of Program**  
**Based on Historical Data: \$10,063,798,139.50**  
**Trend-Based Adjustment: \$11,660,467,779.48**

**Step 4: Estimate total projected VCF administrative costs through December 2022.**

The total funding for the VCF covers both the awards paid to claimants and the administrative costs to operate the program. As a result, the total administrative costs must be estimated through the end of the program in order to calculate the total overall estimated expenditures when the program closes.

For purposes of these estimates, we assume the program will close on December 31, 2022, which equates to the first quarter of Government FY2023. This allows for time after the December 18, 2020, filing deadline for all claims to be processed and paid, including the influx of claims expected to be filed at the deadline, and for proper archiving of files and systems and activities required for program shut down.

**a. Historical administrative costs to date**

Our starting point for these estimates is the historical data for administrative costs each year since the VCF re-opened in October 2011. These costs are shown in Table 13 below. Costs incurred in Fiscal Years 2012 and 2013 are combined as was done in prior Annual Reports. The costs to date shown in Table 13 differ slightly from the costs reported in Section 8 of this report as those totals reflected expenditures through December 31, 2018, whereas the totals below are through September 30, 2018, which is the end of the most recent Government Fiscal Year.

**Table 13: Historical VCF Administrative Costs to Date\***

	<b>FY2012- FY2013</b>	<b>FY2014</b>	<b>FY2015</b>	<b>FY2016</b>	<b>FY2017</b>	<b>FY2018</b>
Total Costs	\$22.8 million	\$17.3 million	\$18.9 million	\$17.8 million	\$24.5 million	\$22.8 million
<b>TOTAL Administrative Costs to Date: \$124.1 million</b>						

\* Costs for prior years are subject to change as routine accounting and audit activities are conducted.

**b. Projected administrative costs through December 31, 2022**

Using this historical information, we considered the expected increase in future years, given the volume of claims to be processed, our anticipated staffing levels needed to process the claims to completion, and the changes that are planned for our internal claims processing system. We projected staffing needs to account for an increase in each year from FY2019 through a peak staffing level in FY2022, followed by a reduction in the first quarter of FY2023 as we complete all required shutdown activities.

A portion of our administrative costs are related to the development and ongoing maintenance of our claims management system, and we have projected increased costs in FY2019 for planned improvements to the system. These costs are then projected to decrease in later years as we shift to operations and maintenance activity only. Table 14 on the following page shows our estimated costs each year through the end of the program.



**Table 14: Projected Future VCF Administrative Costs**

	FY2019	FY2020	FY2021	FY2022	FY2023 (Q1 only)
Total Estimated Costs by Year	\$25.7 million	\$29.5 million	\$32.1 million	\$31.0 million	\$8.4 million
<b>TOTAL Projected Future Administrative Costs: \$126.7 million</b>					

Our final step in calculating the total administrative costs is to add the costs to date and projected costs as shown here:

Total Administrative Costs to Date:	\$124.1 million
Total Projected Administrative Costs	\$126.7 million
<b>TOTAL EXPENDITURES AS OF DECEMBER 31, 2022</b>	<b>\$250.8 million</b>

**Step 4 Output: Estimated total administrative costs as of December 31, 2022**  
**\$250.8 million**

**Step 5: Calculate total projected expenditures at end of program.**

The final step in our projections is to add the total estimated awards and the total projected administrative costs to calculate the expected total expenditures over the life of the program.

	2019 Report Historical Data-Based	2019 Report Trend-Based Adjustment	2018 Report Historical Data-Based
Total Estimated Awards – Initial and Revised	\$10,063,798,139.50	\$11,660,467,779.48	\$7,031,513,264.45
Total Projected Administrative Costs	\$250,800,000.00	\$250,800,000.00	\$263,800,000.00
<b>TOTAL EXPENDITURES AS OF DECEMBER 31, 2023</b>	<b>\$10,314,598,139.50</b>	<b>\$11,911,267,779.48</b>	<b>\$7,295,313,264.45</b>

**Step 5 Output: Estimated total expenditures as of December 31, 2022,**  
**Based on Historical Data: \$10,314,598,139.50**  
**Trend-Based Adjustment: \$11,911,267,779.48**

**10. Notice of Inquiry and Determination of Funding Insufficiency**

As mentioned briefly in the Introduction of this report, on October 3, 2018, the VCF published in the Federal Register a Notice of Inquiry as part of the Special Master’s statutory obligation to periodically reassess the VCF’s policies and procedures for two purposes: to make sure that (1) we prioritize claims for individuals who suffer from the most debilitating physical conditions, and; (2) we do not exceed the \$7.375 billion in funds appropriated to the VCF. The publication was prompted by an August 2018 projections analysis, following the same historical-data based methodology detailed in Section 9, which suggested the possibility that, following current policies and procedures, the VCF might exceed its available funding prior to the designated program end on December 18, 2020. The Notice of Inquiry was an effort to inform the community of this possibility and obtain public input from those most affected – the 9/11 community, as well as other interested parties – as to how the



remaining funds might be allocated, with priority given to those claimants with the most debilitating conditions.

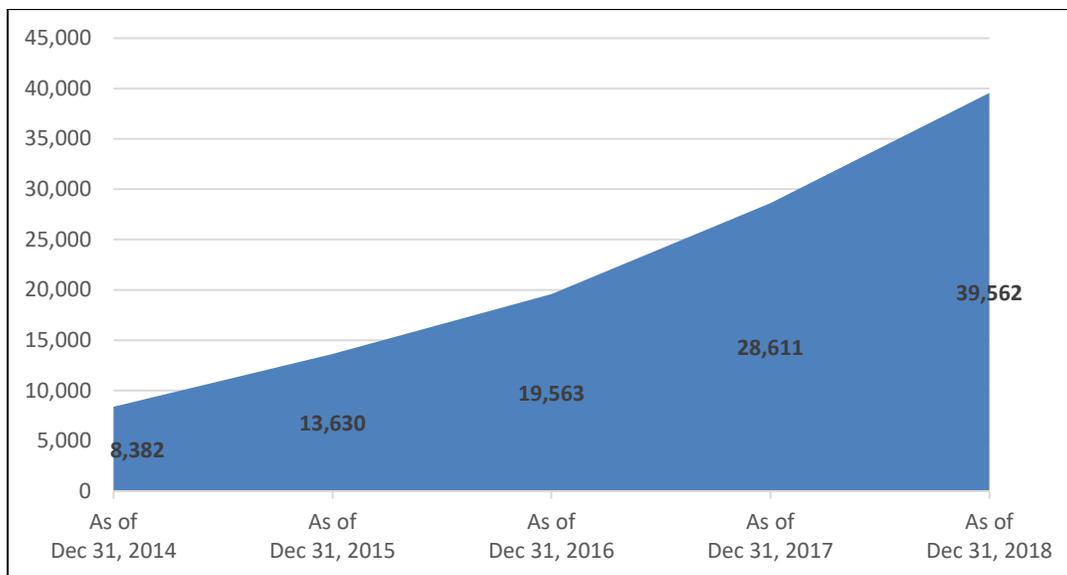
### **Response to Submitted Comments**

The VCF received 28 comments in response to the publication of the Notice of Inquiry, including 23 comments from individuals and 5 comments from entities (e.g., law firms and advocacy organizations). I am grateful to those of you who took the time to consider the questions and submit thoughtful responses; these were critical to our assessment of the best approach moving forward. A thorough summary of the comments submitted, as well as the VCF's response, is provided in Appendix A.

### **Determination of Insufficiency**

As discussed in Section 9, the projections analysis conducted with data as of January 31, 2019, reflects a significant increase in the number of VCF claim filings, particularly in the last four months, coupled with a nearly 235% increase in deceased claims (i.e., claims filed on behalf of individuals who passed away as a result of the 9/11-related physical health conditions) since the reauthorization in December 2015. To underscore the extent of the impact of this increase in claim filings, it is worth noting that in the first **five** years of the Fund, through December 31, 2016, 19,563 compensation forms<sup>9</sup> were filed. In the **two** years since then, through December 31, 2018, 19,999 additional compensation forms have been filed. And in the course of compiling this report, 4,841 additional compensation forms were filed in January 2019 alone. In other words, through January 31, 2019, 44,403 compensation forms have been filed since the inception of the program. Figure 3 below is a graphic depiction of the increased compensation form filing volume since 2014 when the VCF began reporting on claim filings.

**Figure 3: Total Compensation Forms Submitted (Cumulative)**



<sup>9</sup> When publishing statistics, the VCF generally uses “Total Eligibility Claims” to reflect the number of claim forms that have been filed. The VCF equates “Eligibility Claims” to “claims filed” because submitting information regarding eligibility is a principle requirement of filing a claim and, thus, is an indicator of the number of claims that will require review. In this discussion, however, the focus is on “Compensation Claims” as that statistic provides the count of claims that will need an award determination. Note that, prior to August 1, 2016, claimants were required to submit two separate forms – one for eligibility and one for compensation; since that date, however, the VCF has streamlined its claim form and one submission now encompasses both eligibility and compensation.



While the VCF has rendered more than 21,000 initial award determinations as of January 31, 2019, almost 17,000 original claims remain to be decided, and amendments on decisions already rendered and on claims pending decisions continue to be filed.<sup>10</sup> As of the date of publication of this report, \$5 billion of the appropriated amount has been awarded, so that, accounting for the need to reserve a certain amount of funding for administrative costs, just over \$2 billion remains, with two years and many more claims to go.

There is no doubt that the dramatic increase in VCF claim filings over the last four months was due, in part, to the publication of the VCF's Notice of Inquiry in October 2018, which likely prompted many individuals – who may have otherwise waited to submit their claims – to file them now. But the increase in VCF claim filings in 2018 was also due to a number of other factors, most notably the increased rates of serious illnesses suffered by members of the 9/11 community, the increasing number of deaths that can be attributed to 9/11 exposure, and the continued and important outreach efforts of the VCF, the World Trade Center Health Program, the 9/11 advocacy community, and the attorneys who represent 9/11 claimants, all in an attempt to reach potential claimants who might have been affected by the events of 9/11 and their aftermath.

In light of these statistics and the projections analysis set forth above, pursuant to my statutory mandate, I have formally determined that the VCF's appropriated funding amount is insufficient to pay all pending claims, as well as all claims anticipated but not yet filed, at the same levels as we have under current policies. Accordingly, as the law requires, I am hereby adjusting VCF policies and procedures so as to ensure that the VCF does not expend funds beyond its appropriated limit of \$7.375 billion. To that end, the VCF must make significant reductions in awards.

In choosing how to go about this difficult task, I attempted to balance the VCF's two statutory directives – not exceeding the available appropriation and prioritizing the claims for claimants with the most debilitating conditions – against three main policy considerations: (1) ensuring that all claimants filing before the statutory deadline, December 18, 2020, will receive some compensation for their suffering (subject to applicable statutory offsets); (2) holding a reasonable amount of money in contingent reserve to insure against further unanticipated increases in claim filings, and to be able to make increased awards in appropriate cases where claimants are suffering from extraordinarily severe conditions; and (3) minimizing operational and administrative implementation challenges to avoid a delay or outright halt in claim determinations. Also considered were the operational and administrative challenges imposed by the proposed requirement included in legislation introduced in October 2018 (the 115th Congress's H.R. 7062 and S. 3591) that for any claims that are reduced on the basis of insufficient funding, the Special Master, in the year after any such legislation is enacted, must pay the claimant the difference between the amount the claimant would have been paid if sufficient funding was available at the time the award was determined and the amount the claimant was, in fact, paid.<sup>11</sup> The Department of Justice and the VCF also will work with the Administration and

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<sup>10</sup> The VCF has far exceeded the number of claims projected by the Congressional Budget Office as expected to be filed, see <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/s928ltr.pdf>. That projection, which was focused on cancer claims, estimated that of 35,000 potential claimants expected to be diagnosed with a 9/11-related cancer in the 2016 to 2025 period, somewhere between 2,500 and 10,000 individuals would file a VCF claim. But, as shown above in Tables 2, 4, and 5 (Section 5), the VCF has already found 8,091 people who claim cancer as one of their conditions to be eligible for compensation and has already compensated at least 6,822 of those claimants (an additional 1,773 amendments involving cancer claims have also been determined; some of these may be amendments claiming losses arising from new cancer diagnoses, while others are amendments seeking additional losses for cancers already compensated in the original award). And, as demonstrated in Figure 2 on page 37, the rate at which the VCF is making awards to claimants with cancer is increasing. Moreover, the CBO estimates assumed that most other individuals with compensable non-cancer conditions had already filed claims with the VCF, but this has not been reflected in fact. Instead, many claimants with non-cancer conditions, although long-ago diagnosed, have only recently submitted their completed compensation claims. At bottom, as the CBO noted in its 2015 letter, it could not "definitively predict future participation in the program, and this preliminary estimate includes a wide range of possible future claiming behavior.

<sup>11</sup> The draft bills provide that for any award "reduced on the basis of insufficient funding, the Special Master shall, in the first fiscal year following the date of enactment that sufficient funding becomes available under this title, pay to the claimant the



Congress to ensure every appropriate consideration is given to claims as soon as possible.

In making this decision, I was acutely aware of the fact that I had previously announced that reductions aimed at addressing any insufficiency of funds would be applied only to claims filed after the date of announcement, thus sparing any pending claim. The stark reality of the data, however, has regrettably rendered that intention unworkable under every possible option explored. Based on our projections, the funding that remains in the VCF is simply insufficient to continue to compensate any group of pending claims at the award rates under current policy. I am required by statute to prioritize the claimants with the most debilitating conditions and I feel strongly that I would not be fulfilling my responsibility as Special Master if I did not adopt policies that would ensure, at the end of the day, that every individual suffering from a physical health condition as a result of the events of September 11th received at least some measure of compensation from the Fund that was created to help them. I could not abide a plan that would leave some claimants uncompensated or that would fail to make any allowance for the claimants who suffer the most. While I sincerely believed in October 2018, when the Notice of Inquiry was published, that we could make changes only with respect to new claims filed after the effective date, the deluge of claims filed since October 3, 2018, when the Notice was published, and the data and projections we are looking at now no longer bear that out. Thus, I have no choice but to announce that all pending claims, regardless of when they were filed, will be subject to the reductions put in place to address the insufficiency of funds. As explained in the next section, those claims filed on or before February 1, 2019, will be subject to a lesser reduction than subsequently filed claims. I sincerely apologize to the 9/11 community for making a promise that I could not keep.

I recognize that this is unfair, and that many of the over 8,100 claimants who filed their claim forms in the four months since the publication of the Notice of Inquiry did so under the impression that they would be entirely unaffected by any change required due to a determination of insufficient funding. But, the very fact that over 8,100 individuals filed claims in just the last four months has made that prospect untenable. As depicted in Figure 4 on the following page, the over 8,100 new claims the VCF has received in the *four months* since the publication of the Notice of Inquiry is close to the number of claims the VCF would normally receive in one year. In addition, the volume of compensation forms filed in January 2019, over 4,800 forms, was nearly seven times the average monthly filing rate of approximately 700 claims in every month of the year before October 2018.

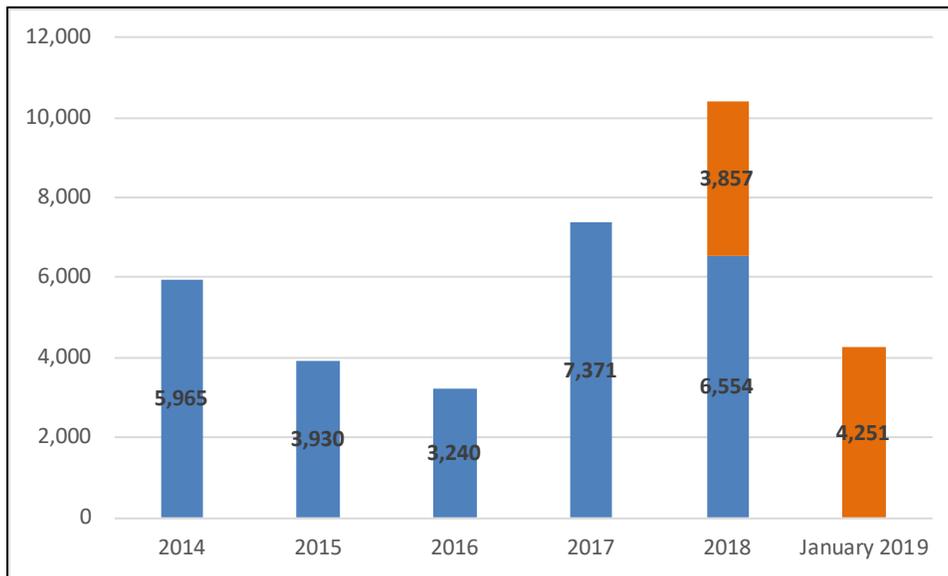
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amount that is, as determined by the Special Master, equal to the difference between – (I) the amount the claimant would have been paid under this title if sufficient funding was available to the Special Master at the time the Special Master determined the amount due to the claimant under this title; and (II) the amount the claimant was paid under this title.”

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**Figure 4: Total Claim Forms Submitted by Year (based on Eligibility Form submissions)**



Given these claim volumes, our evaluation of the types of loss claimed in the almost 20,000 pending claims and amendments, and the trend-based projections detailed above that suggest the eventual submission of another 28,185 claims and amendments that will require an award determination, we believe the plan that we are adopting, at least under current assumptions, meets both the requirements of the law and the other policy goals we identified as most important: adhering to the statutory mandate of prioritizing the claimants with the most debilitating conditions; compensating all claimants who file a claim by the statutory deadline of December 18, 2020 (subject to offsets); and implementing a plan that would not unduly delay claim determinations.<sup>12</sup>

***Reductions Required as a Result of Determination of Funding Insufficiency***

The reductions required in the face of my determination that the VCF’s existing funding is insufficient are not easy ones to make or to announce, as they will result in a significant decrease in all awards still to be issued. Were there any other viable solution, I can assure you that my team and I would have adopted it instead. Above all else, we are committed to helping the 9/11 community – we see you and hear from you and recognize your suffering every day – and it is devastating to have found ourselves in a position where our only choice is to reduce awards. But we are required to follow the law as it was written, and the law is very clear that, if I determine that the VCF’s funding is insufficient, I am required to make reductions to keep the VCF within the appropriated funding limits.

After thoroughly evaluating every potential available option, I agreed with the majority of the commenters who responded to the VCF’s Notice of Inquiry (see Appendix A) who concluded that the fairest way to implement the required reduction of awards is to do so across the board, applying a percentage reduction to all awards. I do believe, however, that it was important to make some allowance for the claimants who submitted their claim on or before February 1, 2019.

Thus, effective for any award on which the VCF makes a determination on or after February 25, 2019,

<sup>12</sup> To be clear, the VCF cannot guarantee that every filed claim will be compensated. That is dependent on a host of factors, not least of which is how many claims remain to be filed from a population that no study the VCF is aware of has been able to quantify with any degree of certainty. All the VCF can do is make projections based on the historical data available and our assessment of current trends, and update those projections as additional data comes in. As required by the law, I will continue to periodically reassess VCF policies and procedures to ensure that, even with the reductions adopted now, the VCF does not risk exceeding its appropriated funding, and will make additional changes if the data and projections suggest that we might need to do so again in the future.



if the claim or amendment was submitted for compensation review on or before February 1, 2019, or if the claim or amendment is approved for expedited review under our expedite process reserved for claimants facing a terminal illness or significant financial hardship, the calculated economic and non-economic loss amounts will be reduced by 50 percent. Offsets, i.e., amounts deducted from the award because they are benefits paid from another source for the same injury, are not subject to reduction, as the VCF is required by law to reduce awards by these amounts in full.

Effective for any award on which the VCF makes a determination on or after February 25, 2019, if the claim or amendment was submitted for compensation review on or after February 2, 2019, the calculated economic and non-economic loss amounts will be reduced by 70 percent. Again, offsets will not be reduced, meaning their full value will be deducted from the award as required by law.

Reduced award values will be communicated by letter, with the accompanying loss detail addendum showing the breakdown of the award, as is done under the VCF's current process. The VCF will not communicate the calculated values of the award before the reduction is applied.<sup>13</sup>

Appeal determinations made on or after February 25, 2019, for appeals filed on awards issued prior to February 25, 2019, will not be subject to percentage reductions, regardless of when the hearing is held. If changes are made to an award following an appeal on these claims, they will be made using the original, unreduced values and calculations.

The reductions made due to insufficient funding will require some attendant changes to VCF procedures, although we are making every effort to minimize these changes and to prevent any slowdown in award determinations as a result of implementation. We are continuing to devise implementation plans and will announce any process changes that affect claim filing or processing as soon as possible.

One process that clearly will be affected is the appeals process. Claimants will continue to have the right to appeal their compensation decisions so long as they do so within the required 30 days of receiving their award letter, consistent with our regulations. Eligibility appeals and appeals from compensation determinations involving economic loss will continue without change. For economic loss appeals, the loss detail addendum will include, as it currently does, the inputs used to calculate economic loss, including the earnings basis, the percentage of disability, and the start of loss date. Thus, while the VCF will not advise the claimant of the unreduced award value, the information necessary to pursue an appeal and seek recalculation of the reduced award remains available to the claimant and the appeal can be heard in the ordinary course.

For compensation appeals involving non-economic loss, the VCF is adopting a two-tiered structure in an effort to preserve the expenditure of resources for appeals for claimants with the most debilitating conditions. Thus, for non-economic loss appeals, the VCF will schedule only appeal hearings for claimants with the most severe conditions – e.g., cancer, interstitial lung diseases, sarcoidosis – so that the VCF can assess whether the limited funding held in contingent reserve for the most severe cases should be used to increase a reduced award. For claimants with less severe conditions, the VCF will defer any requested appeal hearing until after December 18, 2020, but will pay the reduced value award in the interim. These claims will move to payment as soon as the 30-day appeal window has closed, regardless of whether an appeal has been filed or not.

### ***Additional Policy Changes***

In addition to adopting the reductions due to insufficient funding to compensate all pending and projected claims, the VCF is also making several policy changes that I have determined constitute better, sounder policy. These changes are not made due to the determination of funding insufficiency, but are done in continuation of the VCF's long tradition of refining and clarifying our existing policies to make sure that the VCF is operating consistent with our guiding principles, i.e., in a manner that is fair

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<sup>13</sup> See the Anti-Deficiency Act, 31 U.S.C. 1341.



to claimants, consistent with law, and accountable to the taxpayers. These changes include:

- **Recalibrating Non-Economic Loss Awards.** In consultation with the medical professionals at NIOSH and in the World Trade Center Health Program’s Clinical Centers of Excellence, we are adjusting certain non-economic loss values to more accurately correspond to the medical reality, which is that very few non-cancer conditions are, by diagnosis alone, so severe that they should automatically qualify for the highest-available non-economic loss award of \$90,000. Thus, effective immediately, only interstitial lung disease (including asbestosis and pulmonary fibrosis), emphysema, and sarcoidosis will be treated as presumptively severe and awarded the highest level non-economic loss award without further documentation of severity. Similarly, the baseline non-economic loss award values for basal cell and squamous cell skin cancers are being lowered to \$90,000, consistent with the medical view that these conditions have relatively less severe effects on the activities of daily living, with higher awards reserved for those claimants who demonstrate that their condition is severe such that an increase in the award value is warranted (e.g., for recurrence, multiple procedures, or disfigurement resulting from treatment). We are also lowering the minimum non-economic loss value for the least severe conditions – Laryngitis, Nasopharyngitis, Pharyngitis, Rhinitis, Rhinosinusitis, and Sinusitis – to \$10,000. All other conditions will be awarded \$20,000 in non-economic loss, with very limited exceptions where there is demonstrated ongoing severity and significant detrimental effects on a claimant’s quality of life. For further information about how the VCF calculates non-economic loss, see the VCF [“Policies and Procedures”](#) document, which can be found under “Forms and Resources” on the VCF website.
- **Adjusting the Default Future Residual Earnings Assumption.** The default residual earnings assumption of \$23,818, which was set in 2012, is used to calculate a deduction from lost earnings awards when a claimant has been determined to be disabled for certain types of work from his or her 9/11-related eligible physical health conditions, but is not disabled from working completely. In such cases, the claimant retains a “residual earnings capacity,” that is, an ability to continue to earn income in some industry, profession, or capacity, even if not the one she or he was working in at the time of onset of his or her disability. The VCF calculates the claimant’s earnings loss using the income earned from his or her job prior to the onset of disability and subtracts the assumed income a claimant can continue to earn, which is known as “residual earnings.” Given the passage of time, we are adjusting the default residual earnings assumption to more closely mirror current value. Effective immediately, the VCF will adopt \$31,200 as the future annual residual earnings assumption (and also use it as an earnings basis where economic loss is indicated but no other earnings basis can be established from a claimant’s salary history). This is equal to New York City’s 2018 annual minimum wage rate for businesses with 11 or more employees. For further information about how the VCF calculates economic loss, including residual earnings assumptions, see the VCF [“Policies and Procedures”](#) document, which can be found under “Forms and Resources” on the VCF website.
- **Contingent Collateral Offsets.** It has been the VCF’s policy to calculate a future collateral offset only where payment of such benefit was not contingent on some future event. For example, because Social Security survivor benefits are contingent on a victim’s surviving spouse remaining unmarried, they would not be offset for the full period of loss, if at all. Effective immediately, offsets will be taken in full to the end of work life expectancy or other appropriate date, regardless of contingency. If and when a contingency comes to pass that terminates an offset benefit, if it occurs before December 18, 2020, the claimant may amend the claim. For further information about how the VCF treats collateral offsets, see the VCF [“Policies and Procedures”](#) document, which can be found under “Forms and Resources” on the VCF website.



- **Increased Medical Expenses Threshold.** The minimum threshold for reimbursement of out-of-pocket medical expenses is increased from \$2,000 to \$5,000. As is currently true, exceptions to this policy may be made in appropriate circumstances. For further information about how the VCF treats claims for reimbursement of medical expenses, see the VCF [“Policies and Procedures”](#) document, which can be found under “Forms and Resources” on the VCF website.

These policy changes, which, to repeat, are not made as a result my determination of funding insufficiency, but rather because they reflect sound policy choices and are consistent with the VCF’s guiding principles, are effective immediately.

## 11. Report Summary

While detailing a year of substantial success and great progress in the processing of claims and outreach to the 9/11 community, the publication of this report also marks a shift that will have a significant impact on many claimants going forward. I sincerely hope that the extremely hard work and dedication of the VCF team, and the tremendous progress we have made, will not get lost in the news of the determination of funding insufficiency and the needs for reduced awards. It is, in many ways, the successes we have had – in reducing the time it takes to award claims and therefore increasing the funds paid to claimants, and the greater awareness of the Fund by those who deserve to be part of it – that has highlighted the shortfall in funding perhaps earlier than might otherwise have been the case. That said, I remain steadfast that we will all continue into 2019 dedicated to serving the 9/11 community with fairness, transparency, and efficiency. I appreciate the opportunity to present this compilation of our year, and trust that it accurately represents the efforts of my extremely talented and dedicated team as a whole.

As we move forward, we recognize not only that there is much work that remains to be done, but that we will be working with claimants, families, and counsel who are facing reductions in awards due to the statutory requirement that I make policy adjustments in light of my determination of funding insufficiency. While it has always been true that no amount of money can compensate for the losses suffered by this community, the reductions to awards only makes that reality more stark. Nonetheless, it is my enduring pledge to the 9/11 community that in the coming year, I will do my level best to lead this team, working closely with our partners at the WTC Health Program and beyond, to ensure that we are doing everything possible to reach and support those whose lives were forever changed by the events of September 11, 2001, in the manner best consistent with the law and the guiding principles of the VCF.

## Appendix A: Summary of Comments Submitted in Response to Notice of Inquiry and VCF Responses

As noted above, the VCF, on October 3, 2018, published a Notice of Inquiry in the Federal Register. The VCF received comments in response to the publication of the Notice of Inquiry from 23 individuals and five entities (e.g., law firms and advocacy organizations). While twelve of these comments related to individual pending claims or to VCF policies and procedures unrelated to those specifically identified in the Notice of Inquiry and will not be addressed in this discussion,<sup>14</sup> the remainder of the comments, either generally or specifically, addressed the questions posed by the VCF and are itemized below, along with the VCF’s response:

**Topic 1: Non-Economic Loss** – *The VCF sought comments regarding the policies by which it calculates non-economic loss, which non-cancer conditions should be considered presumptively severe (which automatically warrant the highest-value non-economic loss award), whether any*

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<sup>14</sup> As always, we encourage claimants with questions about their pending claims to call the VCF Help Line, at 1-855-885-1555, for assistance.



*cancer conditions warranted lower awards, whether the baseline award level of \$20,000 should be decreased, and whether age should be a factor when assessing non-economic loss.*

- Two commenters indicated that non-economic loss values should not be changed and/or should be increased for severe conditions.
- Two commenters indicated that the VCF's list of presumptively severe conditions should not be changed, with one of these commenters noting that the list was established based on medical data regarding how a condition affects a person and daily living and that these conditions tend to change over time and as a person ages.
- Two commenters indicated that the Special Master should exercise discretion to raise awards beyond the statutory cap of \$90,000 for claimants with severe pulmonary conditions, including those that require lung transplants or that lead to death.
- One commenter noted that non-cancer claim awards should be re-evaluated and not automatically receive high-value awards. Similarly, one commenter indicated that Barrett's esophagus should not be included as a presumptively severe condition, and two commenters indicated that sleep apnea with demonstrated CPAP use should not automatically receive the highest award.
- Two commenters indicated that the non-economic loss values for basal cell carcinomas/non-melanoma skin cancer should be reduced, particularly where it is non-facial, or where there is only one occurrence and/or no scarring. One commenter indicated that the VCF already lowers awards for non-melanoma skin cancers and that no additional reductions to cancer awards should be made.
- Three commenters indicated that the VCF's \$20,000 baseline award should not be lowered, noting that these awards were already well below what was awarded in the first iteration of the VCF, which ran from 2001 to 2004, and in Group A, i.e., claimants who received award determinations dated on or before December 17, 2015. One of these commenters also noted that lowering awards below \$20,000 would result in more appeals and a further expenditure of resources. One commenter suggested reducing the \$20,000 baseline award to zero.
- Three commenters indicated that the VCF should consider lowering awards for older claimants, or consider age as a factor among others, as younger people would suffer over a longer period of time, although one of these commenters also noted that older people might feel the effects of a condition more than a younger one, and another of these commenters noted that if age is a factor, then claimants that were minors at the time of the September 11<sup>th</sup> attacks should receive even higher awards, as they will suffer even longer. Two commenters indicated that the VCF should not tie non-economic loss awards to age, noting the multiplicity of factors at play in assessing severity.

The VCF carefully considered the comments provided in response to the inquiry about the proper calculation of non-economic loss awards. In evaluating those comments, as well as updated and projections of anticipated claims yet to be filed, I determined that changes to the calculation of non-economic loss for some conditions but not others, alone or in combination with changes made to economic loss award calculations, would not be enough to cure the determination of funding insufficiency. The comments received in response to the Notice of Inquiry, as well our continued collaborative communications with the physicians at the WTC Health Program, did suggest, however, that certain policy changes to the VCF's non-economic loss awards were appropriate, and those changes are being adopted as part of a limited recalibration of non-economic loss awards as described in detail in Section 10 (non-economic loss awards for the condition of obstructive sleep apnea have already been clarified, as announced by the Special Master on [December 14, 2018](#)). The recalibration of non-economic loss awards, as described in Section 10, is being done because these changes are better policy decisions and consistent with the VCF's guiding principles, not because they are necessitated as a result of my determination of funding



insufficiency.

**Topic 2: Lost Earnings and Benefits** – *The VCF sought comments regarding the policies by which it calculates lost earnings and benefits, including whether there should be adjustments or limitations placed on lost earnings awards, whether awards should be adjusted to account for income received from other sources, how the VCF should treat claimants who left the workforce before they were determined to be disabled as a result of their eligible conditions, whether the VCF should consider pensions when determining whether a claimant is likely to work again following retirement from a first employer, and how the VCF should calculate the loss of employer-provided retirement benefits.*

- Five commenters indicated that no change should be made to the VCF’s method of calculating lost earnings. One of these commenters noted that claims for economic loss will decrease naturally over time as the VCF claimant population ages and has less remaining years of workforce participation.
- Four commenters indicated that the VCF should consider how long a claimant left the workforce before being determined to be disabled from eligible conditions as a factor in considering whether the claimant suffered economic loss attributable to his or her eligible conditions, but these commenters also noted that age and other factors could also play a role in establishing an intention to return to the workforce and that the VCF should consider the severity of the eligible conditions when determining loss even if the reason the claimant stopped working was an ineligible condition. Three of these commenters also indicated that the receipt of a pension from the claimant’s first employer should not preclude the VCF from finding a loss of income associated with a second, post-retirement, employer.
- One commenter indicated that unemployment compensation benefits should be considered when calculating a claimant’s annual income loss.

The VCF carefully considered the comments provided in response to the inquiry about the proper calculation of earnings loss and benefits. In evaluating those comments, as well as updated claims data and projections of anticipated claims yet to be filed, I determined that changes to the calculation of earnings loss and benefits, alone or in combination with changes made to non-economic loss award calculations, would not be enough to cure the determination of funding insufficiency. No changes are being made to the current policies by which the VCF calculates earnings loss and benefits at this time apart from the award reductions necessary to account for the insufficiency of funding as described in Section 10. The VCF will continue, as it does periodically, to recalibrate policies as necessary to ensure that it acts consistently with its statutory imperatives and its guiding principles.

**Topic 3: Disability Determinations** – *The VCF sought comments on the manner in which it determines the percentage of disability when assessing whether loss is attributable to eligible conditions as opposed to ineligible conditions, including how the VCF should treat multiple disability determinations, some eligible, some not, whether disability determinations should be assumed to be permanent, and how the VCF calculates residual earnings capacity for those victims determined to be only partially disabled.*

- Five commenters indicated that no change should be made to how the VCF determines the percentage of disability that should be attributed to an eligible condition, although there might be places where the VCF could “tinker” at the margins if needed to reduce awards. One of these commenters suggested that, in appropriate cases, the VCF could utilize an independent medical examiner to assess the impact of eligible conditions on a claimant’s ability to work.
- Two commenters indicated that the VCF should maintain a reasonable and mid-level unskilled earnings capacity for purposes of calculating future residual earnings (or for purposes of calculating earnings loss for claimants who are limited from working due to



their eligible conditions but for whom a reliable earnings basis cannot be established), with one of these commenters suggesting that it be set at the level at which the Social Security Administration compensated for lost earnings when it makes a disability determination (\$23,000 to \$30,000/year).

- Two commenters requested changes to the VCF's WTC Health Program Disability Evaluation process, noting that it is unfair to have a process where claimants are approved to enter, the claimant undergoes an evaluation, but then the VCF does not accept the evaluation's findings.

The VCF carefully considered the comments provided in response to the inquiry about the proper determination of the percentage of disability. In evaluating those comments, as well as the updated claims data and projections of anticipated claims yet to be filed, I determined that changes to the determination of the percentage of disability, alone or in combination with changes made to non-economic loss award calculations, would not be enough to cure the determination of funding insufficiency.

The VCF notes that it has always clarified that approval for the WTC Health Program Disability Evaluation process does not guarantee a lost earnings award. Evaluations conducted through the process will support a lost earnings award if the claimant suffered earning loss attributable to VCF-eligible conditions. But if the loss was suffered due to ineligible conditions or there was no economic loss, then a disability evaluation, by whomever conducted, cannot support an economic loss award. The VCF has recently tightened its criteria for approving claimants to enter the WTC Health Program Disability Evaluation process and is hopeful that these changes will mean that only claimants to whom the process might have a tangible benefit are approved.

In addition, the VCF agrees with the comment that it should adopt a reasonable and mid-level unskilled earnings capacity as the basis for future residual earnings capacity (or as an alternative earning basis where none can be established), and is making a change to update the outdated figure currently in use as a matter of policy as described in Section 10. No additional changes are being made to the VCF's policies for determining the percentage of disability at this time, apart from the award reductions necessary to account for the insufficiency of funding as described in Section 10. The VCF will continue, as it does periodically, to recalibrate policies as necessary to ensure that it acts consistently with its statutory imperatives and its guiding principles.

***Topic 4: Lost Earnings for Deceased Victims*** – *The VCF sought comments regarding how it calculates lost earnings for deceased victims, including how pre-death lost earnings should be calculated, how the VCF should account for deceased claimants who were not working prior to death, and how the VCF should approach presuming work life expectancies.*

- Five commenters indicated that no changes should be made to how the VCF calculates lost earnings for deceased victims.

The VCF carefully considered the comments provided in response to the inquiry about the proper treatment of lost earnings for deceased victims. In evaluating those comments, as well as updated claims data and projections of anticipated claims yet to be filed, I determined that changes to the treatment of lost earnings for deceased victims, alone or in combination with changes made to non-economic loss award calculations, would not be enough to cure the determination of funding insufficiency. No changes are being made to the VCF's policies on treatment of lost earnings for deceased victims at this time, apart from the award reductions necessary to account for the insufficiency of funding as described in Section 10. The VCF will continue, as it does periodically, to recalibrate policies as necessary to ensure that it acts consistently with its statutory imperatives and its guiding principles.

***Topic 5: Replacement Services Loss*** – *The VCF sought comments in its replacement services loss award policy, including whether replacement services loss should be considered only on*



*amendment, limited only to decedents, or awarded only when there is no earnings loss award, even in deceased claims.*

- One commenter indicated that replacement service loss compensation should be limited to claimants who face extraordinary circumstances and not awarded as a matter of course.
- Two commenters indicated that no change should be made to the VCF's replacement services loss calculation policies, while one commenter indicated that no change to current policies was needed but that the VCF should apply stricter scrutiny and a higher standard of proof to claims for replacement services loss.
- One commenter indicated that, as a matter of process, replacement services loss should be considered only on amendment. A second commenter indicated that considering replacement services loss only on an amendment would be a reasonable approach to delay the award of some funding pending consideration of the VCF's reauthorization by Congress. A third commenter indicated that replacement services loss should be considered only on amendment in personal injury claims, but should continue to be calculated as part of the original determination in wrongful death claims.

The VCF carefully considered the comments provided in response to the inquiry about the calculation of replacement services loss. In evaluating those comments, as well as updated claims data and projections of anticipated claims yet to be filed, I determined that changes to the treatment of replacement service loss, alone or in combination with changes made to non-economic loss award calculations, would not be enough to cure the determination of funding insufficiency. No changes are being made to the VCF's policies on replacement services loss at this time, apart from the award reductions necessary to account for the insufficiency of funding as described in Section 10. The VCF will continue, as it does periodically, to recalibrate policies as necessary to ensure that it acts consistently with its statutory imperatives and its guiding principles.

**Topic 6: Medical Expense Loss** – *The VCF sought comments on its medical expenses reimbursement policy including whether the minimum threshold for the reimbursement of out-of-pocket medical costs should be increased from the current \$2,000, whether certain categories of expenses should be excluded from reimbursement, and whether the VCF should add or remove any expenses from its list of presumptively covered expenses.*

- One commenter indicated that no change should be made to the VCF's current medical expenses reimbursement policy.
- Three commenters suggested increasing the minimum threshold for medical expenses claims from \$2,000 to \$5,000, with one of these commenters suggesting that, for non-cancer claims, it be raised to 10 percent of the value of the non-economic loss award. Two commenters suggested that the VCF consider raising the threshold to \$10,000.

The VCF carefully considered the comments provided in response to the inquiry about the reimbursement of out-of-pocket medical expenses. In evaluating those comments, as well as updated claims data and projections of anticipated claims yet to be filed, I determined that changes to medical expense reimbursement policy, alone or in combination with changes made to non-economic loss award calculations, would not be enough to cure the determination of funding insufficiency. As a matter of policy, the VCF agrees with the commenters who suggested raising the minimum threshold for reimbursement, and is making that change as discussed in further detail in Section 10. No additional changes are being made to the VCF's policies on medical expense reimbursement at this time. The VCF will continue, as it does periodically, to recalibrate policies as necessary to ensure that it acts consistently with its statutory imperatives and its guiding principles.



**Topic 7: Collateral Source Offsets** – The VCF sought comments on the deduction of collateral offsets as required by law, including how to treat changes to applicable offsets, and how to treat contingent offsets.

- Four commenters indicated that the VCF's collateral offsets policy was satisfactory and should not be changed.
- One commenter indicated that the contingency of collateral offsets (e.g., benefits that terminate on remarriage) should be offset at the level they are being paid when the determination is made, with no account taken of the potential contingency. One commenter indicated that the VCF should not penalize a spouse for getting remarried.
- Two commenters indicated that the VCF should adjust awards (including seeking reimbursement of paid funds) where collateral offsets were known to the claimant but not disclosed to the VCF before the award was paid, or where the collateral offset was disclosed after a determination is made but before the award is paid. One commenter indicated that the VCF current policy of requiring disclosure of additional collateral offsets within 90 days was adequate.
- One commenter indicated that the offset of lawsuit settlements was unfair where conditions worsen or become disabling.

The VCF carefully considered the comments provided in response to the inquiry about required collateral offsets. In evaluating those comments, as well as updated claims data and projections of anticipated claims yet to be filed, I determined that changes to the collateral offsets policy, alone or in combination with changes made to non-economic loss award calculations, would not be enough to cure the determination of funding insufficiency. As a matter of policy, the VCF agrees with the commenter who suggested that contingent collateral offsets should be deducted without regard to the contingency, and is making that change as discussed in further detail in Section 10. No additional changes are being made to the VCF's policies on collateral offsets at this time, apart from the award reductions necessary to account for the insufficiency of funding as described in Section 10. The VCF will continue, as it does periodically, to recalibrate policies as necessary to ensure that it acts consistently with its statutory imperatives and its guiding principles.

**Topic 8: Amendments Policy** – The VCF sought comments on its amendments policy, including whether the VCF should limit the filing of amendments.

- One commenter indicated that the VCF should adopt limitations on amendment, so that all documents and parts of the claim known to the claimant at the time the claim is filed are considered on the original claims and cannot be raised on amendment. This commenter suggested that only new conditions or losses would be proper for amendment, with the exception of expedited claims.
- Three commenters indicated that no change to the amendments policies were required.
- One commenter indicated that amendments should be filed when possible to eliminate delays he observed in the appeals/hearings process.
- Three commenters indicated that the VCF should provide further clarification regarding situations where an amendment will not have an effect on an award, so that needless amendments can be avoided.

The VCF carefully considered the comments provided in response to the inquiry about amendments. In evaluating those comments, as well as updated claims data and projections of anticipated claims yet to be filed, I determined that changes to the amendments policy, alone or in combination with changes made to award calculations, would not be enough to cure the determination of funding insufficiency. No changes are being made to the VCF's policies on amendments at this time, apart from changes supporting the award reductions necessary to



account for the insufficiency of funding as described in Section 10. The VCF will continue, as it does periodically, to recalibrate policies as necessary to ensure that it acts consistently with its statutory imperatives and its guiding principles.

**Topic 9: Other Issues/Considerations** – *The VCF sought comments on any other issue or consideration that the VCF should consider when evaluating changes to its policies and procedures in order to address the goals of preserving funds and ensuring that funding is prioritized for claimants with the most debilitating conditions.*

- Three commenters indicated that any reduction in awards should be done across the board, and proportional for all claims, all illnesses, and all circumstances, and not dependent on the “happenstance” of date of diagnosis, date of claim filing, or date of claim determination.

As discussed more fully in Section 10, the VCF ultimately agreed with the suggestion that reductions made due to insufficiency of funds should be made across the board, as a percentage reduction. These reductions are discussed more fully in Section 10.

- Three commenters indicated that the VCF should not change policies or procedures in response to an insufficiency of funding but, rather, should seek additional funding so that all claimant can receive compensation under the current policies, which at least [two] commenters noted had already resulted in lower awards (due to changes to the law made in the VCF Reauthorization Act of 2015) than for claimants who were compensated in Group A.

The VCF can only award the funds that are appropriated to it by Congress. Current law caps that appropriation at \$7.375 billion.

- One commenter noted that eliminating duplicate correspondence sent to both a claimant and his or her attorney would reduce administrative costs.

The VCF’s administrative costs, when projected through the end of the VCF’s operation, currently anticipated to the first quarter of Fiscal Year 2023, following the program’s end in December 2020, are very low, constituting less than three percent of its total appropriated funding. As described elsewhere in this report, I am acutely conscious that every dollar spent on administrative costs is a dollar that is not available for claimant awards. Thus, we make every effort to balance the desire to minimize administrative costs against the reality that certain levels of staffing and operational support are needed to prevent delays in claims processing. The letter policy noted by this commenter was adopted in response to concerns articulated to the VCF that information contained in letters sent only to the claimant or to his or her attorney was not being timely or properly communicated to the party that did not receive the letter, which led to delays in responsiveness and, in turn, claim processing.

The VCF thanks everyone for their thoughtful commentary and their participation in the Notice of Inquiry process.