

117TH CONGRESS
1ST SESSION

H. R. 98

To provide for the establishment of a COVID–19 Compensation Fund to compensate claimants for harms resulting from suffering from COVID–19, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2021

Mr. ESPAILLAT introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for the establishment of a COVID–19 Compensation Fund to compensate claimants for harms resulting from suffering from COVID–19, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “COVID–19 Victims
5 Compensation Fund Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act, the following definitions apply:

1 (1) CLAIMANT.—The term “claimant” means
2 an individual filing a claim for compensation under
3 this Act.

4 (2) COLLATERAL SOURCE.—The term “collat-
5 eral source” means all compensation other than
6 compensation under this Act, including life insur-
7 ance, pension funds, death benefit programs, and
8 payments by Federal, State, local, Tribal, or terri-
9 torial governments.

10 (3) ECONOMIC LOSS.—The term “economic
11 loss” means any pecuniary loss (including the loss of
12 earnings or other benefits related to employment,
13 medical expense loss, replacement services loss, loss
14 due to death, burial costs, and loss of business or
15 employment opportunities) resulting from harm due
16 to COVID–19 to the extent recovery for such loss is
17 allowed under applicable Federal, State, local, Trib-
18 al, or territorial law.

19 (4) NONECONOMIC LOSSES.—The term “non-
20 economic losses” means losses for physical and emo-
21 tional pain, suffering, inconvenience, physical im-
22 pairment, mental anguish, disfigurement, loss of en-
23 joyment of life, loss of society and companionship,
24 loss of consortium (other than loss of domestic serv-

1 ice), hedonic damages, injury to reputation, and all
2 other nonpecuniary losses of any kind or nature.

3 (5) SPECIAL MASTER.—The term “Special Mas-
4 ter” means the Special Master appointed by the Sec-
5 retary under section 3.

6 (6) PLACE OF RESIDENCE.—The term “place of
7 residence” means the physical location or locations
8 at which the claimant resided or was residing during
9 the eligibility period.

10 (7) ELIGIBILITY PERIOD.—The term “eligibility
11 period” means any time during which any Federal,
12 State, Tribal, territorial, or local COVID–19 related
13 emergency order or declaration (or equivalent) is or
14 was in effect.

15 **SEC. 3. ADMINISTRATION.**

16 (a) IN GENERAL.—The Secretary of Health and
17 Human Services, acting through a Special Master ap-
18 pointed by the Secretary, shall—

19 (1) administer the compensation program es-
20 tablished under this Act;

21 (2) promulgate all procedural and substantive
22 rules for the administration of this Act; and

23 (3) employ and supervise hearing officers and
24 other administrative personnel to perform the duties
25 of the Special Master under this Act.

1 (b) APPOINTMENT OF SPECIAL MASTER AND DEP-
2 UTY SPECIAL MASTERS.—The Secretary may appoint a
3 Special Master and no more than two Deputy Special
4 Masters without regard to the provisions of title 5, United
5 States Code, governing appointments in the competitive
6 service. Any such employee shall serve at the pleasure of
7 the Secretary. The Secretary shall fix the annual salary
8 of the Special Master and the Deputy Special Masters.

9 (c) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated such sums as may be
11 necessary to pay the administrative and support costs for
12 the Special Master in carrying out this Act.

13 **SEC. 4. DETERMINATION OF ELIGIBILITY FOR COMPENSA-**
14 **TION.**

15 (a) FILING OF CLAIM.—

16 (1) IN GENERAL.—A claimant may file a claim
17 for compensation under this Act with the Special
18 Master. The claim shall be on the form developed
19 under paragraph (2) and shall state the factual basis
20 for eligibility for compensation and the amount of
21 compensation sought.

22 (2) CLAIM FORM.—

23 (A) IN GENERAL.—The Special Master
24 shall develop a claim form that claimants shall
25 use when submitting claims under paragraph

1 (1). The Special Master shall ensure that such
2 form can be filed electronically, if determined to
3 be practicable.

4 (B) CONTENTS.—The form developed
5 under subparagraph (A) shall request—

6 (i) information from the claimant con-
7 cerning the harm that the claimant suf-
8 fered as a result of COVID–19, or in the
9 case of a claim filed on behalf of a dece-
10 dent, information confirming the dece-
11 dent’s death, as a result of COVID–19;

12 (ii) information from the claimant
13 concerning any possible economic and non-
14 economic losses that the claimant suffered
15 as a result of COVID–19 or that was
16 caused by the death of the decedent from
17 COVID–19; and

18 (iii) information regarding collateral
19 sources of compensation the claimant has
20 received or is entitled to receive as a result
21 of COVID–19.

22 (3) LIMITATION.—No claim may be filed under
23 paragraph (1) after the date that is 5 years after
24 the end of the eligibility period.

25 (b) REVIEW AND DETERMINATION.—

1 (1) REVIEW.—The Special Master shall review
2 a claim submitted under subsection (a) and deter-
3 mine—

4 (A) whether the claimant is an eligible in-
5 dividual under subsection (c); and

6 (B) with respect to a claimant determined
7 to be an eligible individual—

8 (i) the extent of the harm to the
9 claimant, including any economic and non-
10 economic losses; and

11 (ii) subject to paragraph (7), the
12 amount of compensation to which the
13 claimant is entitled based on the harm to
14 the claimant, the facts of the claim, and
15 the individual circumstances of the claim-
16 ant.

17 (2) NEGLIGENCE.—With respect to a claimant,
18 the Special Master shall not consider negligence or
19 any other theory of liability.

20 (3) DETERMINATION.—A determination under
21 this subsection shall be final and not subject to judi-
22 cial review.

23 (4) RIGHTS OF CLAIMANT.—A claimant in a re-
24 view under paragraph (1) shall have—

1 (A) the right to be represented by an at-
2 torney or other representative;

3 (B) the right to present evidence, including
4 the presentation of witnesses and documents;
5 and

6 (C) any other due process rights deter-
7 mined appropriate by the Special Master.

8 (5) NO PUNITIVE DAMAGES.—The Special Mas-
9 ter may not include amounts for punitive damages
10 in any compensation paid under a claim under this
11 Act.

12 (6) COLLATERAL COMPENSATION.—The Special
13 Master shall reduce the amount of compensation de-
14 termined under paragraph (1) by the amount of the
15 collateral source compensation the claimant has re-
16 ceived or is entitled to receive as a result of the
17 claimant suffering from COVID–19.

18 (7) LIMITATIONS ON CLAIMS.—Noneconomic
19 losses shall not exceed such limit as the Special Mas-
20 ter may impose.

21 (c) ELIGIBILITY.—

22 (1) IN GENERAL.—A claimant or decedent shall
23 be determined to be an eligible individual for pur-
24 poses of this subsection if the Special Master deter-
25 mines that such claimant or decedent—

1 (A)(i) was permanently residing in the
2 United States, without regard to whether the
3 claimant or decedent had any lawful status
4 under the immigration laws (as such terms are
5 defined in section 101 of the Immigration and
6 Nationality Act (8 U.S.C. 1101)), during all or
7 a portion of the eligibility period; or

8 (ii) was present in the United States dur-
9 ing all or a portion of the eligibility period and
10 a family member of an individual so residing;

11 (B) expressed symptoms consistent with
12 COVID-19, including those with laboratory
13 confirmations or diagnosis by a health care pro-
14 vider, or for whom there is or was an absence
15 of an alternate diagnosis that explains claim-
16 ant's or decedent's symptoms;

17 (C) suffered economic loss; and

18 (D) meets the requirements of paragraph
19 (2).

20 (2) SINGLE CLAIM.—Not more than one claim
21 may be submitted under this Act by an individual or
22 on behalf of a deceased individual. If the claimant
23 dies during the pendency of a claim, the decedent's
24 family or other individual representing the decedent

1 may continue the claimant's claim with added ex-
2 penses related to the claimant's death, as needed.

3 **SEC. 5. ASSISTANCE TO CLAIMANTS.**

4 The Special Master will establish an office to provide
5 assistance to all claimants in submitting claims.

6 **SEC. 6. PAYMENTS TO ELIGIBLE INDIVIDUALS.**

7 (a) IN GENERAL.—Subject to the limitations under
8 subsection (d), not later than 20 days after the date on
9 which a determination is made by the Special Master re-
10 regarding the amount of compensation due a claimant under
11 this Act, the Special Master shall authorize payment to
12 such claimant of the amount determined with respect to
13 the claimant.

14 (b) FUNDING.—

15 (1) IN GENERAL.—The Secretary is authorized
16 to accept such amounts as may be contributed by in-
17 dividuals, business concerns, or other entities to
18 carry out this Act, under such terms and conditions
19 as the Secretary may impose.

20 (2) USE OF SEPARATE ACCOUNT.—In making
21 payments under this section, amounts contained in
22 any account containing funds provided under para-
23 graph (1) shall be used prior to using appropriated
24 amounts.

1 (c) DEVELOPMENT OF AGENCY POLICIES AND PRO-
2 CEDURES.—Not later than 120 days after the date of en-
3 actment the Special Master shall develop agency policies
4 and procedures that meet the requirements including poli-
5 cies and procedures for presumptive award schedules, ad-
6 ministrative expenses, and related internal memoranda.

7 (d) ATTORNEY FEES.—The Special Master shall have
8 the sole discretion to determine reasonable compensation
9 for services rendered for attorney fees for services ren-
10 dered, if any.

11 **SEC. 7. REGULATIONS.**

12 Not later than 90 days after the date of enactment
13 of this Act, the Secretary, in consultation with the Special
14 Master, shall promulgate regulations to carry out this Act,
15 including regulations with respect to—

16 (1) forms to be used in submitting claims under
17 this Act;

18 (2) the information to be included in such
19 forms;

20 (3) procedures for hearing and the presentation
21 of evidence;

22 (4) procedures to assist an individual in filing
23 and pursuing claims under this Act; and

24 (5) other matters determined appropriate by
25 the Secretary.

1 **SEC. 8. RIGHT OF SUBROGATION.**

2 The United States shall have the right of subrogation
3 with respect to any claim paid by the United States, sub-
4 ject to the limitation described in this Act.

5 **SEC. 9. VICTIM COMPENSATION FUND.**

6 (a) IN GENERAL.—There is established in the Treas-
7 ury of the United States a fund to be known as the
8 “COVID–19 Compensation Fund”, consisting of amounts
9 deposited into such fund under subsection (b).

10 (b) AVAILABILITY OF FUNDS.—Amounts deposited
11 into the COVID–19 Compensation Fund shall be avail-
12 able, without further appropriation, to the Special Master
13 to provide compensation.

14 (c) TERMINATION.—The COVID–19 Compensation
15 Fund shall be permanently closed on the date that is 1
16 year after the Special Master determines that no addi-
17 tional claims may be filed.

18 **SEC. 10. APPROPRIATION.**

19 There is authorized to be appropriated for purposes
20 of carrying out this Act such sums as may be necessary
21 for fiscal year 2022 and each fiscal year thereafter
22 through fiscal year 2028, to remain available until ex-
23 pended.

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