

117TH CONGRESS
1ST SESSION

S. 476

To provide for the establishment of a COVID–19 Compensation Fund, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2021

Ms. DUCKWORTH (for herself, Mr. BLUMENTHAL, Mr. MARKEY, Mr. MERKLEY, Mrs. GILLIBRAND, and Mr. KAINE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for the establishment of a COVID–19
Compensation Fund, 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 “Pandemic Heroes
5 Compensation Act of 2021”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act, the following definitions apply:

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

1 (2) COLLATERAL SOURCE.—The term “collat-
2 eral source” means all compensation other than
3 compensation under this Act, including life insur-
4 ance, pension funds, death benefit programs, and
5 payments by Federal, State, Territory, or local Gov-
6 ernments.

7 (3) COVID-19.—The term “COVID-19”
8 means novel coronavirus disease 2019, as identified
9 by the Centers for Disease Control and Prevention.

10 (4) 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 (5) ESSENTIAL WORKER.—The term “essential
20 worker” means any individual, employee, or con-
21 tractor working for a person, business, nonprofit en-
22 tity, or Federal, State, tribal, territorial or local gov-
23 ernment that is determined, during the response to
24 the COVID-19 pandemic, to be essential, based on
25 State, local, tribal, or territorial orders or declara-

tions (or equivalent), or Federal guidance published by the Cybersecurity and Infrastructure Security Agency (CISA), and who performed work outside their place of residence.

(6) NONECONOMIC LOSSES.—The term “non-economic losses” means 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.

(7) SPECIAL MASTER.—The term “Special Master” means the Special Master appointed by the Attorney General under section 3.

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

(9) ELIGIBILITY PERIOD.—The term “eligibility period” means any time during which any Federal, State, Tribal, territorial, or local COVID–19-related emergency order or declaration (or equivalent) is or was in effect, regardless of the claimant’s place of residence.

1 **SEC. 3. ADMINISTRATION.**

2 (a) IN GENERAL.—The Attorney General, acting
3 through a Special Master appointed by the Attorney Gen-
4 eral, shall—

5 (1) administer the compensation program es-
6 tablished under this Act;

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

9 (3) employ and supervise hearing officers and
10 other administrative personnel to perform the duties
11 of the Special Master under this Act.

12 (b) APPOINTMENT OF SPECIAL MASTER AND DEP-
13 UTY SPECIAL MASTERS.—The Attorney General may ap-
14 point a Special Master and no more than two Deputy Spe-
15 cial Masters without regard to the provisions of title 5,
16 United States Code, governing appointments in the com-
17 petitive service. Any such employee shall serve at the
18 pleasure of the Attorney General. The Attorney General
19 shall fix the annual salary of the Special Master and the
20 Deputy Special Masters.

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

1 **SEC. 4. DETERMINATION OF ELIGIBILITY FOR COMPENSA-**
2 **TION.**

3 (a) FILING OF CLAIM.—

4 (1) IN GENERAL.—A claimant may file a claim
5 for compensation under this Act with the Special
6 Master. The claim shall be on the form developed
7 under paragraph (2) and shall state the factual basis
8 for eligibility for compensation and the amount of
9 compensation sought.

10 (2) CLAIM FORM.—

11 (A) IN GENERAL.—The Special Master
12 shall develop a claim form that claimants shall
13 use when submitting claims under paragraph
14 (1). The Special Master shall ensure that such
15 form can be filed electronically, if determined to
16 be practicable.

17 (B) CONTENTS.—The form developed
18 under subparagraph (A) shall request—

19 (i) information from the claimant con-
20 cerning the harm that the claimant suf-
21 fered as a result of COVID–19, or in the
22 case of a claim filed on behalf of a dece-
23 dent, information confirming the dece-
24 dent’s death, as a result of COVID–19;

(ii) information establishing that the claimant or decedent was an essential worker;

(iii) information from the claimant concerning any possible economic and non-economic losses that the claimant suffered as a result of COVID-19 or that was caused by the death of the decedent from COVID-19; and

(iv) information regarding collateral sources of compensation the claimant has received or is entitled to receive as a result of COVID-19.

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

(b) REVIEW AND DETERMINATION.—

(1) REVIEW.—The Special Master shall review a claim submitted under subsection (a) and determine—

(A) whether the claimant is an eligible individual under subsection (c); and

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

1 (i) the extent of the harm to the
 2 claimant, including any economic and non-
 3 economic losses; and

4 (ii) subject to paragraph (7), the
 5 amount of compensation to which the
 6 claimant is entitled based on the harm to
 7 the claimant, the facts of the claim, and
 8 the individual circumstances of the claim-
 9 ant.

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

13 (3) DETERMINATION.—A determination under
 14 this subsection shall be final and not subject to judi-
 15 cial review.

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

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

20 (B) the right to present evidence, including
 21 the presentation of witnesses and documents;
 22 and

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

1 (5) NO PUNITIVE DAMAGES.—The Special Mas-
 2 ter may not include amounts for punitive damages
 3 in any compensation paid under a claim under this
 4 Act.

5 (6) COLLATERAL COMPENSATION.—The Special
 6 Master shall reduce the amount of compensation de-
 7 termined under paragraph (1) by the amount of the
 8 collateral source compensation the claimant has re-
 9 ceived or is entitled to receive as a result of the
 10 claimant suffering from COVID–19.

11 (7) LIMITATIONS ON CLAIMS.—Noneconomic
 12 losses shall not exceed such limit as the Special Mas-
 13 ter may impose.

14 (c) ELIGIBILITY.—

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

19 (A) was designated an essential worker
 20 during the eligibility period or was a family
 21 member of such an essential worker who re-
 22 sided with the essential worker during the eligi-
 23 bility period;

24 (B) expressed symptoms consistent with
 25 COVID–19, including those with laboratory

confirmations, diagnosis by a healthcare provider, or for whom there is or was an absence of an alternate diagnosis that explains claimant's or decedent's symptoms;

(C) suffered economic loss; and

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

(2) SINGLE CLAIM.—Not more than one claim may be submitted under this Act by an individual or on behalf of a deceased individual. If the claimant dies during the pendency of a claim, the decedent's family or other individual representing the decedent may continue the claimant's claim with added expenses related to the claimant's death, as needed.

SEC. 5. ASSISTANCE TO CLAIMANTS.

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

SEC. 6. PAYMENTS TO ELIGIBLE INDIVIDUALS.

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

1 (b) FUNDING.—

2 (1) IN GENERAL.—The Attorney General is au-
3 thorized to accept such amounts as may be contrib-
4 uted by individuals, business concerns, or other enti-
5 ties to carry out this Act, under such terms and con-
6 ditions as the Attorney General may impose.

7 (2) USE OF SEPARATE ACCOUNT.—In making
8 payments under this section, amounts contained in
9 any account containing funds provided under para-
10 graph (1) shall be used prior to using appropriated
11 amounts.

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

18 (d) ATTORNEY FEES.—The Special Master shall have
19 the sole discretion to determine reasonable compensation
20 for services rendered for attorney fees for services ren-
21 dered, if any.

22 **SEC. 7. REGULATIONS.**

23 Not later than 90 days after the date of enactment
24 of this Act, the Attorney General, in consultation with the

1 Special Master, shall promulgate regulations to carry out
2 this Act, including regulations with respect to—

3 (1) forms to be used in submitting claims under
4 this Act;

5 (2) the information to be included in such
6 forms;

7 (3) procedures for hearing and the presentation
8 of evidence;

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

11 (5) other matters determined appropriate by
12 the Attorney General.

13 **SEC. 8. RIGHT OF SUBROGATION.**

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

17 **SEC. 9. VICTIM COMPENSATION FUND.**

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

22 (b) AVAILABILITY OF FUNDS.—Amounts deposited
23 into the COVID–19 Compensation Fund shall be avail-
24 able, without further appropriation, to the Special Master
25 to provide compensation.

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

5 **SEC. 10. APPROPRIATION.**

6 There is authorized to be appropriated for purposes
7 of carrying out this Act such sums as may be necessary
8 for fiscal year 2021 and each fiscal year thereafter
9 through fiscal year 2026, to remain available until ex-
10 pended.

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