

107TH CONGRESS
1ST SESSION

S. 1624

To establish the Office of World Trade Center Attack Claims to pay claims for injury to businesses and property suffered as a result of the attack on the World Trade Center in New York City that occurred on September 11, 2001, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 1, 2001

Mrs. CLINTON (for herself and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To establish the Office of World Trade Center Attack Claims to pay claims for injury to businesses and property suffered as a result of the attack on the World Trade Center in New York City that occurred on September 11, 2001, 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 “World Trade Center
5 Attack Claims Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) AFFECTED AREA.—The term “affected
2 area” means the area in lower Manhattan, New
3 York City, that is comprised of—

4 (A) the area located south of Chambers
5 Street and west of Broadway; and

6 (B) the area located south of Worth Street
7 and east of Broadway.

8 (2) ATTACK.—The term “attack” means the at-
9 tack on the World Trade Center in New York City
10 that occurred on September 11, 2001.

11 (3) CLAIM.—The term “claim” means a claim
12 by an injured person under this Act for payment for
13 injury suffered by the injured person as a result of
14 the attack.

15 (4) CLAIMANT.—The term “claimant” means
16 an injured person that submits a claim under section
17 4(b).

18 (5) DIRECTOR.—The term “Director” means—

19 (A) the Director of the Federal Emergency
20 Management Agency; or

21 (B) if an Independent Claims Manager is
22 appointed under section 3(d)(4), the Inde-
23 pendent Claims Manager.

24 (6) INJURED PERSON.—

1 (A) IN GENERAL.—The term “injured per-
2 son” means an individual, corporation, partner-
3 ship, company, association, cooperative, joint
4 venture, limited liability company, estate, trust,
5 or nonprofit organization that—

6 (i) suffered injury as a result of the
7 attack; and

8 (ii) resides or maintains a place of
9 business in the affected area.

10 (B) EXCLUSIONS.—The term “injured per-
11 son” does not include—

12 (i) a lender that holds a mortgage on
13 or security interest in real or personal
14 property affected by the attack; or

15 (ii) a person that holds a lien on real
16 or personal property affected by the at-
17 tack.

18 (7) OFFICE.—The term “Office” means the Of-
19 fice of World Trade Center Attack Claims estab-
20 lished by section 3.

21 **SEC. 3. OFFICE OF WORLD TRADE CENTER ATTACK**
22 **CLAIMS.**

23 (a) IN GENERAL.—There is established within the
24 Federal Emergency Management Agency an office to be

1 known as the “Office of World Trade Center Attack
2 Claims”.

3 (b) PURPOSE.—The Office shall receive, process, and
4 pay claims in accordance with section 4.

5 (c) FUNDING.—The Office—

6 (1) shall be funded from funds made available
7 under this Act; and

8 (2) may reimburse any other Federal agency
9 for provision of assistance in the receipt and proc-
10 essing of claims.

11 (d) PERSONNEL.—

12 (1) IN GENERAL.—The Office may appoint and
13 fix the compensation of such temporary personnel as
14 are necessary to carry out the duties of the Office,
15 without regard to the provisions of title 5, United
16 States Code, governing appointments in the competi-
17 tive service.

18 (2) PERSONNEL FROM OTHER AGENCIES.—On
19 the request of the Director, the head of any other
20 Federal agency may detail, on a reimbursable basis,
21 any of the personnel of the agency to the Federal
22 Emergency Management Agency to assist the Office
23 in carrying out the duties of the Office under this
24 Act.

1 (3) EFFECT ON OTHER FEMA DUTIES.—The es-
2 tablishment of the Office shall not diminish the au-
3 thority of, or funding available to, the Director to
4 carry out the responsibilities of the Federal Emer-
5 gency Management Agency under the Robert T.
6 Stafford Disaster Relief and Emergency Assistance
7 Act (42 U.S.C. 5121 et seq.), including the timely
8 provision of disaster assistance to any area with re-
9 spect to which a major disaster or emergency is de-
10 clared by the President to exist during the period in
11 which the Director carries out this Act.

12 (4) APPOINTMENT OF INDEPENDENT CLAIMS
13 MANAGER.—The Director may appoint an Inde-
14 pendent Claims Manager to head the Office and to
15 assume the duties of the Director under this Act.

16 **SEC. 4. COMPENSATION FOR VICTIMS OF THE ATTACK.**

17 (a) IN GENERAL.—Each injured person shall be enti-
18 tled to receive from the United States compensation for
19 injury suffered by the injured person as a result of the
20 attack, as determined by the Director in accordance with
21 subsection (d).

22 (b) SUBMISSION OF CLAIMS.—

23 (1) IN GENERAL.—Not later than 2 years after
24 the date on which interim final regulations are pro-
25 mulgated under subsection (l), an injured person

1 may submit to the Director a written claim for pay-
2 ment of injury suffered by the injured person as a
3 result of the attack in accordance with such require-
4 ments as the Director determines to be appropriate.

5 (2) STATEMENT OF USE OF PAYMENT.—

6 (A) IN GENERAL.—Subject to subpara-
7 graph (B), an injured person shall include in a
8 written claim submitted under paragraph (1) a
9 statement of the purposes for which any pay-
10 ment on the claim will be used.

11 (B) AUTHORIZED USES.—An injured per-
12 son may use a payment on a claim only to con-
13 tinue, repair, replace, start, establish, or locate,
14 in New York City, a business or residence that
15 was located, before September 11, 2001, in the
16 affected area.

17 (c) INVESTIGATION OF CLAIMS.—The Director shall
18 investigate, adjust, grant, deny, or settle any claim sub-
19 mitted under subsection (b).

20 (d) AMOUNT OF PAYMENT.—

21 (1) IN GENERAL.—Any payment on a claim by
22 an injured person—

23 (A) shall be limited to the amount nec-
24 essary to compensate the injured person for in-
25 jury described in paragraph (2) suffered as a

1 result of the attack during the period beginning
2 on September 11, 2001, and ending on March
3 11, 2003;

4 (B) shall be subject to subsection
5 (e)(1)(C);

6 (C) shall not include—

7 (i) interest on the amount of the pay-
8 ment before the date of settlement or pay-
9 ment of a claim; or

10 (ii) punitive damages or any other
11 form of noncompensatory damages; and

12 (D) shall not exceed \$500,000, except in
13 the case of a claim for which the Director de-
14 termines that a greater amount is appropriate.

15 (2) TYPES OF INJURY.—

16 IN GENERAL.—Under paragraph (1), sub-
17 ject to subparagraph (B), an injured person
18 may receive payment for—

19 (i) an uninsured or underinsured
20 property loss;

21 (ii) damage to or destruction of phys-
22 ical infrastructure;

23 (iii) damage to or destruction of tan-
24 gible assets or inventory;

25 (iv) a business interruption loss;

- 1 (v) overhead costs;
2 (vi) employee wages for work not per-
3 formed;
4 (vii) an insurance deductible;
5 (viii) a temporary living or relocation
6 expense; and
7 (ix) debris removal and other cleanup
8 costs; and
9 (x) any other type of injury that the
10 Director determines to be appropriate.

11 (B) LIMITATION ON CERTAIN TYPES OF
12 BUSINESS LOSS.—An injured person may re-
13 ceive payment for a type of injury specified in
14 clause (iv), (v), or (vi) only if the injured person
15 has experienced, as a result of the attack, with
16 respect to a business facility of the person—

- 17 (i) disruption in power;
18 (ii) disruption in telecommunications
19 capacity;
20 (iii) damage to or destruction of phys-
21 ical infrastructure; or
22 (iv) disruption in physical access.

23 (3) BURDEN OF PROOF.—

1 (A) IN GENERAL.—Subject to subpara-
 2 graph (B), a claimant shall have the burden of
 3 demonstrating injury suffered by the claimant.

4 (B) ABSENCE OF DOCUMENTS.—If docu-
 5 mentary evidence substantiating injury is not
 6 reasonably available, the Director may pay a
 7 claim based on an affidavit or other documenta-
 8 tion executed by the claimant.

9 (4) APPLICABILITY OF STATE LAW.—Except as
 10 otherwise provided in this section, the law of the
 11 State of New York shall apply to the determination
 12 of injury under this subsection.

13 (e) PAYMENT OF CLAIMS.—

14 (1) DETERMINATION AND PAYMENT OF
 15 AMOUNT.—

16 (A) IN GENERAL.—Not later than 180
 17 days after the date on which a claim is sub-
 18 mitted under subsection (b), the Director
 19 shall—

20 (i) determine the amount, if any, to
 21 be paid for the claim; and

22 (ii) pay the amount.

23 (B) PARAMETERS OF DETERMINATION.—

24 In determining and paying a claim, the Director
 25 shall determine only—

1 (i) whether the claimant is an injured
2 person;

3 (ii) whether the injuries that are the
4 subject of the claim resulted from the at-
5 tack;

6 (iii) the amount, if any, to be paid
7 under this section; and

8 (iv) the person or persons entitled to
9 receive the amount.

10 (C) INSURANCE AND OTHER BENEFITS.—

11 (i) IN GENERAL.—Subject to clause
12 (ii), to prevent recovery by a claimant in
13 excess of the equivalent of actual compen-
14 satory damages in accordance with sub-
15 section (d), the Director, in determining
16 the amount of, and paying, a claim, shall
17 reduce the amount to be paid for the claim
18 by an amount that is equal to the sum of
19 the payments or settlements of any kind
20 that were paid, or will be paid, with re-
21 spect to the claim, including—

22 (I) payments on insurance poli-
23 cies;

24 (II) benefits under the public as-
25 sistance program, individual assist-

1 ance program, or other program of
2 the Federal Emergency Management
3 Agency or under a program of any
4 other Federal, State, or local agency;
5 and

6 (III) financial assistance provided
7 by a charitable or other nonprofit,
8 nongovernmental organization.

9 (ii) GOVERNMENT LOANS.—Clause (i)
10 shall not apply to the receipt by a claimant
11 of any Federal, State, or local government
12 loan that is required to be repaid by the
13 claimant.

14 (2) ADVANCE AND PARTIAL PAYMENTS.—

15 (A) IN GENERAL.—At the request of a
16 claimant, the Director may make 1 or more ad-
17 vance or partial payments before the final set-
18 tlement of a claim, including final settlement on
19 any portion of a claim that is determined to be
20 severable.

21 (B) JUDICIAL DECISION.—If a claimant re-
22 ceives a partial payment on a claim, but the Di-
23 rector denies any further payment on the claim,
24 the claimant may—

1 (i) seek judicial review under sub-
2 section (j); and

3 (ii) retain any partial payment that
4 the claimant received, unless the Director
5 determines that the claimant—

6 (I) was not eligible to receive the
7 partial payment; or

8 (II) fraudulently obtained the
9 partial payment.

10 (f) ACCEPTANCE OF PAYMENTS ON CLAIMS.—The
11 acceptance by a claimant of a payment on a claim under
12 this section, except an advance or partial payment under
13 subsection (e)(2), shall—

14 (1) be final and conclusive on the claimant with
15 respect to all claims arising out of or relating to the
16 same subject matter;

17 (2) subject to subsection (h), be final and con-
18 clusive on the United States; and

19 (3) include a certification by the claimant,
20 made under penalty of perjury and subject to section
21 1001 of title 18, United States Code, that the claim
22 of the claimant is true and correct.

23 (g) USE OF PAYMENTS ON CLAIMS.—An injured per-
24 son may use a payment on a claim only for the purposes
25 stated in the statement submitted under subsection (b)(2).

1 (h) RECOVERY OF FUNDS IMPROPERLY PAID OR
2 MISUSED.—The United States may recover any portion
3 of a payment on a claim that—

4 (1) was improperly paid to the claimant as a re-
5 sult of—

6 (A) fraud or misrepresentation on the part
7 of the claimant or a representative of the claim-
8 ant;

9 (B) a material mistake on the part of the
10 United States;

11 (C) the payment of benefits described in
12 subsection (e)(1)(C) that were not taken into
13 account in determining the amount of the pay-
14 ment; or

15 (D) the failure of the claimant to cooperate
16 in an audit; or

17 (2) is used by the claimant in violation of sub-
18 section (g).

19 (i) ARBITRATION.—

20 (1) IN GENERAL.—Not later than 45 days after
21 the date of enactment of this Act, the Director shall
22 establish by regulation procedures under which a
23 dispute concerning a claim may be settled by arbi-
24 tration.

1 (2) ARBITRATION AS REMEDY.—On establish-
2 ment of arbitration procedures under paragraph (1),
3 an injured person that submits a claim that is dis-
4 puted may elect to settle the claim through arbitra-
5 tion.

6 (3) BINDING EFFECT.—An election by an in-
7 jured person to settle a claim through arbitration
8 under this subsection shall—

9 (A) be binding; and

10 (B) preclude any exercise by the injured
11 person of the right to judicial review of a claim
12 under subsection (j).

13 (j) JUDICIAL REVIEW.—

14 (1) IN GENERAL.—A claimant aggrieved by a
15 final decision of the Director under this section may
16 bring, not later than 60 days after the date on which
17 the decision is issued, a civil action in the United
18 States District Court for the Southern District of
19 New York to modify or set aside the decision, in
20 whole or in part.

21 (2) RECORD.—The court shall hear a civil ac-
22 tion under paragraph (1) on the record made before
23 the Director.

24 (3) STANDARD OF REVIEW.—The court shall
25 uphold the decision of the Director if the decision is

1 supported by substantial evidence on the record as
2 a whole.

3 (k) ATTORNEY'S AND AGENT'S FEES.—

4 (1) IN GENERAL.—No attorney or agent, acting
5 alone or in combination with any other attorney or
6 agent, shall charge or accept, for services rendered
7 in connection with a claim, a fee in excess of 10 per-
8 cent of the amount of any payment on the claim.

9 (2) PENALTY FOR VIOLATION.—An attorney or
10 agent who violates paragraph (1) shall be subject to
11 a civil penalty of not more than \$10,000.

12 (l) REGULATIONS.—Notwithstanding any other pro-
13 vision of law, not later than 45 days after the date of en-
14 actment of this Act, the Director shall promulgate and
15 publish in the Federal Register interim final regulations
16 for the processing and payment of claims.

17 (m) PUBLIC INFORMATION.—

18 (1) IN GENERAL.—At the time of publication of
19 interim final regulations under subsection (l), the
20 Director shall publish, in newspapers of general cir-
21 culation in New York City, a clear, concise, and eas-
22 ily understandable explanation, in English and
23 Spanish, of—

24 (A) the rights conferred under this section;

25 and

1 (B) the procedural and other requirements
2 of the regulations promulgated under subsection
3 (1).

4 (2) DISSEMINATION THROUGH OTHER MEDIA.—
5 The Director shall disseminate the explanation pub-
6 lished under paragraph (1) through brochures, pam-
7 phlets, radio, television, and such other media as the
8 Director determines to be likely to reach prospective
9 claimants.

10 (n) COORDINATION.—In carrying out this section, the
11 Director shall coordinate with the Administrator of the
12 Small Business Administration, other Federal agencies,
13 and State and local agencies, as the Director determines
14 to be necessary—

15 (1) to ensure the efficient administration of the
16 claims process; and

17 (2) to provide for local concerns.

18 (o) APPLICABILITY OF DEBT COLLECTION REQUIRE-
19 MENTS.—Section 3716 of title 31, United States Code,
20 shall not apply to any payment on a claim.

21 **SEC. 5. RELATIONSHIP TO FEDERAL ENTITLEMENT PRO-**
22 **GRAMS.**

23 Nothing in this Act affects any right of an injured
24 person that submits a claim to submit a request for bene-
25 fits under any Federal entitlement program.

1 **SEC. 6. REPORTS AND AUDITS.**

2 (a) REPORTS.—Not later than 1 year after the date
3 of promulgation of interim final regulations under section
4 4(l) and annually thereafter, the Director shall submit to
5 Congress a report that describes the claims submitted
6 under section 4(b) during the year preceding the date of
7 submission of the report, including, with respect to each
8 claim—

9 (1) the amount claimed;

10 (2) a brief description of the nature of the
11 claim; and

12 (3) the status or disposition of the claim, in-
13 cluding the amount of any payment on the claim.

14 (b) AUDITS.—The Comptroller General shall—

15 (1) conduct an annual audit of the payment of
16 all claims submitted under section 4(b); and

17 (2) not later than 1 year after the date of en-
18 actment of this Act and annually thereafter, report
19 to Congress on the results of the audit.

20 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

21 (a) IN GENERAL.—There is authorized to be appro-
22 priated to carry out this Act \$2,000,000,000, to remain
23 available until expended.

24 (b) FEMA FUNDS.—None of the funds made avail-
25 able to the Federal Emergency Management Agency for

1 the administration of disaster relief shall be used to carry
2 out this Act.

3 **SEC. 8. TERMINATION OF AUTHORITY.**

4 The authority provided by this Act terminates effec-
5 tive 42 months after the date of enactment of this Act.

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