

FINAL PROGRAM GUIDELINES
VICTIMS OF CRIME ACT FY 1997 VICTIM COMPENSATION PROGRAM
(PUBLISHED IN THE FEDERAL REGISTER OF FEBRUARY 14, 1997)

DEPARTMENT OF JUSTICE

Office of Justice Programs

Victims of Crime Act Victim Compensation Grant Program

AGENCY: Office of Justice Programs, Office for Victims of Crime, Justice.

ACTION: Final Program Guidelines.

SUMMARY: The Office for Victims of Crime (OVC), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) is publishing Final Program Guidelines to implement the victim compensation grant program as authorized by the Victims of Crime Act of 1984, as amended, 42 U.S.C. 10601, et seq. (hereafter referred to as VOCA).

EFFECTIVE DATE: From October 1, 1996 (Federal Fiscal Year 1997 VOCA grant program), until further revised by OVC.

FOR FURTHER INFORMATION CONTACT: Carol R. Watkins, Director, State Compensation and Assistance Division, 810 7th Street N.W., Washington, D.C. 20531; telephone number (202) 307-5983. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: VOCA provides federal financial assistance to states for the purpose of compensating and assisting victims of crime, providing funds for training and technical assistance, and assisting victims of federal crimes.

These Final Program Guidelines provide information on the administration and implementation of the VOCA victim compensation grant program as authorized in Section 1403 of VOCA, Public Law 98-473, as amended, codified at 42 U.S.C. 10602 and 10603b, and contain the following information: Summary of the Comments on the Proposed Program Guidelines;

Background; Funding Allocation and Application Process; Program Requirements; Financial Requirements; Monitoring; and Suspension and Termination of Funding. These Final Program Guidelines are based on the experience gained and legal opinions rendered since the inception of the grant program in 1986, and are in accordance with VOCA. These Final Program Guidelines are all inclusive. Thus, they supersede any Guidelines previously issued by OVC.

The Office of Justice Programs, Office for Victims of Crime, in conjunction with the Office of Policy Development, DOJ, and the Office of Information and Regulatory Affairs, the Office of Management and Budget (OMB), has determined that this rule is not a "significant regulatory action" for purposes of Executive Order 12866 and, accordingly, these Final Program Guidelines were not reviewed by OMB.

In addition, it has been determined that these Final Program Guidelines will not have a significant economic impact on a substantial number of small entities; therefore, an analysis of the impact of these Guidelines on such entities is not required by the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

The program reporting requirements described in the Program Requirements section have been approved by the OMB as required under the Paperwork Reduction Act, 44 U.S.C. 3504(h). (OMB Approval Number 1121-0014.)

SUMMARY OF THE REVISIONS TO THE 1997 PROPOSED PROGRAM GUIDELINES

Proposed VOCA Victim Compensation Program Guidelines were distributed to interested individuals and organizations for the purpose of soliciting comments. In September, 1996, OVC asked the state VOCA victim compensation program administrators attending the annual conference of the National Association of Crime Victim Compensation Boards (NACVCB) for their comments. In September, OVC also mailed copies of the Proposed Guidelines to all of the state VOCA victim compensation and assistance program administrators, as well as to the executive directors of national victim organizations.

OVC received comments from state VOCA victim compensation and assistance administrators, representatives of national victim organizations, and one state legislator. In total, over 18 different recommendations, questions, and comments were received.

As a result of the comments from the field, recent legislative amendments, and modifications of applicable federal regulations, substantive changes were made to four sections of the Proposed Program Guidelines, including: the Availability of Funds, the Application Process, the Program Requirements, and the Financial Requirements. These changes are summarized in the paragraphs

below, and incorporated into the complete text of the Final Program Guidelines for Crime Victim Compensation Grants. The Final Program Guidelines also include several technical corrections that are not listed in this summary because they do not affect policy or implementation of the Guidelines.

I. Comments from the Field

A. Administrative Cost Provision.

1. Indirect Cost. Some respondents questioned OVC's prohibiting the use of these funds for indirect cost and noted that this was inconsistent with rules governing other OJP formula grant programs. Thus, this restriction has been eliminated from the "Availability of Funds" section of the Final Program Guidelines.

2. Delivery and Quality of Services. Respondents also noted that VOCA compensation programs, like VOCA assistance programs need to measure the impact of their activities on the delivery and quality of services to crime victims throughout their state. Thus, the following activities can now be supported by VOCA victim compensation administrative funds:

a. Improving coordination efforts on behalf of crime victims with other OJP Offices and Bureaus and with federal, state, and local agencies and organizations;

b. Providing training on crime victim compensation program issues such as application and eligibility requirements and range of compensable expenses, to state, public, and nonprofit organizations that serve or assist crime victims such as law enforcement officials, victim witness coordinators, corrections personnel, social service workers, victim service providers, and mental health and medical professionals;

c. Purchasing, printing, and/or developing applications, brochures and other relevant publications such as training manuals which describe the compensation application process, eligibility criteria, and range of benefits, available for crime victims; and

d. Developing protocols, policies, and procedures that promote coordination of victim compensation and victim assistance services and improve the ways crime victims are treated and served;

B. Victim Cooperation with Law Enforcement. OVC received numerous inquiries concerning the VOCA provision which requires, as a condition of eligibility, that a program promote victim cooperation with the reasonable requests of law enforcement.

Many victims of crime cannot qualify for compensation because they have not complied with reporting and cooperating requirements found in most state statutes. There are many reasons for this, including fear of reprisal, a belief by the victim that the police are insensitive, ineffective, or biased, and other reasons. Historically, the most under reported crimes were rape, sexual assault, and domestic violence. Moreover, when many of these victims do report, they frequently miss the 72-hour reporting requirement used as a condition of eligibility in most state compensation programs.

In light of these facts, and in response to comments from VOCA program administrators and other crime victim advocates, OVC has modified the Final Program Guidelines. Although state crime victim compensation programs maintain the authority and discretion to establish their own standards for "reasonable cooperation," OVC encourages state

compensation program staff to meet with victims and victim service providers to carefully review whether state statutes, program guidelines, and policies are responsive to the needs of crime victims and to determine possible barriers that might impede a victim's cooperation with law enforcement.

Possible impediments include compelling health or safety reasons, such as apprehension regarding personal safety, fear of retaliation, and intimidation by the offender or others. For example, some victims may be reluctant to cooperate fully with law enforcement after receiving threats of violence or even death against themselves and their children from the offender.

Age, psychological, cultural, or linguistic barriers may also influence the extent of victim cooperation with law enforcement. For instance, there may be special barriers deterring a young child or senior citizen from "reasonable cooperation." Likewise, embarrassment and shame may delay the reporting of sexual assault, and cultural and language differences may diminish a victim's access to the criminal justice system.

In setting the standard for victim cooperation with law enforcement, the state program should determine how much weight to give to these considerations.

VOCA's "cooperation with the reasonable requests of law enforcement" requirement may be fulfilled by utilizing the following criteria or any other criteria the state believes is necessary to encourage victim cooperation with law enforcement. For example, a state may:

1. Require a victim to report the crime to a law enforcement agency;
2. Require a victim to report the crime to an appropriate governmental agency, such as child and/or adult protective services, family or juvenile court; or
3. Accept proof of the completion of a medical evidentiary examination, such as medical reports, x-rays, medical photographs, as well as other clinical assessments as evidence of cooperation with law enforcement in cases involving sexual assault or abuse.

Modifications to the "victim cooperation with law enforcement" language are contained in the "Program Requirements" section of the Final Program Guidelines.

II. Legislative Changes

A. The Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132). The Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132) (hereinafter "The Antiterrorism Act"), signed into law on April 24, 1996, contained a number of victim related provisions that amended VOCA. Listed below are three provisions that resulted in changes to the "State Eligibility Criteria" section of the Final Program Guidelines.

1. State Eligibility Criteria/Mandatory Coverage of Terrorism Victims in State Compensation Statutes. The Antiterrorism Act provides for a new VOCA-eligibility requirement that each state must include "crimes involving terrorism" in their definition of "compensable crimes". Thus, the state must offer compensation benefits to:

- a. Residents and non-residents who are injured or killed by a crime involving terrorism occurring within the state;
- b. Its own residents who are injured or killed in terrorist attacks occurring outside the United States or in a state that does not have an eligible crime victim compensation program.

The law gives states until April 24, 1997 (Federal Fiscal Year 1998 grant application) to come into compliance with this new eligibility requirement for receiving federal VOCA compensation grants.

2. Means Testing. The Antiterrorism Act also prohibits any federal, state, or local government program that uses federal funds from including victim compensation benefits when determining

income eligibility for an applicant, if the applicant needs such assistance (medical or otherwise), in full or in part, because of the commission of a crime against the applicant.

3. Prohibition Against Awards To Convicted Persons Owing Fines. The Antiterrorism Act prohibits states from awarding victim compensation benefits to any person convicted of a federal crime who is delinquent in paying a fine, monetary penalty, or restitution imposed for the offense. This provision, however, will not become effective until the U.S. Attorney General and the Director of the Administrative Office of the U.S. Courts issue a written determination that the entities administering federal victim programs have access to accurate and efficient criminal debt payment information. As of this date, no such determination has been made, and states are under no obligation to investigate or make determinations on whether a victim owes a federal criminal debt before awarding compensation benefits.

The Antiterrorism Act also resulted in three changes to the "Availability of Funds" section.

4. OVC Reserve Fund. The Anti-terrorism Act authorizes the OVC Director to establish a reserve fund, up to \$50 million, from current year Crime Victims Fund (Fund) deposits which are in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year. Reserve fund monies may be used for supplemental grants to assist victims of terrorist acts or mass violence occurring within or outside the U.S. The OVC Director may award reserve funds to the following entities:

a. States for providing compensation and assistance to their state residents, who, while outside of the borders of the United States, become victims of a terrorist act or mass violence. The beneficiaries, however, cannot be persons who are already eligible for compensation under the Omnibus Diplomatic Security and Antiterrorism Act of 1986. Individuals covered under this Act include those who are taken captive because of their relationship with the U.S. government as a member of the U.S. Civil Service, as well as other U.S. citizens, nationals, or resident aliens who are taken captive while rendering service to the U.S. similar to that of civil servants. Dependent family members of such persons also are covered under the Omnibus Diplomatic Security Act.

b. States' eligible crime victim compensation and assistance programs for providing compensation and emergency relief for the benefit of victims of terrorist acts or mass violence occurring within the U.S.; and

c. U.S. Attorney's Offices for use in coordination with state victim compensation and assistance efforts in providing relief to victims of terrorist acts or mass violence occurring within the U.S.

d. The Director of OVC may also award OVC reserve funds to eligible state compensation and assistance programs to offset fluctuation in the funds during years in which the Fund decreases and additional monies are needed to stabilize funding for state programs.

5. Unobligated Grant Funds. Beginning with FY 1997 VOCA grants, funds not obligated by the end of the grant period, up to a maximum of \$500,000, will be returned to the Fund, and not to the General Treasury, as was the practice in previous years. Returned funds in excess of \$500,000 in a given year shall be returned to the Treasury. Once any portion of a state's grant is returned to the Fund, the funds must be redistributed according to the formula established by VOCA and the Final Program Guidelines. States are encouraged to closely monitor the expenditure of VOCA funds throughout the grant period to avoid returning unobligated balances at the end of the grant period.

6. Grant Period Extended. The Antiterrorism Act extended the VOCA victim compensation grant period from the year of award plus one, to the year of award plus two. (Subsequent legislation further extended the grant period to the year of award, plus three.)

B. Omnibus Appropriations Act of 1997. This legislation was passed by Congress and signed into law by President Clinton in September, 1996. This Act further extended the grant period to the year of award plus three. This change is effective for all FY 1997 grants. The Final Program Guidelines clarify that funds are available for obligation beginning October 1 of the year of the award, through September 30 of the FY three years later. For example, grants awarded in November, 1996 (FY 1997) are available for obligation beginning October 1, 1996 through September 30, 2000.

This modification is contained in the "Availability of Funds" section of the Final Program Guidelines.

III. Changes in Applicable Federal Regulations.

A. Mandatory Enrollment in U.S. Treasury Department's Automated Clearing House (ACH) Vendor Express Program. In accordance with the Debt Collection Improvement Act of 1996, the U.S. Treasury Department revised its regulations regarding federal payments. The Final Program Guidelines have been modified to require that, effective July 26, 1996, all federal payments to VOCA victim compensation grantees must be made via electronic funds transfer.

States that are new award recipients, or those that have previously received funds in the form of a paper check from the U.S. Treasury, must enroll in the Treasury Department's ACH Vendor Express program before requesting any federal funds. This means that VOCA grantees can no longer receive drawdowns against their awards via paper check mailed from the Treasury. Grant

recipients must enroll in ACH for Treasury to electronically transfer drawdowns directly to their banking institutions. States that are currently on the Letter of Credit Electronic Certification System (LOCES) will be automatically enrolled in the ACH program. This modification is included in the "Application Process" section of the Final Program Guidelines.

B. Higher Audit Threshold. In response to suggestions made by many recipients of federal grant awards, including VOCA grant recipients, OMB Circular, A-133 was revised, raising the audit threshold to \$300,000 for all organizations receiving federal grants. This means that those state compensation programs that expend \$300,000 or more in federal funding within the state fiscal year must have an audit made in accordance with OMB Circular A-133, as amended. This rule is effective for all fiscal years that began on or after July 1, 1996.

Previously, states that received \$100,000 or more in federal financial assistance in any fiscal year were required to have a single audit for that year. States and subrecipients receiving at least \$25,000, but less than \$100,000, in a fiscal year had the option of performing a single audit or an audit of the federal program, and state and local governments receiving less than \$25,000 in any fiscal year were exempt from audit requirements. This modification is contained in the "Financial Requirements" section of the Final Program Guidelines.

GUIDELINES FOR CRIME VICTIM COMPENSATION GRANTS

I. Background

In 1984, VOCA established the Crime Victims Fund (Fund) in the U.S. Treasury and authorized the Fund to receive deposits from fines and penalties levied on criminals convicted of federal crimes. This Fund provides the source of funding for carrying out all of the activities mandated by VOCA.

OVC makes annual VOCA crime victim compensation grants from the Fund to eligible states. The primary purpose of these grants is to supplement state efforts to provide financial assistance and reimbursement to crime victims throughout the Nation for costs associated with being a victim of a crime, and to encourage victim cooperation and participation in the criminal justice system. State crime victim compensation programs may use VOCA compensation grant funds to pay for eligible expenses provided by the state compensation statute except for property damage and property losses.

States have the responsibility for establishing guidelines and procedures for applying for crime victim compensation benefits which meet the minimal statutory requirements outlined in VOCA

and the requirements in these Final Program Guidelines.

II. Funding Allocation and Application Process

A. Distribution of Crime Victim Fund. OVC administers the deposits made into the Fund for programs and services, as specified in VOCA. The amount of funds available for distribution each year is dependent upon the total deposits into the Fund in the preceding Federal Fiscal Year.

The Federal Courts Administration Act of 1992 removed the cap on the Fund, beginning with FY 1993 deposits. This Act also eliminated the need for periodic reauthorization of VOCA and the Fund. Thus, under current legislation, the Fund will continue to receive deposits.

The Violent Crime Control and Law Enforcement Act of 1994 provides that the deposits into the Fund are to be distributed as follows:

1. The first \$3,000,000 deposited in the Fund in each fiscal year is available to the Administrative Office of United States Courts for administrative costs to carry out the functions of the judicial branch under Sections 3611 of Title 18, U.S. Code.

2. The next \$10,000,000 deposited in the Fund in a particular fiscal year:

a. 85% shall be available to the Secretary of Health and Human Services for grants under Section 4(d) of the Child Abuse Prevention and Treatment Act for improving the investigation and prosecution of child abuse cases;

b. 15% shall be available to the Director of the Office for Victims of Crime for grants under Section 4(d) of the Child Abuse Prevention and Treatment Act for Assisting Native American Indian Tribes in developing, establishing, and operating programs to improve the investigation and prosecution of child abuse cases.

3. The remaining Fund deposits are distributed as follows:

a. 48.5 percent is available for victim compensation grants;

b. 48.5 percent is available for victim assistance grants;

c. Three percent is available for support of services to federal crime victims and for demonstration, training, and technical assistance grants to eligible crime victim programs.

B. Availability of Funds.

1. VOCA Victim Compensation Grant Formula. The Director of OVC will make an annual grant to eligible state crime victim compensation programs equal to 40 percent of the amounts awarded by the state program to victims of crime from state sources of revenue during the fiscal year preceding the year of deposits in the Fund (two years prior to the grant year). Note: Amounts paid to compensate victims for property damage or property loss cannot be included in a state's certification for a VOCA victim compensation grant award. If the amount in the Fund is insufficient to award each state 40 percent of its prior year's compensation payout, Section 1403(a)(2) of VOCA provides that all states will be awarded the same reduced percentage of their prior year payout from the available funds.

2. Reserve Fund. As the result of the provisions in the Antiterrorism Act amending VOCA, the OVC Director is authorized to retain funds in a reserve fund, up to \$50 million. The Director may utilize the reserve funds in order to:

a. Award supplemental grants to assist victims of terrorist acts or mass violence outside or within the U.S. The OVC Director may grant reserve funds for such purposes to the following entities:

1) States for providing compensation and assistance to their state residents, who, while inside their state borders or outside of the borders of the United States, become victims of a terrorist act or mass violence. The beneficiaries, however, cannot be persons who are already eligible for compensation under The Omnibus Diplomatic Security and Antiterrorism Act of 1986.

Individuals covered under the Omnibus Diplomatic Security and Antiterrorism Act of 1986 include persons who are taken captive because of their relationship with the U.S. Government as a member of the U.S. Civil Service, as well as other U.S. citizens, nationals, or resident aliens who are taken captive while rendering service to the U.S. similar to that of civil servants. Dependent family members of such persons also are covered under the Omnibus Diplomatic Security Act.

2) States' eligible crime victim compensation and assistance programs for providing emergency relief, including crisis response efforts, training, and technical assistance for the benefit of

victims of terrorist acts or mass violence occurring within the U.S.

3) U.S. Attorney's Offices for use in coordination with state victim compensation and assistance efforts in providing emergency relief to victims of terrorist acts or mass violence occurring within the U.S.

b. Offset Fluctuations in Fund. The OVC director may also use the reserve fund to offset fluctuations in Fund deposits for state compensation and assistance programs in years in which the Fund decreases and additional monies are needed to stabilize programs.

3. Grant Period. Federal legislation passed in 1996 also makes victim compensation grant funds available for expenditure throughout the FY of award as well as in the next three fiscal years. The FY begins on October 1 and ends on September 30. State crime victim compensation programs may pay compensation claims retroactively from October 1, even though the VOCA grant may not be awarded until later in the grant period.

4. Grant Deobligations. Funds not obligated by the end of the grant period, up to a total of \$500,000, will be returned to the Fund. Once any portion of a state's grant is returned to the Fund, the funds must be redistributed according to the rules established by VOCA and the Final Program Guidelines, so states are encouraged to monitor closely the expenditure of VOCA funds throughout the grant period.

C. Administrative Costs

1. Purpose of Administrative Cost Allowance. Since FY 1995, the VOCA has allowed up to five percent of crime victim compensation grant funds to be used for administering the state crime victim compensation grant program(s). It is in the state's discretion to use the allowable five percent for program administration. However, any part of the allowable five percent which is not used for administrative purposes must be used for awards of compensation to crime victims.

The intent of this provision of VOCA is to support and advance program administration in all operational areas including claims processing, staff development and training, public outreach, and program funding by supporting those activities that will improve program effectiveness and service to crime victims. If a state elects to use up to five percent of their VOCA compensation grant for administrative purposes, only those costs directly associated with administering the program, enhancing overall program operations such as training and public outreach regarding eligibility requirements and available benefits, and ensuring compliance with federal requirements, can be paid with limited administrative grant funds. Further, states must certify that VOCA funds used for administrative purposes will not be used to supplant state or local

funds but will be used to increase the amount of state funds that are available for administering the compensation program. For the purpose of establishing a baseline level of effort, states should maintain documentation as to the overall administrative commitment of the state prior to their use of VOCA administrative grant funds.

2. Allowable Costs. Allowable administrative costs include but are not limited to the following: program personnel, salary and benefits; travel costs for attendance at state, regional, and national compensation training conferences; computer equipment and support services; audit costs; costs involved in the production and distribution of program brochures and posters, and other program outreach activities; professional fees for computer services and peer review of compensation claims; agency membership dues for victim compensation organizations; program enhancements such as toll-free numbers; special equipment and materials to facilitate service to persons with disabilities, and other reasonable costs directly related to administering a compensation program.

The following activities impact the delivery and quality of compensation services to crime victims throughout the state and, thus, can be supported by administrative funds:

- a. Improving coordination efforts on behalf of crime victims with other OJP Offices and Bureaus and with federal, state, and local agencies and organizations;
- b. Providing training on crime victim compensation program issues such as application and eligibility requirements and range of compensable expenses, to state, public, and nonprofit organizations that serve or assist crime victims such as law enforcement officials, victim witness coordinators, corrections personnel, social service workers, victim service providers, and mental health and medical professionals;
- c. Purchasing, printing, and/or developing applications, brochures and other relevant publications such as training manuals which describe the compensation application process, eligibility criteria, and range of benefits, available for crime victims;
- d. Developing protocols, policies, and procedures that promote coordination of victim compensation and victim assistance services and improve the ways crime victims are treated and served; and

3. Salary Costs. Staff supported by administrative funds under the VOCA crime victim compensation grant must work directly for the compensation program in the same proportion as their level of support from VOCA grant funds. If the staff have other functions, the proportion of time working on the compensation program must be documented using some reasonable method at regular intervals such as time and attendance records on all funded staff which demonstrate the portion of staff time spent on compensation related activities. The documentation must provide a

clear audit trail for the expenditure of grant funds.

Only staff activities directly related to compensation functions can be funded with VOCA administrative funds. Similarly, any equipment purchases or other expenditures charged to the VOCA compensation grant should only be charged proportionate to the percentage of time utilized by the compensation program.

Temporary or periodic personnel support, such as qualified peer reviewers for medical and mental health claims, and data processing support services are also allowable. These services may be obtained through contract using VOCA administrative funds.

4. Requirement to Notify OVC of Use of Administrative Funds. Those states that elect to utilize administrative funds under the VOCA compensation grant, are required to include with their annual application the following information:

- a. The amount of the total grant that will be used for program administration;
- b. An itemization of the state's projected expenditures and a general description of the activities that will be supported;
- c. How these activities will improve the administration of the VOCA program and/or improve services to crime victims.

A state may modify projections set forth in their application by providing OVC a revised description of their planned use of administrative funds in writing, subsequent to submitting their annual application. However, the revised description must be reviewed prior to the obligation of any federal funds. Failure to notify OVC of modifications will prevent the state from meeting its obligation to reconcile its State-wide Report with its Final Financial Status Report.

D. Application Process

1. Application for Federal Assistance. Each year, OVC issues to each eligible state a Program Instruction and Application Kit, which contains the necessary forms and detailed information required to make application for VOCA crime victim compensation grant funds. The amount for which each state may apply is included in the Application Kit. States shall use the Standard Form 424, Application for Federal Assistance, and its attachments to apply for VOCA victim compensation grant funds. Applications for VOCA crime victim compensation grants may only

be submitted by the state agency designated by the Governor to administer the VOCA grant.

Completed applications must be submitted on or before the stated deadline, as determined by OVC. If an eligible state fails to apply for its crime victim compensation allocation by the prescribed deadline, OVC will redistribute federal VOCA crime victim compensation dollars to the VOCA victim assistance grant program as provided by Section 1404(a)(1) of VOCA (42 U.S.C. 10603 (a)(1)), assuming all states have received the statutorily prescribed 40% (percent) of their prior years payouts.

2. Required Attachments to Application. In addition to submission of the Application for Federal Assistance, states shall submit the following information:

a. A description of their arrangements for complying with the audit provisions of Circular A-133, as amended.

b. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements; Civil Rights Compliance, and any other certifications required by OJP and OVC. Additionally, states must complete a disclosure form specifying any lobbying activities that are conducted.

c. Crime Victim Compensation Eligible State Payments Certification Form which is furnished by OVC. The amount certified on this Form is used by OVC to determine the annual federal grant award to each eligible state in the following year. This form must be completed and signed by the authorized individual within the agency designated by the Governor to administer the VOCA crime victims compensation grant. For further information concerning the state certification, see the Program Requirements section.

d. An assurance that the program will comply with all applicable nondiscrimination requirements;

e. An assurance that in the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing, on the grounds of race, color, religion, national origin, sex, or disability against the program, the program will forward a copy of the finding to the Office of Justice Programs, Office for Civil Rights (OCR);

f. The name of the civil rights contact person who has lead responsibility for ensuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters

with OCR;

g. An assurance that programs will maintain information on crime victims receiving services by race, national origin, sex, age, and disabilities, where such information is voluntarily furnished by claimants. A state may, at its discretion, use the following language when soliciting claimant responses: "The submission of information regarding race/ethnic background or disabilities is strictly voluntary. A decision to not supply this information will not affect your eligibility for compensation benefits information. However, this information is important. We use it to study the extent to which members of minorities and persons with disabilities are recipients of compensation benefits and to determine the extent to which outreach efforts should be enhanced to ensure access and services to these populations."

h. A copy of the state statute authorizing the state's crime victim compensation program.

3. Enrollment in Automated Clearing House. In addition to yearly submission of the grant application and the above-mentioned information and assurances, states must be enrolled in the automated clearing house (ACH) so that the U.S. Department of Treasury can electronically transfer the VOCA victim compensation grant directly to the grantee's banking institution. States that are new award recipients, or those that have previously received funds in the form of a paper check from the U.S. Treasury, must enroll in the Treasury Department's ACH Vendor Express program before requesting any federal funds. This means that VOCA grantees can no longer receive drawdowns against their awards via paper check mailed from the Treasury. Grant recipients must enroll in ACH for Treasury to electronically transfer drawdowns directly to their banking institutions. States that are currently on the Letter of Credit Electronic Certification System (LOCES) will be automatically enrolled in the ACH program. Enrollment in ACH need only be completed once.

III. Program Requirements

A. State Eligibility Criteria

The fundamental criteria for eligibility is the grantee must be an operational state-administered crime victim compensation program. The term "state" includes the District of Columbia, the Virgin Islands, and any other possession or territory of the United States. Although an authorized program that has not actually paid out compensation benefits would be technically eligible under Section 1403(b)(1) of VOCA, the program would not be entitled to a VOCA grant because it had not awarded any benefits that could be matched under Section 1403(a)(1). VOCA compensation grant funds may not be used as "start-up" funds for a new state program.

Section 1403 of VOCA prescribes the conditions and eligibility criteria related to crime victim compensation grants. In order for a state to meet or maintain eligibility for a crime victims compensation grant, it must satisfy the following eligibility requirements:

1. State Operated Compensation Program for Victims. The program must be operated by a state and offer compensation to victims and survivors of victims of "compensable crimes," including crimes involving terrorism, drunk driving, and domestic violence. The Amendments to VOCA contained in the Antiterrorism Act of 1996 gives states until April 24, 1997 (FY 1998 grant application) to come into compliance with the new eligibility conditions for receiving federal VOCA compensation grants.

The term "compensable crime" means a crime, the victims of which are eligible for compensation under the state's eligible crime victim compensation program statute or rule. The range of expenses for which states may award crime victims compensation varies nationwide, although all states must award compensation for medical expenses, including mental health counseling and care; loss of wages; and funeral expenses.

2. Means Testing. The Antiterrorism Act prohibits any federal, state, or local government program that uses federal funds from including victim compensation benefits when determining income eligibility for an applicant, if the applicant needs such assistance (medical or otherwise), in full or in part, because of the commission of a crime against the applicant.

3. Prohibition Against Awarding Compensation to Those Delinquent in Paying Federal Criminal Fines. The Antiterrorism Act prohibits states from awarding victim compensation benefits to any person convicted of a federal crime who is delinquent in paying a fine, monetary penalty, or restitution imposed for the offense.

This provision, however, will not become effective until the U.S. Attorney General and the Director of the Administrative Office of the U.S. Courts issue a written determination that the entities administering federally-funded victim compensation programs have access to accurate and efficient criminal debt payment tracking information. As of this date, no such determination has been made, and states are under no obligation to investigate or make determinations on whether a victim owes a federal criminal debt, before awarding compensation benefits.

4. Victim Cooperation with Law Enforcement. Encouraging victims to cooperate with law enforcement and to report the crime is important to the effective functioning of the criminal justice system and to preventing further victimization.

Although state crime victim compensation programs maintain the authority and discretion to establish their own standards for "reasonable cooperation," OVC encourages state compensation

program staff to meet with victims and advocates to carefully review whether state statutes and state program guidelines and policies are responsive to the needs of crime victims and to determine possible barriers that might impede a victim's cooperation with law enforcement.

Possible impediments include compelling health or safety reasons, such as apprehension regarding personal safety, fear of retaliation, and intimidation by the offender or others. For example, some victims may be reluctant to cooperate fully with law enforcement after receiving threats of violence or even death against themselves and their children from the offender.

Age, psychological, cultural, or linguistic barriers may also influence the extent of victim cooperation with law enforcement. For instance, there may be special barriers deterring a young child or senior citizen from complying fully with law enforcement. Embarrassment and shame may delay the reporting of sexual assault, and cultural and language differences may diminish a victim's access to the criminal justice system.

In setting the standard for victim cooperation with law enforcement, the state program should determine how much weight to give to these considerations.

VOCA's "cooperation with the reasonable requests of law enforcement" requirement may be fulfilled by utilizing the following criteria or any other criteria the state believes is necessary to encourage victim cooperation with law enforcement. For example, a state may:

- a. Require a victim to report the crime to a law enforcement agency;
- b. Require a victim to report the crime to an appropriate governmental agency, such as child and/or adult protective services, family court, or juvenile court; or
- c. Accept proof of the completion of a medical evidentiary examination, such as medical reports, x-rays, medical photographs, as well as other clinical assessments as evidence of cooperation with law enforcement in cases involving sexual assault or abuse.

5. Nonsupplantation. The state must certify that grants received under this section will not be used to supplant state funds otherwise available to provide crime victim compensation or to administer the state crime victim compensation program.

The nonsupplantation provision is intended to assure that states use VOCA funds to augment, not replace, otherwise available state funding for crime victim compensation. More specifically, the

states may not decrease their financial commitment to crime victim compensation solely because they are receiving VOCA funds for the same purpose.

6. Compensation for Residents Victimized Outside Their Own State. The state must provide compensation to residents of the state who are victims of crimes occurring outside the state, if the crimes would be compensable had they occurred inside that state; and the crimes occurred in a state not having an eligible crime victim compensation program, or occurred outside the U.S. (If the compensable crime is terrorism as defined in Section 2331 of title 18 of the U.S. Code). The state must make these awards according to the same criteria used to make awards to those who are victimized while in the state.

This provision is intended to cover those residents of a state who are victimized in a state which does not have an eligible crime victims compensation program for which the victim qualifies. In such instances, the victim would be eligible to apply for crime victim compensation from the State in which he or she resides.

7. Compensation for Non-residents of a State. The state must make compensation awards to victims who are non-residents of the state according to the same criteria used to make awards to victims who are residents of such state.

Eligibility for VOCA funds requires the state program to extend its coverage to all non-residents victimized in the state. Note: For the purposes of this provision, the term "non-resident" must, at a minimum, include anyone who is a resident in one state but victimized in another. A state may, at its discretion, broaden its definition of non-resident to include anyone victimized in the state regardless of whether the victim is a United States resident.

This provision is intended to ensure that non-residents of a state, who are victimized in a state that has an eligible compensation program, are provided the opportunity to apply for and receive the same compensation benefits that are available to residents of the state. The provision of reciprocal agreements with certain other states will not suffice to meet these criteria.

8. Victims of Federal Crime. The state must provide compensation to victims of federal crimes occurring within the state on the same basis that such program provides compensation to victims of state crimes.

For example, a victim of a rape, occurring on a federal installation or Indian reservation inside the state, must be afforded the same benefits that would be available to the victim if the rape were classified as a crime against the state. This provision is intended to cover those individuals victimized on military installations, national parks and highways, Native American reservations, and under other circumstances where Federal jurisdiction exists since there is no federal compensation program which provides benefits to victims covered under federal jurisdiction.

9. Unjust Enrichment. Except pursuant to rules issued by the compensation program to prevent unjust enrichment of the offender, the state cannot deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender.

Unjust enrichment, as the basis for denying crime victims compensation, must be based upon written rules issued by the state crime victims compensation program. "Rules" mean either written policies or directives developed and distributed by state crime victim compensation programs or rules adopted by legislative or administrative bodies. Such rules cannot have the effect of denying compensation to a substantial percentage of domestic violence victims. The rules relating to unjust enrichment should be applicable to all claims for compensation although it is recognized that domestic violence cases have the greatest potential for unjust enrichment.

In general, programs must balance the goals of making compensation benefits available to victims and preventing unjust enrichment of offenders. State programs are strongly encouraged to work with domestic violence coalitions and representatives to this end.

In developing rules, the states are encouraged to consider the following:

a. Legal responsibilities of the offender to the victim under the laws of the state and collateral resources available to the victim from the offender. For example, legal responsibilities may include court-ordered restitution or requirements for spouse and/or family support under the domestic or marital property laws of the state. Collateral resources may include insurance or pension benefits available to the offender to cover the costs incurred by the victim as a result of the crime. However, as with other crimes, victims of domestic violence should not be penalized when collateral sources of payment are not viable, e.g., when the offender refuses to, or cannot, pay restitution or other civil judgments within a reasonable period of time or when the offender otherwise impedes direct or third party (i.e., insurance) payments.

b. Payments to victims of domestic violence which benefit offenders in only a minimal or inconsequential manner would not be considered unjust enrichment. To deny payments, in some instances, could serve to further victimize the claimant. For example, denial of medical or dental expenses solely because the offender has legal responsibility for the charges, but is unwilling, or unable to pay them, could result in the victim's inability to receive treatment.

c. Consultation with social services and other concerned governmental entities, as well as with private organizations that support and advocate on behalf of domestic violence victims.

d. The special needs of child victims of criminal violence especially when the perpetrator was the parent who may or may not have lived in the same residence.

10. Other Information Requested by the OVC Director. The state must provide such other information and assurances as the Director of OVC may reasonably require.

11. Payor of Last Resort. When a victim is eligible to receive benefits from a federal program or federally financed state or local program, such as Medicaid, the state compensation program shall not pay the costs that the federal or federally financed programs covers. Additionally, the federal or federally financed program shall make its payments without regard to the existence of the crime victim compensation program. The compensation program is the payor of last resort with regard to federal or federally financed programs.

OVC encourages state grantees to coordinate their VOCA assistance and compensation activities to ensure a continuum of services for crime victims. Coordination may include activities such as: planning meetings; training activities for direct service providers on the general parameters of the state compensation agency's program (e.g., eligibility criteria, completion of claims, and time frames for receiving compensation); providing information on VOCA-funded victim assistance services within the state; and developing joint guidance, where applicable, on third-party payments to VOCA assistance organizations.

OVC also requires state grantees to coordinate their activities with the Victim/Witness Coordinator staff within U.S. Attorney Offices to ensure that the Coordinators are aware of available resources for victims of federal crime.

B. State Certifications. Guidelines on amounts to be included as well as amounts to be excluded in a state's certification of payments of crime victims compensation from state funding sources are furnished below:

1. Program Revenue. States must report on the certification form all sources of state revenue available to the crime victims compensation program during the Federal Fiscal Year. In some instances, funds are made available to the crime victims compensation program from other departments or agencies, from supplemental appropriations, donations, or unspent funds carried over from prior years. All state funds which are available during the Federal Fiscal Year should be reported. The amount of certified revenue, excluding VOCA funds, but including all other sources, including carried over funds, must meet or exceed the amount of certified payments to crime victims.

2. Amounts to Be Included. The total amount to be certified by the state program must include only those amounts paid from state funding sources to or on behalf of crime victims during the

Federal Fiscal Year (October 1 to September 30).

3. Compensable Expenses. The range of expenses for which states may award crime victims compensation varies nationwide, although all states must award compensation for medical expenses, including mental health counseling and care; loss of wages; and funeral expenses. Note: The term "medical expenses" includes, to the extent provided under the state crime victim compensation program statute, expenses for eyeglasses and other corrective lenses; dental services, devices, and prosthetic devices; and for services rendered in accordance with a method of healing recognized by the law of the state. "Mental health counseling and care" means the assessment, diagnosis, and treatment of an individual's mental and emotional functioning that is required to alleviate psychological trauma resulting from a compensable crime. Such intervention must be provided by a person who meets such standards as may be set by the state for victim mental health counseling and care.

Compensable expenses to be included in the annual certification must be authorized by state statute or rule, providing there is rule making authority in state law. States may include expenses, not specifically identified in VOCA, such as pain and suffering; crime scene clean up; replacement costs for clothing and bedding held as evidence; annuities for child victims for loss of support; medically-necessary building modification; medically-necessary devices; and attorney fees related to a victim's claim for compensation.

States may also include payments related to forensic sexual assault examinations, even if the victim did not report the crime to law enforcement if such payments are made from funds administered by the compensation program and are allowable under the state's statute or administrative rules.

4. Amounts to Be Excluded. States must exclude, in the certification, VOCA grant funds, compensation for property losses or property damage, audit costs, personnel costs, and any other program administrative costs.

5. Applicable Credits. Any "applicable credits" must be deducted from the state certification. The term "applicable credits" refers to those receipts or reduction of expenditures, which offset or reduce expense items that are allocable to a particular crime victim compensation claim. Typical examples of applicable credits in state crime victims compensation programs include funds received through a state's subrogation interest in a claimant's civil law suit recovery, restitution, refunds, or other reimbursements. Refunds include amounts from overpayment, erroneous payments made to claimants, uncashed checks, etc. Additional guidance regarding applicable credits can be found in OMB Circular A-87, "Cost Principles for State and Local Governments."

States must determine how to account for both the receipt and expenditure of restitution and refunds. Note: A state is not required to reduce its certified payment figure by the amount of restitution recoveries received by the state which are not directly related to the payment of crime

victim compensation benefits, nor when such reimbursements were from payments to victims prior to receiving a VOCA award.

6. Recovery Costs. Salary costs for personnel directly involved in recovery efforts, which are directly attributable to the recovery of restitution, refunds, and other reimbursements, may be offset against the amount of income received from such reimbursement. Expenses shall be limited to the percentage of those salaries incurred by the state for employees whose primary responsibilities (not less than 75 percent of their time) are directly and specifically related to recovering restitution and other reimbursements. Recovery costs can not be claimed for employees whose salary is derived from federal administrative grant funds.

7. Source of Payments to Crime Victims. There is no financial requirement that state compensation programs identify the source of individual payments to crime victims as either federal or state dollars, nor is there any requirement that restitution recoveries or other refunds be tracked to federal or state dollars paid out to the victim.

C. Incorrect Certifications. If it is determined that a state has made an incorrect certification of payments of crime victims compensation from state funding sources and a VOCA crime victim compensation grant is awarded in error, one of the following two courses of action will be taken:

1. Over Certification. In the event that an over certification comes to the attention of OVC or the Office of the Comptroller, OJP, the necessary steps will be taken to recover funds which were awarded in error. OVC does not have the authority to permit states to keep amounts they were not entitled to as a result of overcertification.

2. Under Certification. If a state under-certifies amounts paid to crime victims, OVC will not supplement payments to the state in a subsequent year to correct the state's error. Once OVC awards funds in a given FY, there are no excess funds available to remedy errors of this nature.

D. Program Reporting Requirements. Annual Performance Report. States receiving VOCA crime victims compensation grant funds are required to submit an Annual Performance Report that is provided by OVC. The Report requests specific information about claims for compensation, such as types of crimes compensated, including terrorism, drunk driving and domestic violence, disposition of claims, payments for compensable expenses, and use of administrative and training funds. The Performance Report covers the Federal Fiscal Year ending September 30 and is due to OVC by December 30 of the same year.

E. Additional Requirements

1. Civil Rights - Prohibition of Discrimination for Recipients of Federal Funds. No person in any state shall, on the grounds of race, color, religion, national origin, sex, or disability be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any program or activity receiving federal financial assistance, pursuant to the following statutes and regulations: Section 809(c), Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789d, and Department of Justice Nondiscrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Subtitle A, Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq.; and Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681-1683; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, et seq.

2. Confidentiality of Research Information. Except as otherwise provided by law, no recipient of monies under VOCA shall use or reveal any research or statistical information gathered under this program by any person, and identifiable to any specific private person, for any purpose other than the purpose for which such information was obtained, in accordance with VOCA. Such information, and any copy of such information, shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. [See Section 1407(d) of VOCA, codified at 42 U.S.C. 10604(d)].

This provision is intended, among other things, to assure the confidentiality of information provided by crime victims to employees of VOCA-funded victim compensation programs. However, there is nothing in VOCA or its legislative history to indicate that Congress intended to override or repeal, in effect, a state's existing law governing the disclosure of information, which is supportive of VOCA's fundamental goal of helping crime victims. For example, this provision would not act to override or repeal, in effect, a state's existing law pertaining to the mandatory reporting of a suspected child abuse. See Pennhurst State School and Hospital v. Halderman, et al., 451 U.S. 1 (1981).

IV. Financial Requirements

As a condition of receiving a grant, states agree to insure adherence to the general and specific requirements as set forth in the "OJP Financial Guide" and applicable OMB Circulars and Common Rules. This includes the maintenance of books and records in accordance with generally accepted government accounting principles. States further agree to identify their state fiscal year and federal cognizant audit agency. This section describes the payment of grant funds, termination of advanced funding; financial status reports, and audit requirements.

A. Audit Responsibilities for States. State compensation programs that expend \$300,000 or more in federal financial assistance within the state's fiscal year are required to have an audit in accordance with OMB Circular A-133, as amended. State and local governments expending less than \$300,000 in their fiscal year are exempt from audit requirements. This rule is effective for all fiscal years that began on or after July 1, 1996.

B. Audit Costs. Although under OMB Circular A-133 audit costs are generally allowable charges under federal grants, audit costs incurred at the grantee level are determined to be an administrative expense and may be paid with the allowable five percent for administration. Any of the VOCA grant monies used for administrative purposes cannot be included in the state-certified payout.

C. Financial Status Report for States. Financial Status Reports (269A) are required from all state agencies. A Financial Status Report shall be submitted to the Office of the Comptroller for each calendar quarter in which the grant is active. This Report is due even when no obligations or expenditures were incurred during the reporting period. Financial Status Reports shall be submitted to the Office of the Comptroller, by the state, within 45 days after the end of each calendar quarter. Calendar quarters end March 31, June 30, September 30, and December 31. A Final Financial Status Report is due 120 days after the end of the VOCA grant, no later than January 31.

D. Termination of Advance Funding. If the state grantee receiving cash advances by direct Treasury deposit demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and disbursements, OJP may terminate advance funding and require the state to finance its operations with its own working capital. Payments to the state will then be made to the state by the ACH Vendor Express method to reimburse the grantee for actual cash disbursements. It is essential that the grantee organization maintain a minimum of cash on hand and that drawdowns of cash are made only when necessary for disbursements.

V. Monitoring

A. Office of the Comptroller/General Accounting Office/Office of the Inspector General. The Office of the Comptroller, the General Accounting Office, and the Office of the Inspector General conduct periodic reviews of the financial policies and procedures and records of VOCA state grantees. Therefore, upon request, states must give authorized representatives the right to access and examine all records, books, papers, case files, or other documents related to the grant.

B. Office for Victims of Crime. OVC conducts on-site monitoring in which each state grantee is visited a minimum of once every three years. While on site, OVC personnel will review various

documents and files such as (1) financial and program manuals and procedures governing the crime victim compensation grant program; (2) financial records, reports, and audit reports for the state grantee; (3) the state's compensation application, procedures, and guidelines for awarding compensation benefits; (4) a random sampling of victim compensation claim files; and (5) all other applicable state records and files.

VI. Suspension and Termination of Funding

If, after notice to the grantee, OVC finds that a state has failed to comply substantially with VOCA, the OJP Financial Guide (effective edition), the Final Program Guidelines, or any implementing regulation or requirement, OVC may suspend or terminate funding to the state and/or take other appropriate action. Under the procedures of 28 CFR Part 18 (7-1-96-Edition), states may request a hearing on the justification for the suspension and/or termination of VOCA funds.

See also:

- [Victim Assistance Guidelines](#)
- [2001 VOCA Guidelines from the Federal Register](#) (PDF 70 kb)

[Return to Grants & Funding](#)

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