



**MEMORANDUM**

November 23, 2010

**To:** Honorable Carolyn Maloney  
Attention: Elizabeth Darnall

**From:** Celinda Franco, Specialist in Crime Policy, 7-7360

**Subject:** **Comparison of the September 11<sup>th</sup> Victim Compensation Fund of 2001 and Title II of H.R. 847, the James Zadroga 9/11 Health and Compensation Act of 2010**

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This memorandum responds to your request for a side-by-side comparison of current law for the September 11<sup>th</sup> Victims Compensation Fund and the provisions of Title II of H.R. 847, the James Zadroga 9/11 Health and Compensation Act of 2010. The statutory provisions of the September 11<sup>th</sup> Victims Compensation Fund of 2001 are found at 49 U.S.C. §40101 note (P.L. 107-42, the Air Transportation Safety and System Stabilization Act). As you specified, the version of H.R. 847 used for this comparison is the version of the bill placed on the U.S. Senate Legislative Calendar on November 15, 2010.

**Table 1** provides the comparison of the provisions of the September 11<sup>th</sup> Victims Compensation Fund of 2001 in current law and the provisions of H.R. 847. Provisions of H.R. 847 that would add new sections that are not comparable to existing sections of current law are indicated in italicized text.

Please contact me if you have any additional questions regarding the September 11<sup>th</sup> Victims Compensation Fund of 2001 or Title II of H.R. 847.

**Table I. Side-By-Side Comparison of the Provisions of September 11<sup>th</sup> Victims Compensation Fund of 2001 and Title II of H.R. 847**

Section	Current Law	H.R. 847
Section 401. Short title.	'September 11 <sup>th</sup> Victim Compensation Fund of 2001'	No change.
Section 402. Definitions.	(1) Air carrier: a citizen of the United States undertaking, directly or indirectly, to provide air transportation and including employees and agents (persons engaged in the business of providing air transportation security and their affiliates) of such citizen.	No change.
	(2) Air transportation: foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.	No change.
	(3) Aircraft manufacturer: any entity that manufactured the aircraft or any parts or components of the aircraft involved in the terrorist-related aircraft crashes of September 11, 2001 (9/11), including employees and agents of that entity.	No change.
	(4) Airport sponsor: the owner or operator of an airport as defined under federal law at 49 U.S.C. § 40102.	No change.
	(5) Claimant: an individual filing a claim for compensation under section 405(a)(1) of this law.	No change.
	(6) Collateral source: all collateral sources, including life insurance, pension funds, death benefit programs, and payments from federal, state or local governments related to the terrorist-related aircraft crashes of 9/11.	<p>§ 201 amends Section 402(6) of the Air Transportation Safety and System Stabilization Act to include as a 'collateral source' any payments made related to debris removal at the World Trade Center (WTC), including under the WTC Health program, and payments made pursuant to the settlement of a civil action as provided in § 405(c)(3)(C)(iii), as amended by the bill.</p> <p>§ 201 amends Section 402 to add definitions of "contractor and subcontractor" and "debris removal."</p> <p>-Contractor and Subcontractor: any contractor or subcontractor (at any tier of a subcontracting relationship), including any general contractor, construction manager, prime contractor, consultant, or any parent, subsidiary, associated allied company, affiliated company, corporation, firm, organization, or joint venture thereof that participated in debris removal at any 9/11 crash site. Such term shall not include any entity, including the Port Authority of New York and</p>

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		<p>New Jersey, with a property interest in the WTC on September 11, 2001, whether fee simple, leasehold or easement, direct or indirect.</p> <p>-Debris Removal: the rescue and recovery efforts, removal of debris, cleanup, remediation, and response during the immediate aftermath of the terrorist-related aircraft crashes of September 11, 2001, at a 9/11 crash site.</p>
	(7) Economic loss: any pecuniary loss resulting from harm (including lost earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is permitted under applicable state law.	No change.
	(8) Eligible individual: an individual determined to be eligible for compensation under section 405(c) of this law.	No change.
	(9) Noneconomic losses: losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.	No change.
	(10) Special Master: the Special Master appointed by the Attorney General under section 404(a) of this law.	No change.
		<p>§ 201 amends Section 402 of the Air Transportation Safety and System Stabilization Act to add definitions for the terms “immediate aftermath” and “9/11 crash site.”</p> <p>-Immediate Aftermath: any period beginning with the terrorist-related aircraft crashes of September 11, 2001, and ending on August 30, 2002.</p> <p>-9/11 Crash Site: The term 9/11 crash site means—</p> <p>(A) the WTC site, Pentagon site, and Shanksville, Pennsylvania site;</p> <p>(B) the buildings or portions of buildings that were destroyed as a result of the terrorist related aircraft</p>

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		<p>crashes of September 11, 2001;</p> <p>(C) any area contiguous to a site of such crashes that the Special Master determines was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses (including the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured individuals); and</p> <p>(D) any area related to, or along, routes of debris removal, such as barges and Fresh Kills.</p>
Section 403. Purpose.	Provides compensation to any individual or relatives of an individual physically injured or killed as a result of the terrorist-related aircraft crashes of September 11, 2001.	No change.
Section 404. Administration.	(a) Requires the Attorney General to appoint a Special Master to administer the compensation program; promulgate all procedural and substantive rules for administering the program; and employ and supervise personnel administering the program.	No change.
	(b) Authorizes the appropriation of such sums as may be necessary to pay the administrative and support costs of carrying out the program.	No change.
Section 405. Determination of eligibility for compensation.	<p>Specifies the conditions of eligibility for compensation to include the following:</p> <p>(1) In general, claimants are required to file a claim for compensation on a form developed to include the factual basis for eligibility for compensation and the amount of compensation sought. (2) The Special Master is required to develop a form that requests information from the claimant or a decedent's claimant concerning (i) physical harm that the claimant suffered or confirmation of a decedent's death resulting from the terrorist-related crashes of 9/11; (ii) information from the claimant concerning possible economic and noneconomic losses suffered as a result of the crashes; and (iii) information regarding collateral sources of compensation that the claimant received or was eligible to receive.</p>	§ 202(a) amends Section 405(a)(2)(B) of the Air Transportation Safety and System Stabilization Act to require that the eligibility claim form for compensation benefits be amended to also request information from claimants or representatives of decedents, concerning physical harm or death resulting from debris removal related to the 9/11 aircraft crashes.

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	(3) Claims must be filed no later than 2 years after regulations are promulgated for the program.	§ 202(b) amends Section 405(a)(3) of the Air Transportation Safety and System Stabilization Act to provide a deadline of two years from the date on which the regulations are updated to reflect the provisions of this Act for claims related to physical harm or death from debris removal at the crash site; and extends the claim filing deadline through December 22, 2031.
Section 405(b) Review and determination.	<p>(b) Requires the Special Master to review claims submitted and determine whether the claimant is eligible; the extent of the harm to the claimant, including economic and noneconomic losses; and the amount of compensation the claimant is entitled to based on the harm to the claimant, the facts of the claim, and the individual circumstances of the claimant. Prohibits the Special Master from considering negligence or any other theory of liability. Requires the Special Master to complete a review, make a determination, and provide written notice to claimants no later than 120 days after the date on which the claim is filed.</p> <p>Claimants are provided the right to legal representation, the right to present evidence (witnesses or documents), and other due process rights the Special Master determines are appropriate. Compensation amounts can not include amounts for punitive damages. Requires the Special Master to reduce compensation amounts by the amount of collateral source compensation a claimant received or was entitled to receive as a result of the terrorist-related aircraft crashes of 9/11.</p>	No change.
Section 405(c). Eligibility.	(c) Requires the Special Master to determine an individual's eligibility on the basis of whether an individual was (1) present at the WTC, the Pentagon, or the site of the aircraft crash at Shanksville, PA at the time, or in the immediate aftermath, of the terrorist-related attacks of 9/11, and the individual suffered physical harm or death as a result of the air crash; or (2) was a member of the flight crew or a passenger of American Airlines flights 11 or 77 or United Airlines flights 93 or 175, except anyone determined to be a participant or conspirator in the crashes, or the personal representative of a decedent. No more than one claim may be submitted by an individual or	

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<p data-bbox="178 633 724 690"><i>Section 202(c). Requirements for filing claims during extended filing period.</i></p>	<p data-bbox="724 243 1333 267">personal representative of an deceased individual.</p> <p data-bbox="724 284 1333 617">Submission of a claim would constitute a waiver of the right to file a civil action, or be a party to an action, in federal or state court for damages sustained as a result of the terrorist-related aircraft crashes. The provision would not apply to civil action to recover collateral source obligations, or to civil action against any person who knowingly participated in any conspiracy to hijack any aircraft or commit any terrorist act. Individuals who are a party to a pending civil action are prohibited from submitting a claim for compensation unless they withdrew from such action within 90 days after the date on which regulations are promulgated.</p> <p data-bbox="724 633 1333 657">No similar provision.</p>	<p data-bbox="1333 633 1913 795">§ 202(c) amends Section 405(c)(3) of the Air Transportation Safety and System Stabilization Act to establish the timing requirements for claims filed during the extended filing period. Individuals or a representative for the deceased can file a claim during the following periods:</p> <ul data-bbox="1333 812 1913 1274" style="list-style-type: none"> <li data-bbox="1333 812 1913 1039">-in cases that the Special Master determines the individual knew, or reasonably should have known, that they had suffered physical harm at a 9/11 crash site or as a result of debris removal, and the individual knew or should have known before the original deadline for filing a claim, the deadline for filing would be up to two years after the date specified in the bill (90 days after enactment); and</li> <li data-bbox="1333 1055 1913 1274">-in cases that the Special Master determines the individual first knew, or reasonably should have known, on or after the date specified in the bill (90 days after enactment), the filing deadline is up to two years after the date the Special Master determines the individual first knew, or should have known, that they had suffered a harm from debris removal related to the 9/11 aircraft crashes.</li> </ul> <p data-bbox="1333 1291 1913 1347">Permits individuals to file a claim during the extended filing period only if:</p> <ul data-bbox="1333 1364 1913 1412" style="list-style-type: none"> <li data-bbox="1333 1364 1913 1412">-the individual was treated by a medical professional for suffering from a physical harm as described within a</li> </ul>

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<i>Section 202(d). Clarifying applicability to all 9/11 crash sites.</i>	No similar provision.	<p>reasonable time from the date of discovering the harm; and</p> <p>-the individual's physical harm is verified by contemporaneous medical records created by or at the direction of the medical professional who provided the medical care.</p> <p>§ 202(d) amends Section 405(c)(2)(A)(i) of the Air Transportation Safety and System Stabilization Act to clarify that claimants can include individuals who were present at any other 9/11 aircraft crash sites at the time, or in the immediate aftermath, of the 9/11 aircraft crashes.</p>
<i>Section. 202(e) Inclusion of physical harm resulting from debris removal.</i>	No similar provision.	<p>§ 202(e) amends Section 405(c)(2)(A)(ii) of the Air Transportation Safety and System Stabilization Act to expand eligibility requirements to include as claimants individuals who suffered physical harm resulting from debris removal.</p>
<i>Section 202(f). Limitations on civil actions.</i>	No similar provision.	<p>§ 202(f)(1) amends Section 405(c)(3)(C)(i) of the Air Transportation Safety and System Stabilization Act to require that individuals or personal representatives filing a claim for compensation related to 9/11 crash site debris removal waive their right to file a civil action or be party to such an action in any federal or state court for damages sustained as the result of the 9/11 terrorist attacks.</p> <p>§ 202(f)(2) amends Section 405(c)(3)(C)(ii) of the Air Transportation Safety and System Stabilization Act to require that individuals who are a party to a civil action are prohibited from submitting a claim during the basic extension period provided under the bill (two years after the date updated regulations are promulgated) unless they withdraw from such action within 90 days of the promulgation of updated regulations.</p> <p>§ 202(f)(3) amends Section 405(c)(3)(C) of the Air Transportation Safety and System Stabilization Act by adding a new subsection (iii) to provide that individuals who are a party to a civil action are prohibited from submitting a claim under the extended filing deadline provided under the bill (the period between the</p>

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		<p data-bbox="1348 250 1906 329">promulgation of updated regulations and December 22, 2031) unless they withdraw from such action within 90 days of the promulgation of updated regulations.</p> <p data-bbox="1348 347 1906 565">§ 202(f)(3) further amends Section 405(c)(3)(C) of the Air Transportation Safety and System Stabilization Act by adding a new subsection (iv) to provide that individuals who were a party to a civil action, withdrew from such an action in order to submit a claim for compensation, and were found ineligible, are permitted to reinstitute such action without prejudice during the 90-day period after their ineligibility determination.</p>
Section 406. Payments to individuals	Requires the Special Master to authorize payment to a claimant no later than 20 days after the date on which a determination of the amount of compensation due to an individual was made. Authorizes the AG to accept amounts contributed by individuals, businesses, or other entities for the program, and requires that these amounts be used before using federally appropriated amounts.	
<i>Section 205. Funding.</i>	No similar provision.	<p data-bbox="1348 797 1906 1015">§ 205 amends Section 406 of the Air Transportation Safety and System Stabilization Act to provide a limit on the total compensation payments provided under this title to \$8.4 billion. Of this amount, \$4.2 billion shall be available to pay claims during the ten-year period beginning on the date in which regulations are promulgated and \$4.2 billion shall be available to pay claims after this period.</p> <p data-bbox="1348 1032 1906 1414">During the one-year period beginning on the date in which the first payment for claims filed pursuant to the updated regulations is paid, requires the Special Master to examine the number and amount of such claims during this period and project the total number and amount of claims expected to be paid during the first 10-year period. If the Special Master determines that there will not be sufficient funds to pay such claims during the initial 10-year period, requires the Special Master to ratably reduce the amount of compensation due to claimants in a manner that ensures that all claimants who would have been determined to be entitled to a payment receive a payment, and the total amount of all such payments during the initial 10-year period does not</p>



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		<p>exceed the \$4.2 billion cap.</p> <p>For those claimants who have their payments reduced due to the cap, on or after the first day after the initial 10-year period, requires the Special Master to pay the claimants an amount that equals the difference between what they would have been paid if there had not been a 10-year cap on total compensation, and the amount the claimant was actually paid during the initial 10-year period.</p>
<p><i>Section 205. Attorney Fees.</i></p>	<p>No similar provision.</p>	<p>§ 205 also provides that notwithstanding any contract, this amendment would limit the amount a claimant's representative would be allowed to charge an individual for legal services rendered in connection to a claim. Attorney fees would be limited to not more than 10% of an award made for a claim filed under this title. However, if an individual was charged a legal fee in connection with a civil action that was commenced after December 22, 2003, and the release of all claims in such action was tendered prior to the date of enactment of this legislation (such as the proposed WTC Captive Insurance Company settlement), the claimant's representative may not charge any amount for compensation for services rendered in connection with a claim filed under this title. If the legal fee charged in connection with such a settled civil action is less than 10% of the aggregate amount of compensation awarded through such settlement and a claim filed under this title, then a claimant's representative may charge an amount for compensation for services rendered in connection with a claim under this title, as long as the amount charged is not more than 10% of such aggregate amount of the civil settlement and the Title II claim, minus the total amount of all legal fees charged for services rendered in connection with such a settlement.</p> <p>§ 205 further provides an exception for attorneys' fees related to claims made on behalf of individuals who filed a lawsuit in the Southern District of New York prior to January 1, 2009. In these cases, if a claimant's representative believes in good faith that the 10% limit will not provide adequate compensation for a substantial</p>

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		<p>amount of legal services already rendered on behalf of the claimant, the representative could apply to the Special Master for greater compensation. The Special Master is authorized to use his or her discretion to award an amount in excess of the 10% limit to provide reasonable compensation for legal services rendered. The amendment further provides that the Special Master's attorneys' fee awards will be final, binding, and non-appealable.</p>
<p>Section 407. Regulations.</p>	<p>Requires the AG, in consultation with the Special Master, to promulgate regulations for the program no later than 90 days after enactment, for (1) the forms to be used for submitting claims; (2) information to be included in such forms; (3) procedures for hearing and presenting evidence; (4) procedures to assist an individual in filing and pursuing claims under the program; and (5) other matters the AG determines appropriate.</p>	<p>§ 203 amends Section 407 of the Air Transportation Safety and System Stabilization Act by adding a new subsection (b) that requires the Special Master to update the regulations originally promulgated for the 9/11 Victims Compensation program to reflect the changes made by this Act within 90 days of enactment.</p>
<p>Section 408. Limitation on liability.</p>	<p>(a) Notwithstanding any other provision of law, limits the liability for all claims arising from the terrorist-related aircraft crashes of 9/11 to the limits of liability insurance coverage of air carrier, aircraft manufacturer, airport sponsor, or person with a property interest in the WTC, whether a claim is for compensatory or punitive damages or for contribution or indemnity. The liability limits do not apply to any person with a property interest in the WTC if the Attorney General determines, that the person willfully defaulted on a contractual obligation to rebuild, or assist in the rebuilding of the WTC.</p> <p>Limits the liability for all claims, whether for compensatory or punitive damages or for contribution or indemnity arising from the terrorist-related aircraft crashes of 9/11, against the City of New York to not more than the city's insurance coverage or \$350 million. Claimants seeking compensation under the program waive their right to file a civil action (or to be a party to an action) in any federal or state court for damages sustained as a result of the terrorist-related aircraft crashes of 9/11, including any such action against the City of New York. The claimant waiver would not, however, apply to a civil action to recover collateral source obligations.</p>	<p>No change.</p>

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	<p>(b) Establishes a federal cause of action for damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on 9/11. Notwithstanding 49 U.S.C. §40120(c), this cause of action is the exclusive remedy for damages arising out of the hijacking and subsequent crashes of such flights. Provides that decisions in such suits are to be derived from the law in states where the crash occurred, except if such law is inconsistent with or preempted by federal law. Provides that the U.S. District Court for the Southern District of New York shall have original and exclusive jurisdiction over all actions brought for any claim resulting from or relating to the terrorist-related aircraft crashes of September 11, 2001. Establishes nationwide subpoenas for witnesses at such trials or hearings, and establishes a rule of construction providing that nothing in this subsection is intended to diminish the authority of a court to quash or modify a subpoena under the Federal Rules of Civil Procedure.</p> <p>(c) Provides that nothing in this section shall limit any liability of any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act. Further provides that the limitation on liability and federal cause of action provided under this section of the law do not apply to civil actions to recover collateral source obligations.</p>	
<p><i>Section 204. Limited liability for certain claims.</i></p>	<p>No similar provision.</p>	<p>§ 204 amends Section 408(a) of the Air Transportation Safety and System Stabilization Act to provide liability limits for all claims and actions related to physical harm or death from debris removal, including those claims or actions previously resolved, currently pending, and that may be filed through December 22, 2031. These claims can include compensatory damages, contribution or indemnity, or any other form or type of relief arising from or related to debris removal filed against the City of New York any entity (including the Port Authority of New York and New Jersey), with a property interest in the WTC on September 11, 2001, and any contractors and subcontractors. The liability limits may not exceed the sum of the following, as applicable:</p>

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		<p>-(i) the amount of funds of the WTC Captive Insurance Company, including the cumulative interest;</p> <p>-(ii) the amount of all available insurance identified in schedule 2 of the WTC Captive Insurance Company's insurance policy;</p> <p>-(iii) as it relates to the limitation of liability of the City of New York, the amount that is the greater of the City of New York's insurance coverage or \$350 million. Any amounts related to funds or amounts of available insurance identified in schedule 2 of the WTC Captive Insurance Company shall not be included in determining the City's liability limits;</p> <p>-(iv) as it relates to the limitation of liability of any entity, including the Port Authority of New York and New Jersey, with a property interest in the WTC on September 11, 2001, the amount of all available liability insurance coverage maintained by any such entity; and</p> <p>-(v) as it relates to the limitation of liability of any individual contractor or subcontractor, the amount of all available liability insurance coverage maintained by such contractors or subcontractors on September 11, 2001.</p> <p>§ 204 establishes the priorities for payments awarded to plaintiffs of these claims or actions. Claim payments are to be made, until the funds of each payer are exhausted, in the following order, as may be applicable:</p> <ul style="list-style-type: none"> <li>-from funds in the WTC Captive Insurance Company or the WTC Captive Insurance Company's insurance policy;</li> <li>-from funds available through the City of New York's insurance coverage, the greater of the City of New York's insurance coverage or \$350 million;</li> <li>-from funds available through liability insurance coverage maintained by entities with a property interest in the WTC on September 11, 2001; and</li> <li>-from funds available through liability insurance coverage maintained by contractors and subcontractors on September 11, 2001.</li> </ul>

Section	Current Law	H.R. 847
		§ 204 provides that any party to a claim or action related to harms from debris removal may either file an action for a declaratory judgment for insurance coverage or bring a direct action against the insurance company involved.
Section 409. Right of subrogation.	Provides that the United States shall have the right of subrogation, with respect to any claim paid under the program, subject to the limitations provided in Section 408 (above).	No change.

**Source:** Congressional Research Service (CRS).