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Workers of America**
AFL-CIO, DISTRICT 1

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August 4, 2011

Mr Kenneth L. Zwick, Director
Office of Management Programs
Civil Division
U.S. Department of Justice
Main Building, Room 3140
Pennsylvania Avenue, NW
Washington, DC 20530

Re: Docket No. CIV 151, Notice of Proposed Rulemaking, James Zadroga 9/11 Health and Compensation Act of 2010

Dear Mr Zwick:

I respectfully submit these comments on behalf of the Communications Workers of America, District 1 (CWA District 1) regarding the Department of Justice's notice of proposed rulemaking for regulations to implement Title II of the James Zadroga 9/11 Health and Compensation Act, Part 104 – September 11th Victim Compensation Fund (VCF).

CWA District 1 is the northeast district of the Communications Workers of America (CWA), America's largest communications and media union, represents over 700,000 men and women in the U.S., Canada and Puerto Rico in both private and public sectors. The CWA headquarters is in Washington D.C., with eight regional district offices across the country. CWA is affiliated with the AFL-CIO, the Canadian Labour Congress, and the worldwide Union Network International. CWA District 1 is the largest of the CWA's districts by total membership and includes more than 180,000 members in 327 CWA local unions in New York, New Jersey, and New England. CWA District 1's diverse membership is employed in many different sectors of the economy: telecommunications; health care; higher education; manufacturing; broadcast and cable television; commercial printing and newspapers; and state, local, and county government. The CWA District 1 office is located in downtown Manhattan, just a few blocks east of the World Trade Center site.

CWA District 1 members, as well as members from other CWA districts in the country were greatly impacted by the events of 9/11. Thirteen CWA members died as a result of the attacks, either in the collapse of the towers or on one of the flights that crashed that day. Thousands of CWA District 1 members worked in the World Trade Center and other buildings in the area and

many were caught in the dust cloud as they evacuated on 9/11. It was CWA members working for Verizon who rushed in and got the Stock Market up and running within a few days after the disaster. Several thousand CWA members were responders and participated in the rescue and recovery efforts at Ground Zero (GZ), including telecommunications workers employed by Verizon, AT&T, and Lucent (now Alcatel-Lucent); traffic enforcement agents and supervisors employed by the NYPD; sanitation workers employed by the NYC Department of Sanitation; nurses from NYU Downtown Hospital (the closest hospital to the site); and members who volunteered as part of local emergency response organizations or on their own. CWA District 1 members employed by major broadcasting companies including ABC and NBC, and major newspapers including the Wall Street Journal and the New York Times, covered the events of 9/11 at Ground Zero. In addition to our CWA responders, thousands of CWA District 1 members were “area” workers including public sector workers employed by the City of New York in all city agencies, and private sector workers employed by Verizon and AT&T, the Wall Street Journal and other publications. These area workers returned to offices and other worksites affected by WTC contamination, some in less than one week after September 11th because of declarations by the Federal government that it was “safe” to return.

Due to the fact that CWA represents an extremely diverse group of workers in both the public and private sectors – some of whom evacuated from buildings on 9/11, some of whom were responders at Ground Zero and in the surrounding neighborhoods (including those who came from other parts of the country), some of whom worked in buildings in the immediate area, and some of whom are residents, CWA District 1 has been involved in all aspects of WTC-related issues since 9/11. We have seen many of our members develop serious and disabling illnesses related to their exposures, many have suffered severe economic losses as a result of their poor health, and some have already died. We are thankful that the reopening of the VCF will allow for those who have suffered such losses to receive fair compensation.

Our specific comments on the proposed rule are as follows:

§ 104.2 (b) General eligibility. Immediate aftermath.

The proposed rule defines the immediate aftermath as the period beginning with the terrorist-related aircraft crashes of September 11, 2001, and ending on May 30, 2002. We believe this date should be extended and is an inappropriate cut-off. May 30, 2002 may have marked the official closing of the Ground Zero site, but it did not mark the end of potential exposures related to contamination in the area, particularly in indoor spaces. Our telecommunications members continued the restoration of essential services for a long time after the site was officially closed.

For example, work continued past May 30, 2002 in the heavily damaged and heavily contaminated Verizon building located at 140 West Street. This building is one of several telecommunications “hubs”, referred to as Central Offices, in the area and was inside the “restricted zone” at the northern end of GZ. The closing of GZ did not end the work in this building, nor the potential for continued exposures. CWA District 1 has, and continues to have, concerns about remaining WTC contamination in some areas of this building. Environmental sampling results conducted by a Certified Industrial Hygienist hired by CWA District 1 indicate the presence of WTC contamination as recent as 2008. This proves the persistence of WTC

contamination when that contamination is not properly cleaned up and the areas harboring the contamination are not adequately remediated. Remaining contamination provides a source of potential, chronic exposures and additional risk of adverse health effects. Verizon has repeatedly refused to acknowledge or address this issue.

Our telecommunications members also continued to work past May 2002 in manholes in the area and in all buildings in 9/11 impacted neighborhoods performing repair, maintenance and installation services. CWA District 1 has had on-going concerns about the potential for continued and chronic exposures of our telecommunications members in particular as they work in areas of buildings, such as basements, that were contaminated after 9/11 and were least likely to have been properly cleaned. Indeed, the entire issue of WTC contamination in indoor spaces has been virtually ignored or downplayed by government at all levels since 9/11 and to this day.

At a minimum, we recommend the period defined as the “immediate aftermath” be extended to match the eligibility requirements for the WTC Health Program (WTC HP) established in Title I of the James Zadroga Act and by the regulations implementing that Title. We also recommend that a person applying for compensation from the Fund, be considered as eligible if they can show documentation of WTC-related contamination and exposures that occurred past this extended time period as long as they meet the other eligibility requirements.

§ 104.2 (g)(3) 9/11 crash site.

The proposed rule defines the geographic boundary for eligibility as, “The area of Manhattan south of the line that runs along Reade Street from the Hudson River to the intersection of Reade Street and Centre Street, south on Centre Street to the Brooklyn Bridge and along the Brooklyn Bridge, or any other area contiguous to the crash sites 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).

We believe the boundaries as proposed must be extended and are arbitrary in that contamination – the dust from the collapse and the combustion by-products from the fires that burned for many months after the towers’ collapse – could not possibly have followed and ended at the lines being drawn. Contamination extended well beyond the geographic boundaries being proposed. If the proposed boundaries were based upon satellite or other images of the dust cloud taken within days after 9/11, it should be noted that these images are but a snapshot in time. Such images would not show the movement of contamination from the fires, nor show the full extent of contamination as it moved through the area and entered buildings through open windows or ventilation systems, and would not capture the continued spread of contamination over the course of time as debris was disturbed and removed during rescue, recovery and restoration activities at GZ and in the surrounding areas. Since there has never been a systematic and appropriate evaluation of the extent of 9/11 contamination by any government agency, the demarcation lines of WTC contamination remain virtually unknown.

CWA District 1 is concerned that a portion of our members who worked in the area as responders (telecommunications, traffic enforcement, sanitation, media and broadcasting) and who had 9/11-related exposures resulting in harm, would be excluded based on the proposed boundaries. CWA District 1 has “incident/exposure reports” collected from many of our members who worked as responders in the year following 9/11. CWA District 1 local unions distributed and collected these incident/exposure reports to try to keep track and maintain a record for the future of who was involved in the response. These incident/exposure reports include self-reported descriptions of contaminated conditions and adverse health symptoms for work performed in the vicinity of GZ and extending well beyond the proposed geographic boundaries. Specific examples of buildings where CWA members worked include the Verizon building (since sold) at 375 Pearl Street (north of the Brooklyn Bridge), the AT&T building (since sold) at 33 Thomas Street (north of Reade Street) and the Verizon building (since sold) at 50 Varick St., near Canal. Like many buildings in the area, the ventilation system was left on at the 375 Pearl St. building on 9/11 and CWA District 1 has environmental sampling results showing contamination in this location. CWA District 1 also represents members working for NYC agencies in buildings located beyond the proposed geographic boundaries in areas affected by contamination.

The geographic boundaries established for other 9/11-related programs were not based on environmental measures of contamination, but rather were “best guesses” of the likelihood of the areas and people most at risk of WTC exposures (best case scenario geared towards inclusion) or at worst, based on some politically motivated determination. Clearly, the Special Master will also need to choose a geographic cut-off in the absence of hard data. We recommend that the geographical boundaries for eligibility for the VCF be the same as those established for the World Trade Center Health Program established under Title I and that the Special Master also consider claims for individuals outside of the established boundaries if additional documentation presented by the claimant indicates a likelihood of harm.

§ 104.21 Presumptively covered conditions.

We support the Special Master’s use of a list of presumptively covered conditions that are determined to be WTC-related health conditions by the WTC Health program and the updating of this list as new conditions are added. We also support the coverage of conditions other than the presumptively covered conditions if circumstances and/or documentation provided by an individual applying to the Fund support an individual’s claim. We believe that the “circumstances” presented should be considered if they are reasonable and plausible, but that they should not have to be “extraordinary” circumstances as proposed.

§ 104.22(b)(3)(ii) Filing for compensation. Proof of presence at site:

We support the Special Master’s consideration of documentation sufficient to establish presence at a 9/11 crash site to include the examples listed, but “without limitation” so that other forms of documentation not listed will also be considered. We recommend against the reliance on employer records as it has been our experience with certain employers that they will not provide this documentation or may not have the documentation to begin with.

§ 104.22(b)(3)(ii) Filing for compensation. Proof of physical harm:

The proposed regulations do not provide for compensation for mental health only conditions. We recommend the Special Master reconsider this determination and cover all WTC health conditions covered by the WTC Health Program, including mental health only conditions.

§ 104.22(e) Filing for compensation. Amendment of claims.

We strongly support the proposed regulations to allow an individual who previously filed a claim with the VCF to amend that claim under the conditions listed in the proposed regulations.

§ 104.51(c) Pro-ration and payment of remaining claims.

The proposed regulations indicate the total amount of all payments made by the Special Master during the five year period beginning on the effective date of the final rule and ending five years after the effective date of the final rule shall not exceed the amount of \$875 million available by law during that period and that all claimants who are determined to be entitled to a payment receive one during that period. We recommend the Special Master establish a systematic procedure for payment of an individual's award in this initial, five year period which takes into account the extent of harm and the immediacy and severity of economic need, i.e. hardship. In other words, the initial awards should be equitable and proportional to need at that time and should not be divided up equally amongst all eligible claimants.

The proposed regulations provide for awards to be provided in two installments and that the second installment be reduced on a prorated basis if sufficient funds are not available to pay all claims deemed eligible. We recommend that the Special Master determine each award on the basis of what is fair and reasonable compensation and that an individual be informed of the full amount of the award determination that would be provided should sufficient funds be available, as well as be informed of the possibility of a reduced, prorated award should there be insufficient funds available at the time of the second installment. We recommend once the full amount of all claims has been determined, the Special Master issue a public report on the status of claims, the total amount of the award determinations, and the shortfall (should it exist) in funds available to compensate 9/11 claimants.

Thank you in advance for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Shelton", written in a cursive style.

Christopher Shelton, V.P.
CWA District 1