

This is the accessible text file for GAO report number GAO-04-1013T entitled 'September 11: Federal Assistance for New York Workers' Compensation Costs' which was released on September 08, 2004.

This text file was formatted by the U.S. Government Accountability Office (GAO) to be accessible to users with visual impairments, as part of a longer term project to improve GAO products' accessibility. Every attempt has been made to maintain the structural and data integrity of the original printed product. Accessibility features, such as text descriptions of tables, consecutively numbered footnotes placed at the end of the file, and the text of agency comment letters, are provided but may not exactly duplicate the presentation or format of the printed version. The portable document format (PDF) file is an exact electronic replica of the printed version. We welcome your feedback. Please E-mail your comments regarding the contents or accessibility features of this document to Webmaster@gao.gov.

This is a work of the U.S. government and is not subject to copyright protection in the United States. It may be reproduced and distributed in its entirety without further permission from GAO. Because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

Testimony Before the Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform, House of Representatives:

United States Government Accountability Office:

GAO:

For Release on Delivery Expected at 10:00 a.m. EDT:

Wednesday, September 8, 2004:

SEPTEMBER 11:

Federal Assistance for New York Workers' Compensation Costs:

Statement of Robert E. Robertson, Director, Education, Workforce, and Income Security Issues:

GAO-04-1013T:

GAO Highlights:

Highlights of GAO-04-1013T, testimony before the Chairman, Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform, House of Representatives

Why GAO Did This Study:

In the aftermath of the September 11, 2001, terrorist attacks, Congress appropriated \$175 million for the New York State Workers' Compensation Board (the Board) to assist with the resulting workers' compensation claims. These claims were filed by workers or volunteers (or survivors) who were injured, became ill, or died as a result of the attacks and the recovery efforts. Specifically, Congress provided federal funds to the U.S. Department of Labor (DOL) for the Board in three earmarked portions: \$125 million for processing of claims, and \$25 million each to reimburse the state Uninsured Employers Fund (UEF) for benefits paid (1) for workers associated with uninsured employers and (2) for volunteers. DOL transferred the funds to the Board using a grant agreement.

This testimony looks at the Board's use of the \$175 million in federal funds and the status of September 11 workers' compensation claims. The testimony addresses: (1) how the federal funds have been used and (2) how many applications for compensation have been received and their status. In addition, we are continuing to gather information about whether the grant agreement and the appropriation act are consistent with the Board's use of the funds.

What GAO Found:

As of June 30, 2004, of the \$175 million in federal funds appropriated to help pay workers' compensation expenses related to the September 11

attacks and recovery, the New York State Workers' Compensation Board had used about \$49 million. From the \$125 million portion available for processing of claims, the Board had used about \$44 million to reimburse two state entities—the New York State Crime Victims Board and the New York State Insurance Fund—for benefits those entities had paid to September 11 victims (or survivors). In addition, the Board had used about \$4.4 million of the \$125 million to prepare for responding to any future terrorist attacks. For example, the Board paid for new computer backup systems and new off-site storage contracts to ensure access to claims data in case of a disaster. At the time of our review, the Board had not yet used any of the \$25 million that is available to reimburse the UEF for benefits the UEF paid to workers associated with uninsured employers (or survivors). However, the Board had used funds from the UEF to pay these benefits and was first trying to recoup these funds from the uninsured employers before drawing upon federal funds to reimburse for any unrecovered expense. Finally, the Board had used about \$456,000 of the \$25 million that is available to reimburse the UEF for benefits the UEF paid to volunteers (or survivors).

The Board indicated that, as of mid-2004, it had received 10,182 claims for workers' compensation and 588 volunteer claims related to the September 11 attacks and recovery. Ninety percent of the workers' compensation claims had been resolved, that is, the Board had resolved all the issues that it could with the information available at that point. The remaining 10 percent of claims were pending, as the Board was waiting for additional information from claimants (such as medical evidence), hearings were yet to be held, or claimants had not pursued their case after initial filing. The Board officials noted that the status of claims was fluid: a resolved claim could change to pending if more information becomes available and the Board reopens the case. In addition, we were unable to report approval and denial rates of claims because, according to Board officials, the Board's core mission is to process individual claims and not track outcomes of claims decisions. For 52 percent of workers' compensation claims received, (1) a link had been established between the September 11 disaster and the resulting death, injury, or illness and benefits had been paid or were in the

process of being paid, or (2) this link had been established but the Board had not authorized paying benefits. Of the 10,182 workers' compensation claims, 133 were associated with workers whose employers were uninsured. The Board had resolved 89 percent of these 133 claims. Of the 588 volunteer claims received, the Board had resolved 31 percent and 69 percent were pending. According to the Board, many of the volunteer claims were pending because the claimants were not actively pursuing their claims.

The Board provided oral comments on a draft of GAO's findings and GAO incorporated these comments as appropriate.

www.gao.gov/cgi-bin/getrpt?GAO-04-1013T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robert E. Robertson at (202) 512-7215 or robertsonr@gao.gov.

[End of section]

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss New York State's use of federal funds provided for workers' compensation expenses related to the September 11, 2001, terrorist attacks. In the aftermath of the terrorist attacks, Congress appropriated \$175 million for the New York State Workers' Compensation Board (the Board) to assist with the resulting workers' compensation claims.[Footnote 1] These claims were filed by workers or volunteers (or their survivors) who were injured, became ill, or died as a result of the attacks and the recovery efforts. Specifically, Congress provided federal funds to the U.S. Department of Labor (DOL) for the Board in three earmarked portions: \$125 million for processing of claims and \$25 million each to reimburse the state Uninsured Employers Fund[Footnote 2] (UEF) for benefits paid (1) for workers associated with uninsured employers and (2) for volunteers.[Footnote 3] DOL transferred the funds to the Board using a grant agreement. The federal funding provided to the Board is distinct from several other federal efforts to provide assistance to victims and survivors of the terrorist attacks. For example, Congress established

the September 11th Victim Compensation Fund of 2001 to provide compensation for individuals (or their survivors) who were injured or killed as a result of the terrorist attacks.[Footnote 4]

My testimony today focuses on the Board's use of the \$175 million in federal funds and the status of September 11 workers' compensation claims. Specifically, my testimony addresses: (1) how the federal funds have been used and (2) how many applications for compensation have been received and their status. My colleague's testimony addresses the health effects that have been observed in the aftermath of the September 11 terrorist attacks.[Footnote 5]

We relied primarily on data provided by the Board to describe the use of funds and the status of claims. However, we were unable to report approval and denial rates of claims because, according to Board officials, the Board's core mission is to process individual claims and not track outcomes of claims decisions. In addition, the status of claims represents a point-in-time assessment that could change in the future. The Board officials told us that the status of claims was fluid: a "resolved" claim (that is, the Board had resolved all issues it could with the information available at the time) could change to a "pending" claim if more information becomes available and the Board reopens the case to consider the new information. To assess the reliability of the Board data we used, we requested information on Board systems for aggregating and reporting the data and Board policies for ensuring data quality. We reviewed the responses to our requests and determined that the aggregate data the Board had provided to us was sufficiently reliable for the purposes of providing descriptive information in our testimony. In addition, we reviewed relevant legislation, federal grant documents, and New York's policies and procedures for filing and processing claims. We interviewed Board officials, DOL officials, and representatives of selected worker and volunteer groups who filed September 11 claims with the Board. We conducted our review from February 2004 through August 2004 in accordance with generally accepted government auditing standards.

In summary, as of June 30, 2004, of the \$175 million in federal funds appropriated to help pay workers' compensation expenses related to the

September 11 attacks and recovery, the New York State Workers' Compensation Board had used about \$49 million. From the \$125 million portion available for processing of claims, the Board had used about \$44 million to reimburse two state entities--the New York State Crime Victims Board (CVB) and the New York State Insurance Fund (SIF)--for benefits those entities had paid to September 11 victims (or their survivors). In addition, the Board had used about \$4.4 million of the \$125 million to prepare for responding to any future terrorist attacks.

We are continuing to gather information about whether the grant agreement's statement of work and the appropriation act are consistent with these uses of the funds. At the time of our review, the Board had not yet used any of the \$25 million that is available to reimburse the Uninsured Employers Fund (UEF) for benefits the UEF paid to workers associated with uninsured employers (or their survivors). At the time of our review, the Board had used funds from the UEF to pay these benefits and was first trying to recoup these funds from the uninsured employers before drawing upon federal funds to reimburse for any unrecovered expense. Finally, the Board had used about \$456,000 of the \$25 million that is available to reimburse the UEF for benefits the UEF paid to volunteers (or their survivors).

The Board indicated that, as of mid-2004, it had received 10,182 claims[Footnote 6] for workers' compensation and 588 volunteer claims related to the September 11 attacks and recovery. Ninety percent of the workers' compensation claims had been resolved, that is, the Board had resolved all the issues that it could with the information available at that point. The remaining 10 percent of claims were pending, as the Board was waiting for additional information from claimants (such as medical evidence), hearings were yet to be held, or claimants had not pursued their case after initial filing. For 52 percent of workers' compensation claims received, (1) a link had been established between the September 11 disaster and the resulting death, injury, or illness and benefits had been paid or were in the process of being paid, or (2) this link had been established but the Board had not authorized paying benefits. Of the 10,182 workers' compensation claims, 133 were associated with workers whose employers were uninsured. The Board had resolved 89 percent of these 133 claims. Of the 588 volunteer claims received, the Board had resolved 31 percent and 69 percent were

pending. According to the Board, many of the volunteer claims were pending because the claimants were not actively pursuing their claims.

The Board provided oral comments on a draft of GAO's findings. GAO incorporated these comments as appropriate.

Background:

The New York State Workers' Compensation Board administers the state workers' compensation program and processes claims for workers' compensation benefits. These benefits go to workers who are injured at work or become ill because of workplace conditions and to survivors of workers who die because of their work-related injury or illness. New York State requires employers to provide workers' compensation insurance--either from the State Insurance Fund (SIF), a private insurance carrier, or self-insurance--to pay cash and/or provide medical benefits for workers who qualify for coverage.[Footnote 7] Because some employers do not comply with this requirement, the state maintains a UEF to provide workers' compensation benefits for workers associated with uninsured employers. To administer the state workers' compensation program, the Board reviews claims to determine whether a worker is eligible to receive workers' compensation benefits. In simplified form, the workers' compensation claims process includes the following steps:

- * An individual files a claim.
- * An insurer can challenge the claim if it questions the validity of the claim.
- * The Board resolves some cases without a hearing, while for others the Board holds a hearing or a series of hearings before a Workers' Compensation Administrative Law Judge with interested parties present, such as claimants, employers, and insurance carriers.
- * The Board makes a final decision whether or not benefits are to be awarded to the claimant. For claims approved, insurance carriers, self-insured employers, or the UEF makes direct payments to the claimant.
- * Either the claimant or insurer can appeal this decision. The appeal process involves successively higher levels of appeal; the highest level is the New York State Court of Appeals.

As a result of the September 11 terrorist attacks, Congress appropriated \$175 million in federal funds to assist the New York State

Workers' Compensation Board with the resulting workers' compensation claims. Specifically, the law provided the funds in three earmarked portions: \$125 million "for payment to the New York State Workers' Compensation Review (sic) Board, for the processing of claims related to the terrorist attacks"; \$25 million "for payment to the New York State Uninsured Employers Fund, for reimbursement of claims related to the terrorist attacks"; and \$25 million "for payment to the New York State Uninsured Employers Fund, for reimbursement of claims related to the first response emergency services personnel who were injured, were disabled, or died due to the terrorist attacks." The legislation provided no further explanation regarding the use of the federal funds.

The law appropriating the funds gave DOL responsibility for distributing the funds. After researching various methods of transferring the funds, DOL provided the funds to the Board in the form of a grant.

Consistent with normal grant practices, before the funds were made available to the Board, DOL required the Board to complete a grant application that consisted of a statement of work, budget information, and other documents related to use of the funds. DOL approved the Board's grant application without making any changes. DOL awarded the grant to the Board and made the funds available for 4 years.[Footnote 8] The grant agreement and the provisions of the underlying appropriation act together provide the legal framework for using the funds.

The grant agreement's statement of work, prepared by the Board,

- * set out three broad categories of activities to be carried out: (1) administration, (2) mitigation--efforts to help mitigate the effects of future disasters, and (3) claims reimbursements to the Uninsured Employers Fund;

- * requested flexibility to "transfer funds amongst the three pools of money," that is, the \$125 million and the two \$25 million portions;[Footnote 9] and:

* listed the Board's intention "to use a portion of the disaster funds to assist other entities by creating a contingency account within [the Board's] funding structure that will allow the State to respond effectively to any unexpected needs as they arise, both in administrative and in mitigation efforts.":

The following timeline summarizes the flow of federal funds to the Board:

* Early January 2002: Congress appropriated \$175 million to DOL for the New York State Workers' Compensation Board.

* Mid-January 2002: The Board first contacted the New York State Department of Labor (NYDOL) and DOL's New York regional office for guidance about using the funds. NYDOL and DOL's New York regional office referred the Board to DOL headquarters for guidance.

* April 2002: DOL had determined that a federal grant agreement was the appropriate vehicle for providing funds to the Board. DOL notified the Board that the Board needed to submit a one-to-two page statement of work describing its proposed use of the funds before a grant could be awarded.

* October 2002: The Board submitted its complete grant application paperwork, including the statement of work, to DOL after consulting with the New York State Division of Budget.

* November 2002: DOL notified the Board of its decision to approve the grant, thereby allowing the Board to draw down funds to conduct activities consistent with the statement of work.

* May 2003: The Board made its first draw down of the funds.

As is the case with federal grants in general, DOL requires the Board to regularly submit reports to DOL for review. These reports specify the amount of federal funds the Board spent during the previous quarter of the year. These reports do not require the Board to indicate specifically how it had used the funds. In addition to these quarterly reports, DOL can access reports on funds the Board had drawn down but not yet spent.

The Board Used \$49 Million for Benefits and Mitigation Efforts:

As of June 30, 2004, of the \$175 million in federal funds to help pay expenses related to the September 11 attacks and recovery, the New York State Workers' Compensation Board had used about \$49 million. The Board had used about \$44 million of the \$125 million available for "processing of claims" (activities that the Board described in its statement of work as "administration" and "mitigation") to reimburse two state entities for payment of benefits those entities had made to individuals (or their survivors) who were injured, killed, or became ill as a result of the September 11 terrorist attacks. Specifically, the Board had spent about \$28 million to reimburse the New York State CVB and \$16 million to reimburse the New York SIF for benefit payments they each made to September 11 victims (or their survivors). The Board also had used about \$4.4 million on mitigation efforts to prepare for responding to any future terrorist attacks. The Board had not yet used any of the \$25 million available to reimburse the UEF for benefits the UEF paid to workers with uninsured employers (or their survivors). However, the Board had used funds from the UEF to pay these benefits and was first trying to recoup these funds from the uninsured employers before drawing upon federal funds to reimburse for any unrecovered expense. Finally, the Board had used about \$456,000 of the second \$25 million to reimburse the UEF for benefits the UEF paid to volunteers (or their survivors) who provided assistance under the direction of an authorized rescue entity.

The Board Had Used a Sizable Portion of the \$125 Million for Benefits Reimbursements and Mitigation Efforts:

The Board paid about \$28 million of the \$125 million to reimburse the CVB--a state agency that compensates crime victims--for payments in connection with individuals who were injured or killed during the September 11 attacks. The state determined that the September 11 attacks were a crime that qualified for benefits under the state Crime Victim Compensation Act.[Footnote 10] According to Board officials, New York State temporarily designated the CVB as the first source of benefit payments for September 11 victims because state officials believed that this would be the most efficient way to deliver

benefits.[Footnote 11] Within a month of the attacks, the Governor issued two formal decisions suspending limits on the benefit amounts payable by the CVB and identifying individuals who would be eligible for benefit payments from the CVB.[Footnote 12] According to the Board, the reimbursement agreement between the Board and the CVB was established and approved by the New York State Assembly, the New York State Senate, and the Governor. Based on this agreement, the Board reimbursed the CVB after receiving documentation describing the nature and amounts of payments that the CVB had previously made to victims. The CVB requested reimbursement from the Board for payments to victims related to loss of earnings and support, loss of essential personal property, funeral and burial expenses, and medical expenses. According to the Board, the New York State Comptroller authorized the payments, and the New York State Division of the Budget reviewed and approved these payments. The Board said it did not anticipate the need to provide additional reimbursements beyond the \$28 million already provided to the CVB because individual claimants are now going directly to the Board and not to the CVB.

The Board paid about \$16 million of the \$125 million to reimburse the SIF for workers' compensation benefits the SIF paid to September 11 victims employed by the state (or their survivors). The SIF--held by the New York State Department of Labor--is a fund that provides workers' compensation insurance to public entities and private employers who elect this coverage. Specifically, the Board reimbursed the SIF for workers' compensation benefits paid to state employees (or their survivors) who were injured or killed during the September 11 disaster. After the SIF provided documentation to the Board on benefits paid, the Board reimbursed the SIF to cover both payments already made to state employees (or their survivors) and projections of future benefit payments for these employees. These reimbursement payments were reviewed and approved by the New York State Division of the Budget. The Board did not expect to reimburse the SIF for many more September 11 claims because the deadline for filing had passed for injury and death claims. However, the Board indicated that the SIF might ask for reimbursement for a few new claims from state workers who become ill in the future, because such workers may file a claim when symptoms of a

disease appear.[Footnote 13]

The Board used a significant part of the \$125 million available for processing claims to reimburse the CVB and the SIF for benefit payments those entities made to victims. We are continuing to gather information about whether these reimbursements were authorized in the grant agreement's statement of work and whether the \$125 million appropriation earmarked for "the processing of claims" was available for reimbursements of benefits paid. We are pursuing this matter further and will notify the committee of our findings.

Finally, the Board had spent about \$4.4 million of the \$125 million on mitigation efforts to help position the Board to respond to any future disasters. These funds were used for a multiyear project to ensure the Board has the ability to maintain operations, including access to all claims data, in case the Board's main data system fails. The Board used the funds to upgrade, purchase, and/or install computer systems; pay salaries and fringe benefits of staff working on the project; and cover travel expenses. For example, the Board paid for new tape and disk backup systems, new off-site storage contracts, and new image storage systems to ensure viability of Board data and operations. Finally, to enhance information security, the Board developed a security awareness program for all Board staff, and planned to test vulnerability of its systems. While these mitigation activities were undertaken to position the Board to recover more quickly from another disaster if one should occur, the Board acknowledged that these investments have benefited current operations as well. We are continuing to gather information on whether the \$125 million earmarked for claims processing was available for these mitigation efforts.

The Board Had Not Used any of the \$25 Million Available for Workers with Uninsured Employers:

The Board had not used any of the \$25 million federal funds available to reimburse the UEF for benefits the UEF paid to workers with uninsured employers (or their survivors). Congress appropriated these funds for the Board to reimburse the UEF--a fund maintained by the state that provides workers' compensation benefits for workers associated with uninsured employers--for payments made to September 11

victims. However, the Board had used funds from the UEF to pay these benefits and was first trying to recoup these funds from the uninsured employers before drawing down federal funds to reimburse the UEF for any unrecovered expense.

The Board Had Used Some of the \$25 Million Available for Volunteers:

The Board had used about \$456,000 of the \$25 million available to reimburse the UEF for benefits the UEF paid to volunteers (or their survivors) who were injured or killed as a result of the September 11 attacks. Congress appropriated the \$25 million for "first response emergency services personnel" and, according to Board staff, these funds were intended for individuals who had served as volunteers associated with the September 11 attacks. However, the New York workers' compensation law in existence prior to September 2001 did not include the term "first response emergency services personnel" and did not extend coverage to volunteers. To overcome this issue, the Chair of the New York State Workers' Compensation Board issued an official order that defined "first response emergency services personnel" as "[a]ll persons who, serving without compensation or remuneration, and serving under the direction of an authorized rescue entity or volunteer agency, provided services to deal with the emergency situation created by the September 11, 2001 terrorist attack on the World Trade Center." [Footnote 14] This order also identified the types of groups that the Board would consider to be an authorized rescue entity and volunteer agency (including groups associated with the New York City police and fire departments) and thus designated which volunteers were eligible for benefits that can be reimbursed from the \$25 million in federal funds. [Footnote 15] Notably, volunteers are not covered by the state workers' compensation program because they have no employer and, thus, are not considered "employees." Therefore, compensation available to September 11 volunteers is limited to the \$25 million appropriated by the Congress for reimbursement to the UEF.

While Most September 11 Claims Had Been Resolved, Many of Those from Volunteers Were Pending:

As of mid-2004, 90 percent of September 11-related workers' compensation claims had been resolved, that is, the Board had resolved

all the issues that it could with the information available at that point. For the subset of claims associated with workers whose employers were uninsured, the Board had resolved 89 percent. In addition to the September 11 claims for workers' compensation, the Board had resolved 31 percent of the volunteer claims received and 69 percent of these claims were pending.

Ninety Percent of September 11 Claims for Workers' Compensation Had Been Resolved:

As of mid-2004, most September 11-related workers' compensation claims had been resolved, that is, the Board had resolved all the issues that it could with the information available at that point.[Footnote 16] Specifically, 90 percent of the 10,182 claims received[Footnote 17] by the Board had been resolved. Among the 9,124 resolved claims, 24 percent were death claims, while 76 percent were claims for an injury or illness. (For September 11 claims data provided by the Board, see table 1.):

For 42 percent of claims received, the Board had determined that a link had been established between the September 11 disaster and the resulting death, injury, or illness and benefits had been paid or were in the process of being paid.[Footnote 18] For an additional 10 percent of claims received, the Board had determined that a link had been established between the September 11 disaster and the resulting death, injury, or illness, but had not authorized paying benefits. According to the Board, one of the reasons that benefits had not yet been paid, even though a link had been established, was that these employees had not missed more than 7 days of work on account of their injury or illness.

Ten percent of the claims received by the Board were pending. These claims were pending for a variety of reasons, including that the claimant was waiting for his or her hearing to take place; that no causal link had been established between the death, injury, or illness and the workplace; or claimants had not pursued their case after filing.

Some September 11 claims were challenged after initial filing and some were appealed after a decision had been made. An insurance carrier and/

or employer can challenge a claim after a claim is submitted if they dispute the evidence provided by the claimant. For September 11 claims, insurers/employers challenged a higher proportion of injury or illness claims than death claims. Specifically, insurers/employers challenged about 27 percent of injury or illness claims compared with about 2 percent of death claims. According to the Board, with illness claims, symptoms can develop over time, and sufficient medical evidence may not exist at the time of filing to establish a link between the illness and workplace conditions. Independent of whether a claim is challenged, either the claimant or the insurer/employer can appeal a decision after the Board has resolved a claim. Of the resolved September 11 claims, 5 percent of the death claims were appealed and 6 percent of injury or illness claims were appealed.

Of the resolved September 11 claims, 36 percent were resolved with a hearing(s) and 64 percent were resolved without a hearing(s). [Footnote 19] Of those claims with a hearing(s), 11 percent were death claims and 89 percent were injury or illness claims. The time to process claims with a hearing was as follows: 43 percent took less than 6 months, 22 percent took between 6 months and 1 year, and 35 percent took over 1 year. Of those claims without a hearing(s), 30 percent were death claims and 70 percent were injury or illness claims. The time to process claims without a hearing was as follows: 69 percent took less than 6 months, 21 percent took between 6 months and 1 year, and 10 percent took over 1 year.

Table 1: Status and Number of September 11 Workers' Compensation Claims (excluding volunteers), mid-2004:

Status: Claims received;
 Death claims: 2,195;
 Injury-illness claims: 7,987; Total claims: 10,182.

Status: Claims resolved;
 Death claims: 2,149;
 Injury-illness claims: 6,975;
 Total claims: 9,124.

Status: Claims pending;
Death claims: 46;
Injury-illness claims: 1,012;
Total claims: 1,058.

Status: Claims challenged after initial filing by claimant[A];
Death claims: 33;
Injury-illness claims: 2,121;
Total claims: 2,154.

Status: Claims appealed after Board made its decision;
Death claims: 99;
Injury-illness claims: 422;
Total claims: 521.

Source: New York State Workers' Compensation Board.

Note: Data are current as of July 5, 2004.

[A] Claims challenged may be included in either claims resolved or claims pending.

[End of table]

Most September 11 Claims for Workers with Uninsured Employers Had Been Resolved:

The majority (89 percent) of September 11 claims for workers with uninsured employers had been resolved. Most of these worker claims were resolved with a hearing(s) and took between 3 and 9 months to resolve. However, nearly a third of these claims took over a year to resolve. For those worker claims resolved without a hearing, most took less than 6 months to resolve. Eleven percent of claims from workers with uninsured employers were still pending. Common reasons that these claims were pending included that the claimant was waiting for his or her hearing to take place and that no causal link had been established between the death, injury, or illness and the workplace.

Some claims from workers with uninsured employers were challenged after

initial filing and some were appealed after a decision by the Board had been made. Specifically, about 26 percent of these claims were challenged. Independent of whether a claim was challenged, 17 percent of the resolved claims were appealed after a decision had been made. For two claims for workers with uninsured employers, the claimants had received medical or cash benefits paid from state funds, and for one of these claims, the claimant was receiving continuing cash benefits. (For data on September 11 claims filed for workers with uninsured employers, see table 2.):

Table 2: Status and Number of September 11 Workers' Compensation Claims

Filed for Workers with Uninsured Employers, mid-2004:

Status: Claims received; Death claims: 17;
 Injury-illness claims: 116;
 Total claims: 133.

Status: Claims resolved;
 Death claims: 15;
 Injury-illness claims: 103;
 Total claims: 118.

Status: Claims pending;
 Death claims: 2;
 Injury-illness claims: 13;
 Total claims: 15.

Status: Claims challenged after initial filing by claimant[A];
 Death claims: 2;
 Injury-illness claims: 32;
 Total claims: 34.

Status: Claims appealed after Board made its decision; Death claims: 3;
 Injury-illness claims: 17;
 Total claims: 20.

Status: Claims that received medical or cash benefits; Death claims:

0;
Injury-illness claims: 2;
Total claims: 2.

Status: Claims receiving continuing cash benefits; Death claims: 0;
Injury-illness claims: 1;
Total claims: 1.

Source: New York State Workers' Compensation Board.

Note: Data are current as of August 6, 2004.

[A] Claims challenged may be included in either claims resolved or claims pending.

[End of table]

Most September 11 Claims for Volunteers Were Pending:

While the majority of all September 11 workers' compensation claims had been resolved, 69 percent of volunteer claims were pending. [Footnote 20] According to Board officials, a high portion of the volunteer claims were pending because (1) sufficient medical evidence had not been provided to establish the link between the September 11 volunteer activities and the death, injury, or illness and (2) claimants had not pursued their case after filing. Board officials believe that some volunteers may not have pursued their case further because they had filed a claim before developing symptoms and, therefore, had little, if any, medical evidence to provide. According to Board officials, such volunteers had filed a claim so that they could pursue benefits at a later date if symptoms were to develop. (For data on September 11 claims filed for volunteers, see table 3.):

Table 3: Status and Number of September 11 Workers' Compensation Claims

Filed for Volunteers, mid-2004:

Status: Claims received; Death claims: 1;
Injury-illness claims: 587;
Total claims: 588.

Status: Claims resolved;
Death claims: 0;
Injury-illness claims: 185;
Total claims: 185.

Status: Claims pending;
Death claims: 1;
Injury-illness claims: 402;
Total claims: 403.

Status: Claims challenged after initial filing by claimant[A];
Death claims: 0;
Injury-illness claims: 14;
Total claims: 14.

Status: Claims appealed after Board made its decision;
Death claims: 0;
Injury-illness claims: 0;
Total claims: 0.

Status: Claims that received medical or cash benefits;
Death claims: 0;
Injury-illness claims: 85;
Total claims: 85.

Status: Claims receiving continuing cash benefits;
Death claims: 0;
Injury-illness claims: 23;
Total claims: 23.

Source: New York State Workers' Compensation Board.

Note: Data are current as of August 6, 2004.

[A] Claims challenged may be included in either claims resolved or claims pending.

[End of table]

Ninety percent of the resolved volunteer claims did not require a hearing. The majority of these claims were resolved within 3 to 9 months of filing for benefits. The time it took to resolve the seven volunteer claims that required a hearing(s) ranged from less than 3

months to more than 6 months. A few volunteer claims were challenged after initial filing: while there is no insurer involved with a volunteer claim, the Board itself challenged 2 percent of these claims.

The Board challenged these claims because, for example, it did not believe that a claimant had met the criteria for being considered a September 11 volunteer or had sufficient evidence to support the claim.

There have been no appeals regarding volunteer claims. For 85 volunteer claims, the claimants had received medical or cash benefits, and for 23 of these claims, the claimants were receiving continuing cash benefits.

Mr. Chairman, this concludes my prepared statement. I will be happy to respond to any questions you or other Members of the Subcommittee may have.

GAO Contacts and Staff Acknowledgments:

For information regarding this testimony, please contact Robert E. Robertson, Director, or Brett S. Fallavollita, Assistant Director, Education, Workforce, and Income Security at (202) 512-7215. Individuals making contributions to this testimony include Linda L. Siegel, Kenneth J. Adams, Tonnye Conner-White, Margie Armen, and Amy Buck.

FOOTNOTES

[1] The law appropriating these funds was Public Law 107-117 (approved, Jan. 10, 2002).

[2] New York State requires employers to provide workers' compensation insurance. However, because some employers do not comply with this requirement, the state maintains an Uninsured Employers Fund to provide workers' compensation benefits for workers associated with uninsured employers.

[3] The law refers to "first response emergency services personnel"; however, for the purposes of this testimony we refer to these individuals as volunteers, that is, not associated with an employer.

[4] Benefits paid from the September 11th Victim Compensation Fund of 2001 are paid after deducting collateral sources, including (1) workers' compensation benefits received before filing for benefits with the Victim Fund and (2) future workers' compensation benefits to be paid to the children of the deceased.

[5] GAO, September 11: Health Effects in the Aftermath of the World Trade Center Attack, GAO-04-1068T (Washington, D.C.: Sept. 8, 2004).

[6] In addition to these 10,182 claims, the Board received and cancelled 674 claims. The Board cancelled these claims for a variety of reasons, including the case had been entered into the claims database twice in error or the case was not related to the events of the September 11 disaster.

[7] New York exempts the following businesses from the requirement to carry workers' compensation insurance: (1) a business owned by one individual with no employees that is not a corporation, (2) a business partnership under New York State law that has no employees, and (3) a business corporation owned by one or two individuals who own all of the stock and hold all of the offices and that has no employees.

[8] According to DOL, the Board can apply for an extension to use the funds beyond the 4-year limit.

[9] In the statement of work, the Board requested that the \$50 million for reimbursements be transferred to the Board in its entirety. However, according to DOL officials, the Department of Health and Human Services' Payment Management System--which manages grant payments for DOL and other federal agencies--declined to make a \$50 million advance payment, noting that the statute specified that the funds were available for "reimbursement." This action prevented the co-mingling of the \$125 million with the other funds.

[10] NY Exec. Law 621 et seq. (McKinney 2004).

[11] For non-September 11 claims, the CVB is a payor of last resort

and

would pay only after payments from other sources, such as workers' compensation or Social Security, are deducted from the final award amount.

[12] Executive Order 113.5, September 12, 2001, and Executive Order 113.31, October 10, 2001.

[13] New York workers' compensation law requires a claimant to file within 2 years after the accident or injury, or within 2 years after the death of an employee from a work-related accident or injury, whichever is later. For an occupational disease, the claim must be filed within 2 years after the disablement or after the claimant knew or should have known that the disease is due to the nature of the employment, whichever is the later date.

[14] Order of the Chair #967, July 22, 2003.

[15] The Board did not establish a deadline for volunteers (or their survivors) to file September 11 claims.

[16] The Board provided data on (1) the status of all September 11 claims (which do not include volunteer claims) and the time to process these claims as of July 5, 2004, (2) the status of September 11 claims for workers with uninsured employers and volunteers as of August 6, 2004, and (3) the time to process claims for workers with uninsured employers and volunteers as of May 14, 2004.

[17] The 10,182 claims received does not include September 11 claims for volunteers.

[18] While the Board conducted a special inquiry on this information for the purposes of our study, the Board does not aggregate information that would provide insights on the type of benefit received (i.e., medical or cash benefits) or the type of claim (i.e., death, injury, or illness).

[19] This does not include 26 individual claims that were resolved using a waiver agreement for which processing time was not available. In the case of a waiver agreement, a claimant has waived his or her rights to file a claim for workers' compensation and has entered into

an agreement regarding his or her benefits.

[20] The number of volunteer claims is not included in the total number of September 11 claims identified in table 1.