

DEPARTMENT OF JUSTICE**Office of Justice Programs****[OJP(OVC)-1289]****Proposed Program Guidelines for the Victims of Crime Act Victim Compensation Grant Program****AGENCY:** Office for Victims of Crime, Office of Justice Programs, Justice.**ACTION:** Proposed program guidelines and request for comments.

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

Solicitation of Comments: The public is invited to provide comments to these Proposed Program Guidelines. All comments must be sent (either by conventional mail or electronic mail) to Carol R. Watkins, Director, State Compensation and Assistance Division, 810 Seventh Street, N.W., Washington, D.C. 20531; E-mail: watkinsc@ojp.usdoj.gov. Comments must be received no later than October 20, 2000.

FOR FURTHER INFORMATION CONTACT: Carol R. Watkins, Director, State Compensation and Assistance Division, 810 Seventh Street, N.W., Washington, D.C. 20531; phone: (202) 514-4696. (This is not a toll-free number). E-mail: watkinsc@ojp.usdoj.gov

SUPPLEMENTARY INFORMATION: VOCA provides federal financial assistance to states for the purpose of compensating and assisting crime victims, providing funds for training and technical assistance, and assisting victims of Federal crimes. These Proposed Program Guidelines provide information specifically with regard to 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.

Administrative Requirements*Paperwork Reduction Act*

OVC certifies that these Proposed Program Guidelines will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Summary of Proposed Changes to the 1997 Guidelines*A. Introduction*

These Proposed Program Guidelines, which revise the previously issued Victims of Crime Act Victim Compensation Grant Program Final Program Guidelines (1997 Guidelines), 62 FR 7050-03 (Feb. 14, 1997), 1997 WL 60136, are in accordance with VOCA. These Proposed Program Guidelines are all inclusive. Thus, they supersede any Guidelines previously issued by OVC, including the previously issued 1997 Guidelines. The changes contained in these Proposed Program Guidelines result from developments in the criminal justice and victim services fields since the 1997 Guidelines were issued and from an extensive solicitation of feedback from the field.

B. Encouraged Changes in Coverage by States

OVC acknowledges that the range of compensable expenses varies based upon a state's particular program statute, rulemaking, policy, or procedure. In addition to the crimes and expenses mandated by VOCA, OVC encourages states to cover additional victims and expenses not previously considered in the 1997 Guidelines.

In particular, these Proposed Program Guidelines encourage states to use their state compensation funds for crimes not traditionally funded by state programs; i.e., crimes that involve threat but not actual physical injury or death; economic crime; crimes against United States residents abroad and on international waters; and crimes perpetrated through technology such as child exploitation, stalking, cybercrime, and fraud over the Internet.

These Proposed Program Guidelines would encourage states to cover victims of crime who have not been physically injured or killed but who have been threatened with injury or death. Such changes would, for example, allow for the coverage of victims of stalking, bank robbery, hate crime, workplace violence, and others who have escaped injury but have experienced the trauma of the event. See Section IV.B.1.

Federal and state governments have increased the investigation and prosecution of economic crime particularly telemarketing fraud, insurance scams, identity fraud, and exploitation of the elderly. Concurrently, victim services professionals have identified the need to develop resources to respond to these victims. As a result, OVC is clarifying in these Proposed Program Guidelines that *VOCA does not prohibit states from*

providing such coverage for victims of nonviolent crime. Because of this, these Proposed Program Guidelines encourage states to develop their own guidelines when compensating victims for a range of compensable expenses resulting from economic crime, including mental health counseling and financial planning. *However*, in state certifications used to capture VOCA funds, the only actual property damage or loss that apply are crime scene clean-up, clothing and bedding taken for evidence, and replacement or repair of window(s) and locks.

OVC encourages states to expand coverage to victims of crimes perpetrated through technology. Compensation programs have traditionally covered face to face crimes, but through the Internet, stalking, child exploitation, fraud and other crimes can be perpetrated without the victim meeting the offender. In addition, these cases may be multijurisdictional and so navigating the criminal justice system can be more complex than usual for the victim. As the criminal justice system increasingly directs resources to these crimes, state crime victim compensation programs must build a capacity to adapt to the needs of victims of these crimes. Section IV.B.1.a.

These Proposed Program Guidelines encourage additional states to cover residents victimized by crime while outside the territorial jurisdiction of the United States (e.g., in foreign countries or on international waters) where no other crime victim compensation program exists. While VOCA requires that state compensation programs cover their residents who are victims of terrorism outside of the territorial jurisdiction of the United States, it is silent on the issue of residents who are victims of other (non-terrorist) crimes committed while they are outside the territorial jurisdiction of the United States. OVC encourages state coverage of these victims to assure that business persons, tourists, students, and others can access compensation when needed. See Section III.B.4.

In addition, proposed changes contained in these Proposed Program Guidelines encourage increased collaboration, cooperation, and coordination between states and other organizations serving crime victims, including participation in criminal crisis response teams. OVC encourages states to increase coordination with VOCA victim assistance programs, worker's compensation programs, Medicaid, and other such programs that provide financial assistance and services to crime victims.

C. Proposed Substantive Changes and Clarifications

These Proposed Program Guidelines also propose several substantive changes to the 1997 Guidelines, in light of recent legislative amendments to VOCA. These Proposed Program Guidelines also propose several clarifications to provisions previously set out in the 1997 Guidelines.

First, in light of substantive amendments to VOCA with regard to the distribution of funds, under certain conditions, additional VOCA monies are made available for Child Abuse Prevention and Treatment Grants. Also, because of recent VOCA amendments, the VOCA distribution formula now provides an allowance for the earmarking of funds by Congress annually to be made available for the benefit of crime victims in the Federal criminal justice system.

Second, in light of other recent substantive amendments to VOCA, regarding coverage for compensable crimes, these Proposed Program Guidelines mandate coverage of crimes that involve personal injury or death resulting from certain crimes related to religious real property and the obstruction of the free practice of religion when these crimes are covered by interstate or foreign commerce. In addition, the provision covers crimes which involve personal injury or death resulting from certain crimes related to religious real property because of the race, color, or ethnic characteristics of any individual associated with the property. See Section IV.B.1.a.

Third, these Proposed Program Guidelines contain several changes in requirements from and clarifications to the previous 1997 Guidelines. Administrative cost provisions in these Proposed Guidelines make clear that no state match is required if the state chooses to use up to 5% for such costs and supplantation is clarified as it applies to administrative cost. Also, allowable costs covered by administrative funds are expanded to include monitoring, membership in associations other than crime victim compensation associations, and use of technology to automate claims processing and allow for Internet access to the program by crime victims. Finally, OVC proposes to allow use of administrative funds for the development and coordination of criminal crisis response teams. See Section VII. A & B.

Fourth, a further clarification in these Proposed Program Guidelines, from the 1997 Guidelines, pertains to "means testing" required under VOCA. Under

"means testing," VOCA prohibits Federal, state, or local government programs that use Federal funds from including victim compensation benefits when determining income eligibility for an applicant, until the total amount of medical or other assistance that the applicant receives from all programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime. Under VOCA, the OVC Director is given the authority to determine whether such medical or other assistance is needed by an applicant. Through these Proposed Program Guidelines, the Director's authority would be delegated to state VOCA compensation administrators. This proposed clarification regarding "means testings" affects Medicaid, Veteran's Administration, Supplemental Security Income and other programs. See Section IV.C.1.

Fifth, these Proposed Program Guidelines propose to supplement information in the 1997 Guidelines regarding state compensation program coverage of international terrorism and of the VOCA Emergency Reserve Fund. These Proposed Program Guidelines propose to include information required of state programs in applying for supplemental grants. See Sections II.A.3.d and IX. In addition, OVC proposes to encourage states to cover additional expenses that crime victims of international terrorism face.

Sixth, these Proposed Program Guidelines propose to supplement information in the 1997 Guidelines regarding compensable expenses under VOCA, specifically pertaining to any medically-necessary building adaptations or modifications. These Proposed Program Guidelines propose to include information regarding requirements for compliance with the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*, when a compensation applicant wishes to use VOCA funds for making minor building adaptations or modifications.

Finally, these Proposed Program Guidelines add new definitions to those previously delineated in the 1997 Guidelines. Furthermore, other definitions in these Proposed Program Guidelines serve to reiterate or clarify those contained in the 1997 Guidelines.

D. Proposed Technical Changes

These Proposed Program Guidelines propose several technical changes to the 1997 Guidelines, also. Specifically, the 1997 Guidelines included financial requirements that, within the Office of Justice Programs (OJP), come under the oversight and responsibility of OJP's Office of the Comptroller. While these

financial requirements remain fully in effect, in order to eliminate redundancy and duplication of responsibility, these Proposed Program Guidelines require states to comply with the *OJP Financial Guide* but do not duplicate the contents of that Guide.

Similarly, the 1997 Guidelines included civil rights requirements that, within the Office of Justice Programs (OJP), come under the responsibility of OJP's Office for Civil Rights (OCR). While these nondiscrimination and other civil rights requirements remain fully in effect, in order to eliminate redundancy and duplication of responsibility, these Proposed Program Guidelines recite the language contained in the nondiscrimination provision in VOCA.

There are several additional technical revisions to these Proposed Program Guidelines, which depart from the format of the 1997 Guidelines. These proposed changes, however, would not affect policy or implementation of VOCA victim compensation program provisions. Rather, they are intended to reorganize information in these Proposed Program Guidelines for ease of reference and use.

Summary Outline of Proposed Program Guidelines

These Proposed Program Guidelines contain the following subject matter areas broken down as follows:

- I. Definitions;
- II. Background and State Regulations;
- III. Funding Allocations;
- IV. State Eligibility Criteria;
- V. State Certification;
- VI. Application Process;
- VII. Administrative Costs;
- VIII. Financial Requirements;
- IX. Mass Violence and Terrorism;
- X. Monitoring; and
- XI. Suspension and Termination of Funding.

Guidelines for Crime Victim Compensation Grants

I. Definitions

A. Child Exploitation. The sexual victimization of a minor under the age of 18 involving child pornography, child prostitution, or computer solicitation. Child exploitation does not necessarily involve commercial or monetary gain.

B. Cybercrime. For purposes of these Guidelines, cybercrime is a crime in which computers are used to facilitate traditional criminal activity (*e.g.*, fraud, stalking, child exploitation or extortion).

C. Driving While Intoxicated. This includes drunk driving and driving under the influence of alcohol and/or other drugs.

D. *Federal Crime*. A Federal crime is any crime that is a violation of the United States Criminal Code or Federal regulations. In general, Federal crimes are investigated by Federal law enforcement agencies including the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Bureau of Alcohol, Tobacco and Firearms (ATF), U.S. Postal Service, Department of Interior, Secret Service, Customs Service, Immigration and Naturalization Service (INS), and the investigative agencies of the military services. Federal crimes are prosecuted in Federal District Courts by United States Attorneys' Offices. Some examples of Federal crimes include crimes:

1. against Federal officials;
2. that take place on Federal property, including national parks or military bases, certain maritime or territorial jurisdictions, and buildings owned or leased by the Federal government;
3. like bank robbery where the bank is insured or otherwise secured by the Federal government;
4. acts involving interstate activities, such as kidnaping, interstate domestic violence, or mail, telephone, or wire fraud; and
5. on Indian Country or reservations, where the Federal government has criminal jurisdiction over the crimes.

E. *Hate Crimes*. Crimes that manifest evidence of prejudice based on race, religion, physical or mental disability, sexual orientation, gender, ethnicity, national origin, color, creed or ancestry.

F. *Mass Violence*. Violence inflicted on a large number of persons, without regard to whether the act is related to terrorism.

G. *Mental Health Counseling and Care*. 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.

H. *Native American Tribe, Indian Tribe or Organization*. Any tribe, band, nation, or other organized group or community, including any Alaska native village or regional or village corporation as defined in or pursuant to the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1601, *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Indians.

I. *Property Damage and Loss*. Property damage is damage to material goods.

Property loss is destruction of material goods or loss of money, stocks, bonds, etc.

J. *Reservation*. A tract of land set aside for use of, and occupancy by, Native Americans.

K. *Restitution*. Payment made by the offender to the victim who was injured or killed in the crime. Restitution, however, does not refer to the general collection of fines, fees and other penalties from offenders which provide the basic revenue for the compensation program and are not identifiable to reimbursement of payouts on a specific claim.

L. *Terrorism*. A violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any state, or that would be a criminal violation if committed within the jurisdiction of the United States or any state, and appears to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by assassination or kidnaping.

II. Background and State Regulations

In 1984, the Victims of Crime Act (VOCA) established the Crime Victims Fund (Fund) in the United States Treasury to receive deposits from fines, penalties, and bond forfeitures levied on criminals convicted of federal crimes. The Fund is administered by OVC to support the activities mandated by VOCA.

OVC makes annual VOCA crime victim compensation grants from the Fund to eligible states and territories. 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 the crime, and to encourage victim cooperation and participation in the criminal justice system.

States must have in place statutes and/or written rulemakings, policies, or procedures by which compensation programs operate. With the exception of most property damage or loss, state crime victim compensation programs may use VOCA compensation grant funds to pay for eligible expenses allowed by state compensation statute, rulemakings, policies, or procedures.

III. Funding Allocations

A. *Distribution*. The amount of funds available for distribution each year is dependent upon the total deposits into the Fund in the preceding federal fiscal year. By statute, deposits are to be allocated as follows:

1. Child Abuse Prevention and Treatment Grants. Up to \$20 million¹ of the first amounts deposited in the Fund is allocated to Child Abuse Prevention and Treatment Grants. 85% of these funds are forwarded to the Department of Health and Human Services. The remaining 15% is retained by the Office for Victims of Crime to assist Native American Indian tribes in developing, establishing and operating programs designed to improve:

- a. The handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child victim; and
- b. The investigation and prosecution of cases of child abuse, particularly child sexual abuse.

2. Federal Criminal Justice System. Specific amounts are earmarked by Congress annually to be made available for improving services for the benefit of crime victims in the Federal criminal justice system.

3. Remaining Fund Deposits. The remaining fund deposits are to be distributed as follows:

a. Victim Compensation Grants. 48.5 percent are available to eligible state programs for crime victim compensation.

b. Victim Assistance Grants. 48.5 percent are available to states for victim assistance grants. Unused funds from the victim compensation portion of the deposits are added to this amount.

c. Discretionary Grants. 3 percent is available to OVC for demonstration projects, training and technical assistance grants and for the financial support of services to victims of Federal crime.

d. Emergency Reserve Funds. If monies in the Fund are sufficient to fully provide VOCA grants to the States, and deposits total 110% of the previous fiscal year, the OVC director may retain up to \$50,000,000 in an emergency reserve fund. These funds are to be used for:

(1) Use for Victims of Terrorism Outside the United States. Reserve funds may be used to award supplemental grants to States at the discretion of the OVC Director, to provide compensation and assistance to state residents who are victims of terrorism while outside the country. Victims are not eligible for these funds

¹ In any fiscal year in which Fund deposits are greater than the amount deposited in Fiscal Year 1998, an amount equal to 50 percent of the increase in the amount from fiscal year 1998 shall be available for Child Abuse Prevention and Treatment Grants in addition to the base amount of \$10 million. The total amount allocated for Child Abuse Prevention and Treatment grants for any fiscal year can not exceed \$20 million.

if they are covered for compensation under Title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986. Consequently, 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 are not eligible for VOCA compensation. Similarly, dependent family members of such persons are not eligible for VOCA compensation.

(2) *Use for Victims of Terrorism Within the United States.* Reserve funds may be used to award supplemental grants to states at the discretion of the OVC Director, to provide compensation and assistance to victims of terrorism and mass violence within their states. These supplemental grants are to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance. Reserve funds may also be provided to United States Attorney's Offices for use in coordination with state victim compensation and assistance efforts in providing emergency relief for domestic terrorism and mass casualty victims.

(3) *Use for State Compensation and Assistance Programs.* Reserve funds may be used to supplement basic state compensation and assistance awards, at the discretion of the OVC Director. The OVC Director may also use the Reserve Fund to offset fluctuations in Fund deposits for state compensation and assistance programs.

B. Grant Period. Victim compensation grant funds are available for expenditure throughout the fiscal year (FY) of award plus the next three fiscal years. The federal fiscal year (FFY) begins on October 1 and ends on September 30. State crime victim compensation programs may pay compensation claims retroactively to October 1, even though the VOCA grant may not be awarded until later in the grant period.

C. Grant Deobligations. When State grantees fail to obligate all funds by the end of a grant period, deobligated amounts up to a total of \$500,000, are returned to the Fund. Deobligated amounts in excess of \$500,000 are deposited into the U.S. Treasury for other Federal government purposes.

D. Availability of Funds: VOCA Victim Compensation Grant Formula. The Director of OVC is required to make an annual grant to eligible crime victim compensation programs that is equal to 40 percent of the amount awarded by the state program to victims of crime from state revenues during the fiscal year preceding the year of deposits in

the Fund (two years prior to the grant year). If the amount in the Fund is insufficient to award each state 40 percent of its prior year's compensation payout from state revenues/contributions, all states will be awarded the same reduced percentage of their prior year payout from the available funds.

To determine the amount available, each state must submit with its annual application a certification of the amount expended in the year preceding deposits into the Fund. Amounts paid to compensate victims for property damage or loss cannot be included in the state's certification unless the payment falls within these exceptions: (1) Replacement or repair of windows and locks; (2) crime scene clean-up; and (3) the replacement of emergency items such as prescription medicines, eyeglasses and other minimal costs associated with the replacement of items that have been taken as evidence.

IV. State Eligibility Criteria

A. Grantee. The grantee must be an operational state-administered crime victim compensation program. The term "state" includes the District of Columbia, the Virgin Islands, Guam and any other possession or territory of the United States. A new compensation program is entitled to a VOCA grant after it has awarded benefits that can be matched under VOCA. VOCA may not be used as "start-up" funds for a new state compensation program. In the event that a state chooses to administer this program in a de-centralized fashion, the state remains accountable to VOCA for expenditure of these funds.

B. Program Requirements. For a state to meet or maintain eligibility for a crime victims compensation grant, it must satisfy the following requirements:

1. Compensable Crimes and Expenses.

(a) *Crimes.* At a minimum, VOCA specifically requires the grantee to offer compensation to crime victims and survivors of victims of criminal violence compensation for certain identified expenses (see below) resulting from physical injury from a "compensable crime" as defined by the state. VOCA requires that states include as compensable crimes those crimes whose victims suffer death or personal injury as a result of terrorism, driving while intoxicated, and domestic violence.

In addition, VOCA requires that states include as compensable crimes those crimes whose victims suffer death or personal injury as a result of the intentional or attempted defacement, damage, or destruction of any religious real property because of its religious character or the obstruction, by force or

threat of force, any persons' enjoyment of the free exercise of religious beliefs when the crime is covered by interstate or foreign commerce. VOCA also requires that states include as compensable crimes those crimes whose victims suffer death or personal injury as a result of the intentional or attempted defacement, damage, or destruction of any religious real property because of the race, color, or ethnic characteristics of any individual associated with the religious property.

OVC encourages state grantees to examine the range of crimes covered by their crime victim compensation programs, and to seek to broaden crimes covered to include: crimes involving threats of personal injury (in addition to crimes involving actual physical injury) such as victims of stalking, child exploitation through the Internet, bank robberies, financial and telecommunications fraud, economic crime, cybercrime, hate crime, workplace violence, and other victims who are traumatized by a crime but are not physically injured.

(b) *VOCA Mandated Expenses.* At a minimum, VOCA requires States to award compensation for—

i. medical expenses attributable to physical injury resulting from a compensable crime to include eyeglasses and other corrective lenses, dental services, prosthetic devices, and other services rendered in accordance with a method of healing recognized by the law of the State;

ii. mental health counseling and care attributable to 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.

iii. loss of wages attributable to a physical injury resulting from a compensable crime; and

iv. funeral expenses attributable to a death resulting from a compensable crime.

State grantees may offer compensation for other types of expenses, including property damage and loss. It should be noted, however, that *amounts awarded for property damage and loss cannot be included in the amount certified as a basis for the award of VOCA compensation grants* (see Section III.D. for exceptions to this requirement).

(c) *Additional Recommended Expenses for All Crime Victims.* OVC encourages states to make compensation benefits available for other compensable expenses, as deemed by state statute, rulemaking, policy, or procedure, such as:

i. Financial planning services for victims of economic crime, domestic

violence, and survivors of homicide victims. Financial planning must be provided by a person who meets State standards for provision of this service.

ii. Travel and transport for survivors of homicide victims to secure bodies of deceased victims from another country or state.

iii. Temporary lodging for domestic violence victims.

iv. Crime scene clean up.

v. Replacement costs for clothing and bedding held as evidence, and replacement or repair of windows and locks.

vi. Medically-necessary building modification and medically-necessary devices. With regard to medically-necessary building modifications, VOCA funds used to make minor building adaptations and modifications (e.g., access ramps for persons with mobility-impaired-based disabilities) must comply with the requirements under the National Historic Preservation Act (NHPA), 16 U.S.C. § 470. For more information regarding NHPA compliance requirements, see the VOCA Victim Compensation Application Kit.

vii. Attorneys' fees related to a crime victim's claim for compensation.

viii. Payments related to forensic sexual assault examinations—even if the crime victim did not report the crime to law enforcement, and even if such payments are made from funds administered by the compensation programs and are allowable under state statute, rulemaking, policy, or procedure.

ix. Payments for forensic interviews and other services provided by child advocacy centers which meet the standards of the National Children's Alliance or other standards accepted by the state.

x. Child and respite care for dependents of crime victims and survivors of homicide to allow them to participate in criminal justice activities.

xi. Mental health counseling and care. OVC encourages states to extend mental health counseling and care services to victims of economic crimes who oftentimes suffer mental distress and guilt following the loss of income and savings in financial fraud cases.

(d) *Additional Recommended Expenses for Victims of Terrorist Acts.* OVC encourages states to make additional compensation benefits available, according to state statute, rulemaking, policy, or procedure, for victims of terrorism outside the jurisdiction of the U.S., such as:

i. Transportation to relocation site for injured victim and family members who wish to leave the city or country of the terrorist attack.

ii. Telephone bills related to communicating with family members outside the territorial jurisdiction of the United States (e.g., *abroad*) following a terrorist attack; and

iii. Attorneys' fees related to assisting a claimant in settling an estate, particularly if it involves another country, and obtaining benefits or documents such as government and/or private life insurance, retirement annuities, Social Security Benefits, Victim Compensation in foreign country.

2. Victim Cooperation with Law Enforcement.

Crime victim compensation programs must promote victim cooperation with the reasonable requests of law enforcement authorities.

State crime victim compensation programs maintain the authority and discretion to establish their own standards for victim cooperation with the reasonable requests of law enforcement. OVC encourages state compensation program staff to meet with victims and advocates to review whether state statutes and state program guidelines and policies are responsive to the needs of crime victims and to determine possible issues that might affect a victim's cooperation with law enforcement.

A crime victims' willingness to cooperate may be affected by compelling health or safety concerns including apprehension about personal safety, fear of retaliation, and intimidation by the offender or others. Crime victims may be reluctant to cooperate fully with law enforcement after receiving threats of violence or death against themselves and their families from the offender.

Age, psychological, cultural, or linguistic barriers may affect the victim's ability to cooperate with law enforcement. There may be unique barriers deterring a young child or senior citizen from complying fully with law enforcement. Embarrassment, shame and the psychological trauma may delay the reporting of sexual assault. Cultural and language differences may diminish a victim's access to and understanding of the criminal justice system. In setting the standard for victim cooperation with law enforcement, OVC encourages state programs to determine how to address these considerations.

VOCA's "cooperation with the reasonable requests of law enforcement" requirement may be fulfilled by utilizing the following criteria or by 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.

3. Non Supplantation.

The state must certify that grants received under VOCA will not be used to supplant state funds otherwise available to provide crime victim compensation benefits or to administer the state crime victim compensation program. States may not decrease their financial commitment to crime victim compensation solely because they are receiving VOCA funds for the same purpose.

4. Compensation for Residents Victimized Outside Their Own State.

A state must provide compensation to state residents who are victims of crimes occurring outside the state if the crimes would be "compensable crimes" had they occurred inside that state; and the crimes (1) occurred in a state without an eligible VOCA crime victim compensation program, or (2) in cases of terrorism (as defined in 18 U.S.C. § 2331), occurred outside the territorial jurisdiction of the United States. The state must make these awards according to the same criteria used to make awards to those who are victimized while in the state.

In addition, OVC encourages states to provide compensation to state residents who are victims of crimes other than terrorism while outside the territorial jurisdiction of the United States. This policy would allow coverage for state residents, such as tourists, students or business personnel, who are victims of crime in locations outside the territorial jurisdiction of the United States where no crime victim compensation program exists.

5. Compensation for Non-residents of a State.

The state must make compensation awards to non-resident crime victims for compensable expenses according to the same criteria used to make awards to victims who are residents of the State. For purposes of this provision, the term "non-resident" must, at a minimum, include anyone who is a resident of one of the United States. 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.

6. Victims of Federal Crime.

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

7. Unjust Enrichment.

States cannot deny compensation to a victim based on the victim's familial relationship to the offender or because the victim shares a residence with the offender. States must adapt a rule or written policy or procedure to avoid unjust enrichment of the offender, but they cannot have the effect of denying compensation to a substantial percentage of victims of violence by family members or others with whom the victim shares a residence. In developing rulemakings, or written policies or procedures, states are encouraged to consider the following:

a. The 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 of the offender may include court-ordered restitution or family support under the domestic, marital property or child support 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. As with other crimes, however, victims of family violence must not be penalized when collateral sources of payment are not viable. Examples of such situations include when the offender refuses to, or cannot, pay restitution or other civil judgments within a reasonable period of time or when the offender impedes direct or third party (*i.e.*, insurance) payments.

b. Payments to victims of family violence which only minimally or inconsequentially benefit offenders are not considered unjust enrichment. 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 not receiving treatment. The state must consider paying these expenses. If necessary, the state has the option of seeking reimbursement from the offender.

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

d. The special needs of child victims of criminal violence, especially when

the perpetrator is a parent who may or may not have lived in the same residence, and of child witnesses to violence.

8. Discrimination Prohibited.

No person shall on the grounds of race, color, religion, national origin, handicap, or sex be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with sums made available under VOCA. States and subgrantees in a decentralized system must comply with these VOCA nondiscrimination requirements, the Federal civil rights statutes and regulations cited in the Assurances that accompany the grant award document, and all other applicable civil rights requirements.

9. Other Information Requested by the OVC Director.

The state must provide such other information and assurances as the Director of OVC may reasonably require.

C. VOCA Funds and Collateral Federal Programs

1. Means Testing. Federal, state, or local government programs that use Federal funds are prohibited from including victim compensation benefits when determining income eligibility for an applicant, until the total amount of medical or other assistance that the applicant receives from all programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime. VOCA requires this policy when an applicant needs medical or other assistance, in full or in part, because of the commission of a crime against the applicant. VOCA gives the OVC Director authority to determine whether such medical or other assistance is needed by an applicant for victim compensation. Through these Proposed Program Guidelines, the Director's authority is delegated to State VOCA compensation administrators.

2. Payor of Last Resort. The compensation program is the payor of last resort with regard to Federal or Federally financed programs. When a victim is eligible to receive benefits from a Federal program or Federally financed state or local program, such as Medicaid, Medicare, Social Security Disability, and Veterans' Benefits, the state compensation program shall not use VOCA funds to pay costs that another Federal or Federally financed program covers. Additionally, the Federal or Federally financed program must make payments without regard to benefits awarded to a crime victim by a state crime victim compensation program.

In addition, OVC encourages VOCA compensation administrators to coordinate their activities with such other programs that provide financial assistance and services to crime victims, whether funded by Federal, State or local governments. Examples of such programs include Worker's Compensation programs, vocational rehabilitation programs and VOCA victim assistance subgrantee programs. Outreach to other programs can result in mutual understanding of eligibility requirements, application processing, time lines, and other program specific requirements. Administrators are also encouraged to refer applicants to other programs when those programs can cover applicant expenses or provide services. As payor of last resort, it is in the compensation program's discretion to make exception for victim needs that are not adequately met by other collateral sources.

V. State Certifications

State grantees must provide information about crime victim compensation claims payouts including all available funding sources, deductions, and recovery costs on the certification form. The U.S. Department of Justice, Office of Justice Programs uses this information to calculate allocations for VOCA eligible crime victim compensation programs.

A. *Program Revenue.* States must report on the certification form all sources of revenue to the crime victims compensation program during the Federal Fiscal Year. In some instances, funds are made available to the crime victim compensation program from other departments or agencies, from supplemental appropriations, donations, or unspent funds carried over from prior years. 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.

B. *Program Expenditures.* 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), excluding property damage or loss.

C. *Amounts to be Included.* The types of expenses for which states may award crime victims compensation vary nationwide. However, all states must award compensation for medical expenses, including mental health counseling and care, loss of wages, and funeral expenses.

Compensable expenses to be included in the annual certification must be authorized by state statute, rulemaking, policy, or procedure, providing there is authority in state law. States may include expenses, not specifically identified in VOCA, such as pain and suffering; annuities for child victims for loss of support; and other costs listed under Part IV.B. of these Proposed Program Guidelines. Included as exceptions to the property damage and loss prohibitions are: crime scene clean up; replacement or repair of windows and locks; replacement costs for items held as evidence.

State grantees may include payments related to forensic sexual assault examinations, even if the victim did not report the crime to law enforcement, and if such payments are made from funds administered by the compensation program and are allowable under the state's statute, rulemaking, policy, or procedure. State grantees may also include payments for forensic interviews and other services provided by child advocacy centers which meet the standards of the National Children's Alliance, or other standards accepted by the State.

D. Amounts to be Excluded. State grantees must exclude in the certification VOCA grant funds; compensation for property damage or loss except for items found in Parts IV.B.1.c)iv and IV.B.1.c)v of these Proposed Program Guidelines; audit costs; personnel costs; collection of offender fines, fees, penalties and other revenues which provide basic program funding; and, any other program administrative costs.

E. Deductions. Deductions are receipts or refunds which offset or reduce expense items that are allocable to a particular crime victim compensation claim. These include funds received through a state's subrogation interest in a claimant's civil law suit recovery, restitution, refunds, or other reimbursements. For purposes of applicable credits, the term "restitution" means payment made by the offender to the victim who was injured or killed in the crime.

"Restitution" does not refer to the general collection of fines, fees and other penalties from offenders which provide the basic revenue for the compensation program and are not identifiable to reimbursement of payouts on a specific claim. 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."

F. Recovery Costs. Salary and benefits costs for personnel directly involved in recovery efforts may be offset against the amount of income received from such reimbursement. Recovery efforts are those activities which are directly attributable to obtaining restitution, refunds, and other reimbursements for the expenses of specific crime victims who have received compensation from the state program. Expenses shall be limited to the percentage of those salaries and benefits incurred by the state for individual employees whose primary responsibilities (not less than 75 percent of each individual employee's work time) are directly and specifically related to recovering restitution and other reimbursements on behalf of compensated victims. Additional allowable recovery costs are garnishment fees, service of legal documents, legal publication and subpoena fees related to collecting reimbursements. Recovery costs can not be claimed for employees whose salary and benefits are derived from federal administrative grant funds. Recovery costs do not include the collection of fines, fees and other penalties which provide the basic revenue for the compensation program and are not identifiable to reimbursement of payouts on a specific victim claim.

G. 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.

H. 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 over certification. Generally, it is the policy of OVC to reduce the amount of the subsequent year VOCA victim compensation award by the amount of the overpayment.

2. **Under Certification.** If a state under-certifies amounts paid to crime

victims, OVC and the Office of the Comptroller, OJP, will not supplement payments to the state to correct the state's error since this would require recalculating allocations to every state VOCA compensation and assistance program and cause disruption in administration of these programs.

VI. Application Process

A. Application for Federal Assistance. Each year, OVC issues to each eligible state an 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 victim compensation program and 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, after all states have received the statutorily prescribed percentage of their prior years payout.

B. Program Reporting Requirements: Annual Performance Report. States receiving VOCA crime victim compensation grant funds must submit an annual OVC Performance Report. The Performance Report is due January 15 of each year for the preceding Federal fiscal year.

VII. Administrative Costs

A. Administrative Cost Allowance. VOCA allows, at state discretion, up to five percent of crime victim compensation grant funds to be used for administering the crime victim compensation grant program. Any portion 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 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 activities that will improve program effectiveness and service to

crime victims. If a state elects to use up to five percent of the VOCA compensation grant for administrative purposes, only those costs directly associated with administering the program and enhancing overall program operations ensuring compliance with federal requirements can be paid with administrative grant funds. State grantees are not required to match the portion of the grant that is used for administrative purposes. The state administrative agency may charge a federally approved indirect cost rate to this grant, but this cost is capped by the limits of these five percent administrative funds.

States must certify that VOCA funds used for administrative purposes will not supplant state or local funds but will increase the amount of funds that are available for administering the compensation program. For the purpose of establishing a baseline level of effort, states must maintain documentation on the overall administrative commitment of the state prior to their use of VOCA administrative grant funds. State grantees will not be in violation of the non-supplantation clause if there is a decrease in the state's previous financial commitment towards the administration of the VOCA grant programs in the following situations: (1) A serious loss of revenue at the state level, resulting in across-the-board budget restrictions; and (2) A decrease in the number of "state-supported" staff positions used to meet the state's "maintenance of effort" in administering the VOCA grant programs. State grantees using administrative funds must notify OVC if there is a decrease in the amount of its previous state financial commitment to the cost of administering the VOCA program.

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 administrative funds can only be charged proportionate to the percentage of time utilized by the compensation program.

B. Allowable Costs. Allowable administrative costs include but are not limited to the following:

1. Salaries and benefits for staff and consultant fees to administer and manage the financial and programmatic aspects of the crime victim compensation program and federal funding. 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 performs other functions unrelated to the provision of compensation to crime victims, the proportion of time working on the compensation program must be documented using some reasonable method of valuation at regular measurable intervals; e.g., time and attendance records. The documentation must provide a clear audit trail for the expenditure of grant funds.

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 means deemed acceptable by state administrative procedures.

2. Training and technical assistance. Attendance at training and technical assistance meetings and conferences that address issues relevant to state administration of victim compensation programs. Allowable costs may include travel, registration fees and other such expenses.

3. Monitor compliance with Federal and state requirements.

4. Automation including study, design and implementation of claims processing and other relevant systems; purchase and maintenance of equipment for the state grantee, including computers, software, FAX machines, copying machines and TTY's; and services required to support the use of technology to enhance services to crime victims.

5. Delivery of training to victim services providers, criminal justice personnel, and health and mental health, and social services providers about the crime victim compensation program. Training may include information on application, eligibility requirements and compensable expenses.

6. Memberships in crime victim organizations and victim-related informational materials.

7. Prorated program audit costs for the crime victim compensation program.

8. Indirect costs at a federally approved rate that when applied, does not exceed the 5 percent administrative cost allowance.

9. Participation in improving coordination efforts on behalf of crime victims with other Federal, state, and local agencies and organizations. This includes development of protocols, policies, and procedures that promote coordination of victim compensation with other financial and services programs that improve responses to crime victims. Such participation includes the development and

coordination of criminal crisis response teams.

10. Informational materials including development of applications, brochures, posters, training manuals and other relevant publications which describe the compensation application process, eligibility criteria, and range of benefits available for crime victims. This includes related printing costs.

11. Development of strategic and financial plans, conduct of surveys, needs assessments and examination of victim satisfaction with the program, as well as the use of technology to map victim services.

12. Toll-free telephone numbers, Internet access to claim information, and other such program enhancements.

C. Requirement to Notify OVC of Use of Administrative Funds. State grantees that elect to utilize administrative funds under the VOCA compensation grant are required to include with their annual application notification of their intent to use administrative funds; i.e., the percentage of funds, and the purposes for which they will be used. Grantees will be expected to include in their annual performance report documentation of actual use of administrative funds.

D. Confidentiality of Research Information. Except as otherwise provided by Federal law, no officer or employee of the Federal Government or 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.

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).

VIII. Financial Requirements

As a condition of receiving a grant, states must agree to insure adherence to the general and specific requirements of the *OJP Financial Guide* and all applicable OMB Circulars and Common Rules. This includes the maintenance of books and records in accordance with generally accepted government accounting principles. For copies of the *OJP Financial Guide*, call or write the OJP Office of the Comptroller, 810 7th Street NW, Washington, DC 20531, Customer Service Center 1/800-458-0786; or visit the website at: <http://www.ojp.usdoj.gov/FinGuide/>.

IX. Mass Violence and Terrorism

A. *Criminal Crisis Response*. VOCA crime victim compensation grantees are encouraged to participate in state activities that prepare for and respond to mass violence and to terrorist acts, including working with the designated emergency preparedness organizations in state government. This also includes working with the VOCA victim assistance state grantee, community-based crime victim assistance programs, and other institutions such as schools on protocols for responding to victims of terrorist incidents. Administrative dollars can be used for these purposes by state grantees.

B. *Emergency Reserve Funds*. The Director of OVC may supplement crime victim compensation programs for costs associated with mass violence or terrorism to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance. When a supplement is needed, OVC will utilize the state

grantees' current fiscal year application as a base application in order to allow for an abbreviated and expedited means to supplemental funding. When a mass violence or terrorist act occurs, an OVC staff person and the VOCA administrator will communicate concerning the need for technical assistance and for emergency reserve funds, if needed. If the OVC Director decides that supplemental Federal funding is needed, the State grantee must submit the Standard Form 424, Application for Federal Assistance and its attachments to apply for funds. When considering whether to award a supplemental grant, the OVC Director will consider, *among other factors*:

1. The numbers of victims injured or killed.
2. The impact on a community.
3. The resource limitations of the state and the community to meet the needs resulting from the mass violence or terrorist act.
4. The projected amount of supplemental funding needed as well as the period of time for which funding is needed.

C. *Grant Period*. Supplemental victim compensation grant funds are available for expenditure throughout the fiscal year of award plus the next three fiscal years. The federal fiscal year begins on October 1 and ends on September 30.

X. Monitoring

A. *Office of the Comptroller/General Accounting Office/Office of the Inspector General*. The U.S. Department of Justice, Office of Justice Programs, Office of the Comptroller; the General Accounting Office; and the U.S. Department of Justice, 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 provide authorized representatives with access to examine all records, books, papers, case files, or other documents related to the expenditure of funds received under this grant.

B. *Office for Victims of Crime*. OVC conducts on-site monitoring in accordance with its monitoring plan. While on site, OVC personnel review various documents and files including: (1) program manuals; (2) procedures; (3) program reports; (4) claimant application, eligibility requirements, determination and appeal processes; (5) a random sampling of victim compensation claim files; and (6) other applicable state records and files. Grantees are notified in writing of their compliance with requirements of VOCA.

XI. Suspension and Termination of Funding

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

Dated: September 12, 2000.

Kathryn M. Turman,

Director, Office for Victims of Crime.

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