

116TH CONGRESS  
2D SESSION

# S. 3755

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

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IN THE SENATE OF THE UNITED STATES

MAY 18, 2020

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

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## 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 2020”.

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.

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  
23          government that is determined, during the response  
24          to the COVID-19 pandemic, to be essential, based  
25          on State, local, Tribal, or territorial orders or dec-

1 larations (or equivalent), or Federal guidance pub-  
2 lished by the Cyber & Infrastructure Security Agen-  
3 cy (CISA), and who performed work outside their  
4 place of residence.

5 (6) NONECONOMIC LOSSES.—The term “non-  
6 economic losses” means losses for physical and emo-  
7 tional pain, suffering, inconvenience, physical im-  
8 pairment, mental anguish, disfigurement, loss of en-  
9 joyment of life, loss of society and companionship,  
10 loss of consortium (other than loss of domestic serv-  
11 ice), hedonic damages, injury to reputation, and all  
12 other nonpecuniary losses of any kind or nature.

13 (7) SPECIAL MASTER.—The term “Special Mas-  
14 ter” means the Special Master appointed by the At-  
15 torney General under section 3.

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

20 (9) ELIGIBILITY PERIOD.—The term “eligibility  
21 period” means any time during which any Federal,  
22 State, Tribal, territorial, or local COVID–19 related  
23 emergency order or declaration (or equivalent) is or  
24 was in effect, regardless of the claimant’s place of  
25 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;

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

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

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

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

17 (b) REVIEW AND DETERMINATION.—

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

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

23 (B) with respect to a claimant determined  
24 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



1 confirmations, diagnosis by a healthcare pro-  
2 vider, or for whom there is or was an absence  
3 of an alternate diagnosis that explains claim-  
4 ant's or decedent's symptoms;

5 (C) suffered economic loss; and

6 (D) meets the requirements of paragraph  
7 (2).

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

15 **SEC. 5. ASSISTANCE TO CLAIMANTS.**

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

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

19 (a) IN GENERAL.—Subject to the limitations under  
20 subsection (d), not later than 20 days after the date on  
21 which a determination is made by the Special Master re-  
22 garding the amount of compensation due a claimant under  
23 this Act, the Special Master shall authorize payment to  
24 such claimant of the amount determined with respect to  
25 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 2020 and each fiscal year thereafter  
9 through fiscal year 2026, to remain available until ex-  
10 pended.

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