

Testimony on

“Crime Victims Fund and the FY2007 Budget”

Before the
Senate Subcommittee on Federal Financial Management,
Government Information and International Security
U.S. Senate Committee on Homeland Security and Governmental Affairs

Presented by
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Mr. Chairman and members of the Subcommittee:

Thank you very much for this opportunity to present the subcommittee with information about the Victims of Crime Act (VOCA) and the implications of the FY 2007 Budget on the Crime Victims Fund.

My name is Steve Derene and I am the Executive Director of the National Association of VOCA Assistance Administrators (NAVAA). NAVAA represents the state agencies that receives and administers VOCA victim assistance formula grants in every state and territory and who thus manage the greatest portion of Crime Victims Fund monies every year. Prior to that, I was the VOCA Administrator for the State of Wisconsin and have served at various times as a consultant to the Office for Victims of Crime, including preparation of the first Attorney General’s “Report to Congress” on VOCA in 1988. Last year, with OVC support, I prepared a report that examined the condition of the Crime Victims Fund, trends in Fund deposits, and recommendations for addressing future Fund-related issues.¹

VOCA is the only federal victims’ funding program intended to support services for victims of *all* types of crimes, including domestic violence, child abuse and sexual assault. VOCA funds provide critical financial support for more than 4,400 victim assistance agencies that serve some 3.8 million crime victims.² For many programs—such as those that assist victims of drunken driving, survivors of homicide victims, and law enforcement-based victim services—VOCA may be the *only* source of federal support without which they may have to close their doors. VOCA grants supplementing state crime victim compensation benefits are often the last resort for innocent victims of violent crime who face huge medical and funeral bills and other expenses caused directly by the crime.

¹ Derene, Steve. March 2005. *Crime Victims Fund Report: Past, Present, and Future*. Washington, DC

² Office for Victims of Crime, *2003 Victim Assistance Grant Program Nationwide Performance Report State Performance Report Summary*. Accessed on Feb. 23, 2006 at http://www.ovc.gov/fund/vocanpr_va03.html.

One of the most important findings contained in the first “Report to Congress” was that VOCA’s significance to the crime victims’ field went *beyond the provision of funding*. The fact that the federal government was taking the lead in supporting crime victim services was a critical catalyst in greatly improving and expanding rights and services for all crime victims throughout our nation. VOCA was and remains an important and enduring symbol of the federal government’s understanding of and commitment to crime victims. It is perhaps the threat to the pledge the federal government made to victims 22 years ago that causes the field to feel so betrayed by the attempted rescission of the Crime Victims Fund. It is the first threat that goes to the integrity of the Fund; the Fund that is the very heart of VOCA.

It was on October 12, 1984 that President Reagan signed into law the Victims of Crime Act creating the Crime Victims Fund. Following the recommendations of the President’s Task Force on Victims of Crime, the revenue for the Fund comes from the collection of fines, forfeitures, special assessments and other penalties paid by persons convicted of federal criminal offenses. In its *Final Report*, the Task Force stated,

Not only is it appropriate that these monies collected as a result of criminal activity be used to help victims, but this method of funding also ensures a program that is both administratively efficient and self-sufficient, requiring no funding from tax revenues.³

The new law called for the Department of Justice to make grants to state compensation and victim assistance programs (originally, the only two Fund-supported programs); the amount available for these grants to be determined by the total amount deposited into the Fund. According to the original statute, each year fifty percent of the total deposited into the Fund was available for state crime victim compensation grants (with each state entitled to a grant of 35 percent of amounts awarded the preceding fiscal year other than for property damage). Fifty percent of total deposited into the Fund plus any amounts not used for crime victim compensation grants (because of the 35 percent limitation) was available for state victim assistance grants (of which the Attorney General could use five percent for services to victims of Federal crimes.)⁴

On the day it was created, the Fund, as you would expect, was empty. And so the Department needed to wait during the rest of fiscal year 1985 while the Fund accumulated deposits from the collection of criminal fines and penalty assessments. It was only after the “money was in the bank” and that the total amount actually deposited into the Fund was known that the Department could calculate the amount available for VOCA grants. And so there had to be a year’s delay—until fiscal year 1986—when the Department could award the first VOCA formula grants.

This pattern continued for every year since: the amounts deposited into the Fund during one fiscal year are available for grants in the subsequent year. Until FY 2000, the *entire* amount of the previous year’s deposits was distributed according to the VOCA authorizing statute. Over the years, Congress added more program areas (i.e., Children’s Justice Act, United States Attorney’s

³ President’s Task Force on Victims of Crime, December 1982. *Final Report*, Washington, D.C. 44.

⁴ Pub. L. 98-473. Section 1402(d) (2).

victim witness coordinators, F.B.I. victim assistance specialists, the federal Victim Notification System, OVC discretionary grants and the Antiterrorism Emergency Reserve) funded under VOCA so that today there are eight distinct programs areas dependent upon the annual Fund deposits. With each new program added to the Crime Victims Fund, the formula for determining each year's allocation has become increasingly complex.

In 1994, Congress authorized an emergency reserve of up to \$20 million in the Fund to supplement state grants in years when Fund deposits declined.⁵ This was the first "rainy day" reserve to protect state formula grants against fluctuations in Fund deposits.

Beginning in 1996, annual Fund deposits began to significantly fluctuate. In 1996, one case alone, Daiwa Bank Ltd. of Japan, a financial fraud case, resulted in the collection of a \$340 million criminal fine. That one fine was more than the total amount deposited in any single previous year. Congress increased the Fund's emergency "rainy day" reserve to \$50 million and expanded its use to provide assistance to victims of terrorism and mass violence.⁶

We then began to see a recurring pattern in which deposits would decline and then one (or a few) very large corporate criminal cases would generate a huge jump in deposits into the Fund to be followed by a few years of declining deposits. The largest ever single criminal fine of \$500 million was paid by F. Hoffmann-La Roche as part of a multi-defendant international vitamin price fixing cartel case contributing to total deposits in 1999 of \$985 million. Congress took note of these fluctuations in the Fund and delayed all but \$500 million of the previous year's Fund deposits from being obligated during the fiscal year 2000. This was the first time Congress, through the appropriations process, delayed or "capped" the total amount that could be obligated from Fund deposits. In so doing, Congress clearly stated, "The conferees have taken this action to protect against wide fluctuations in receipts into the Fund, and to ensure that a stable level of funding will remain available for these programs in future years."⁷ As a result, \$485 million was carried over in the Fund balance for use in future years.

Up until that time, the Fund was treated strictly according to the authorizing statute; it had never before been subject to the annual congressional appropriations process. In effect, VOCA was transmuted from a historically direct spending program into a discretionary one.

This change caused considerable consternation in the crime victims' assistance field. Many felt this move would ultimately result in a "raid" should the balance in the Fund become too large. Others believed that the Fund would be diverted to other uses. Congress reaffirmed its commitment by amending the statute to reiterate that all unobligated amounts would remain in the Fund to support future victim services, *without fiscal year limitation*.⁸ In light of the

⁵ Pub. L. 103-322.

⁶ Pub. L. 104-132.

⁷ Conference Report 106-479.

⁸ VOCA was amended in 2000 to expressly provide that "...all sums deposited in the Fund in any fiscal year that are not made available for obligation by Congress in the subsequent fiscal year shall remain in the Fund for obligation in future fiscal years, without fiscal year limitation." Pub. L. 106-386.

repeated attempts to rescind the Fund balance, it appears that these apprehensions may have been well-founded.

Congress continued capping the annual Fund obligations while repeatedly stating its intent was to maintain stable funding for future victim services.⁹ The imposition of the caps resulted in the accumulation of a Fund balance that is carried over from year to year. This balance is drawn upon in those years when the previous year's deposits are less than the annual cap on Fund obligations.¹⁰ Thus, the "rainy day" Fund balance has been needed and used to make up the difference between deposits and the cap in three years since caps were imposed in FY 2000.

Fiscal Year	Previous Year Deposits	Cap on Obligations
2000	985,185,354	\$500,000,000
2001	776,954,858	537,500,000
2002	544,437,015	550,000,000
2003	519,466,480	600,000,000
2004	361,341,967	621,312,498*
2005	833,695,013	620,000,000*
2006	668,268,054	625,000,000

* Includes rescissions and carryovers

According to the Administration's FY 2007 budget request, Fund deposits are projected to be *less than* the caps for FY 2006 and 2007, proving again that the "rainy day" reserve is essential to maintaining stable funding for VOCA programs.

The Administration's budget request would transfer to the General Treasury an estimated \$1.255 billion. An analysis of the FY 2007 budget data shows that this figure is derived by adding the projected Fund balance at the beginning of FY 2007 to the Fund deposits projected to be made *during* FY 2007 and subtracting the requested FY 2007 VOCA cap of \$625 million.

Fund balance, start of year FY 2007	\$1,291,000,000
Receipts; fines, penalties and forfeitures	<u>589,000,000</u>
Total Balances and collections	1,880,000,000
Total new obligations	-625,000,000

⁹ See, for example, Conference Report 107-278, "The conferees have taken this action to protect against wide fluctuations in receipts into the Fund, and to ensure that a stable level of funding will remain available for these programs in future years. House Report 108-576, "[The cap] is continued to ensure a stable source of funds will remain available for the program, despite inconsistent levels of criminal fines deposited annually into the fund." House Report 109-118, "The cap is continued to ensure a stable source of funds will remain available for the program, despite inconsistent levels of criminal fines deposited annually into the fund. Requested language rescinding the remaining balances in the Crime Victims Fund is not included."

¹⁰ Having increased the original emergency reserve to \$100 million, Congress recognized the similar "rainy day" functions of the emergency reserve and the Fund balance, and, as part of the USA Patriot Act, removed the "rainy day" function from the emergency reserve and renamed it the "Antiterrorism Emergency Reserve." Pub. L. 107-56.

Rescission	<u>-1,255,000,000</u>
Unobligated balance carried forward, end of year	0

So, for the first time ever, the deposits collected during a fiscal year would no longer be available for VOCA grants the following fiscal year. If adopted, the VOCA budget recommended by the Administration will take us back 22 years to October 12, 1984 *when there was a zero balance in the Fund* at the beginning of a fiscal year.

In order to realize the impact a zero balance will have on VOCA grants, it is necessary to understand how the VOCA statute says the Fund is to be allocated among the eight program areas each year. According to the law, these amounts are calculated in the following order:

- Up to \$20 million is available first for Children’s Justice Act grants to improve the investigation and prosecution of child abuse cases. Seventy percent of this amount is transferred to the Department of Health and Human Services for formula grants to state and fifteen percent is retained by the Office for Victims of Crime for grants to Indian tribes.
- Beginning in FY 2000, Congress began setting aside a portion of the Crime Victims Fund for certain federal victim assistance activities. These are taken out of the Fund after the Children’s Justice Act grants are determined:
 - In FY 2000, Congress directed that “such sums as may be necessary” shall be available to improve victim assistance services in United States Attorneys Offices. This allocation supports 170 full-time equivalent victim/witness coordinator positions and has ranged between \$14 million to \$22 million annually.
 - In FY 2001, Congress added VOCA support for 112 full time equivalent F.B.I. victim assistance specialist positions. The annual amount for this purpose has been between \$2 million to over \$10 million a year.
 - In FY 2002, another federal program, the Victim Notification System was added. This program receives approximately \$5 million a year.
- Once these amounts are allocated, the remaining amount is made available for the following program areas:
 - The Office for Victims of Crime receives five percent of the remaining amount for discretionary grants for training and technical assistance and services to victims of federal crimes.
 - Forty-seven and a half percent of the remaining amount is available for formula grants to state crime victim compensation programs. Each state grant is limited to 60 percent of its state-funded benefits.
 - Forty-seven and a half percent of the remaining amount plus any amount available for state crime victim compensation program grants but not used because of the 60 percent limitation is available for formula grants to states for direct victim assistance services. Each state receives a base amount of \$500,000 (\$200,000 for Guam, American Samoa and Northern Mariana Islands) and the remainder distribution based upon population.

- The eighth program area is the replenishment of the Antiterrorism Emergency Reserve (AER). This is a separate reserve of up to \$50 million available for compensation and assistance programs for victims of terrorism or mass violence. According to the statute, up to five percent of the Fund balance (after the other seven program areas are distributed) may be used to replenish this reserve. According to the statute, the amounts from the Fund balance used to replenish the AER are *in addition to* the annual cap on Fund obligations, unless Congress specifically states otherwise. The Antiterrorism Emergency Reserve has been used to help victims in the Oklahoma City bombing, U.S. Embassy bombings in East Africa, the U.S.S. Cole bombing, and, of course, the September 11th terrorist attacks. It is also used to fund the International Terrorism Victim Expense Reimbursement Program.

Because of this sequential allocation formula, there must be a known, sum certain at the beginning of each fiscal year for the Department of Justice to administer VOCA grants in accordance with the statute. What is equally important to understand about this rather complicated, cascading formula is actually quite simple: *if there is no money in the Fund at the beginning of FY 2008, there will be no money to distribute to support victim services.*

How much, for example, would be available under the statutory formula for OVC discretionary grants? Well, five percent of zero equals zero. The forty-seven and a half percent available for state crime victim compensation grants would equal zero. The forty-seven and a half percent available for state victim assistance formula grants would equal zero. And, with a zero balance left in the Fund, there will be no money available to replenish the Antiterrorism Emergency Reserve.

If the rescission is approved, the Fund will be as empty on October 1, 2007 as it was on October 12, 1984. Unlike every year since the Fund's first year, the previous year's deposits would disappear and would no longer be available—as promised by Congress—to support VOCA programs. The only two alternatives, it seems to me, would be to:

1. Leave crime victim assistance programs without any VOCA funds for the entire year while the Fund was being replenished with deposits during FY 2008; or
2. Maintain support for crime victim assistance programs by replacing the money paid into the Fund by criminals with money paid into the General Treasury by taxpayers.

Neither of these alternatives seems to be reasonable, practicable or—as a matter of longstanding policy—fair to crime victims or to the general taxpaying public.

According to last year's news reports, the Administration offered the following explanations for proposing the rescission:

- The Administration is not eliminating the Crime Victims Fund. While the Crime Victims Fund would statutorily still exist, it would be an empty Fund at the beginning of Fiscal Year 2008, thus rendering it virtually nonexistent to support critical crime

victim compensation, victim assistance services, Federal employees who serve crime victims in the Federal criminal justice system and replenishment of emergency funding in the event of a terrorist or mass violence incident.

- The Administration refers to the amounts to be taken out of the Fund as “surplus,” “unneeded,” and “excess.” This is *false* for several reasons. First, if Congress had not put a cap on the annual amounts the \$1.255 billion the Administration is seeking to transfer to the General Treasury would already have already been distributed and used for vital victim services. Second, there is an ongoing need to maintain these services while striving to meet the considerable unmet needs of unserved and underserved crime victims. Third, the amounts retained in the Fund have, in fact, been needed and used in three of the years since caps were imposed in 2000, as noted above, the Administration’s itself relies upon the Fund balance to make up the shortfall between deposits and obligations in both FY 2006 and FY 2007.
- The rainy day balance is just a “budget gimmick” to make the federal deficit look smaller and diverting it would “improve accountability in the budget process.” A squabble among government accountants is no excuse to deprive crime victims of funds set aside to provide them with critical services. If the Administration or Congress wishes to eliminate the Fund balance, it should only be done by removing the cap entirely and distributing *all* the money in the Fund to support crime victim services as mandated by the VOCA statute.
- Because Congress failed to use these funds, they ought to go back to taxpayers. This attitude is contemptuous of Congress’ intent to ensure stable funding for victim services, hides the fact that these funds are and will continue to be used and blatantly ignores the fact that these funds come *not from taxpayers*, but from criminals convicted of federal crimes and who are thereby held accountable for their offenses.

One thing is certainly clear: the threat posed by the rescission has brought together an unprecedented coalition of crime victims and survivors, victim service providers, national victim advocacy organizations, criminal and juvenile justice professionals and public officials at all levels and of both political parties. These groups and other organizations understand the importance of the Crime Victims Fund and their members rely upon the infrastructure built by and dependent upon the Fund to continue providing services to their constituents. The following is a partial list of the groups that have banded together to protect the Crime Victims Fund:

Victim Advocacy Organizations

American Society of Victimology

Justice Solutions, Inc.

Mothers Against Drunk Driving (MADD)

National Alliance to End Sexual Alliance

National Association of Crime Victim Compensation Boards (NACVCB)

National Association of VOCA Assistance Administrators (NAVAA)

National Center for Victims of Crime (NCVC)

National Children’s Alliance

National Coalition Against Domestic Violence (NCADV)

National Coalition of Victims in Action (NCVIA)

National Crime Victim Research and Treatment Center
National Network to End Domestic Violence (NNEDV)
National Organization for Victim Assistance (NOVA)
National Organization of Parents of Murdered Children (POMC)
Pennsylvania Coalition Against Rape (PCAR)
Renee Olubunmi Rondeau Peace Foundation, Inc.
Safe Now Project
Security on Campus, Inc.
Victims' Assistance Legal Organization (VALOR)

Criminal Justice and Allied Organizations

American Bar Association Criminal Justice Section
American Correctional Association (ACA)
American Probation and Parole Association (APPA)
Associations of State Correctional Administrators (ASCA)
Attorneys General from all 50 States, District of Columbia, Puerto Rico, American Samoa, Northern Mariana Islands
Balanced and Restorative Justice (BARJ)
Council of State Governments (CSG)
International Association of Reentry
The Justice Project
National District Attorneys' Association (NDAA)
National Grange
National Judicial College
National Sheriffs' Association
U.S. Conference of Catholic Bishops

As I noted earlier, the Administration's proposal to remove the Fund balance represents a major and dramatic break from the historic, bipartisan support VOCA has received from every Congress and previous Administration. The potential loss of these funds would be devastating to the hundreds of thousands of crime victims and survivors who receive compensation benefits to help them recoup some of their otherwise unreimbursed medical costs, lost wages, funeral expenses and other costs arising from the crime and to the millions of victims who receive counseling, advocacy, assistance in participating in the criminal justice system and the host of other services provided by VOCA funded programs.

Indeed, we are seeing that the mere threat or possibility of the rescission has had an adverse impact. Several state VOCA assistance administrators report that they have been delaying or holding back a portion of their VOCA grant or other victim funding programs as a "safety net" in the event future grants become unavailable because of the rescission. One state indicated that it is seeing a lot of staff turnover and burnout due to the stress caused by the possibility of losing funding. The money targeted for rescission otherwise would and should today be supporting needed victim services. For many programs, including those serving survivors of homicide victims, drunk driving and other underserved populations, VOCA is their *only* source of federal funding and a loss or significant reduction of their VOCA subgrant means going out of business.

Because of the nature of crime victimization, it is no cliché to say that “Victim services delayed are victim services denied.”

There are two other budget items that may also adversely affect funding for VOCA victim assistance programs that I would like to bring to the committee’s attention.

1. As mentioned previously, the statute specifies that amounts in the Antiterrorism Emergency Reserve “shall not be subject to any limitation on obligations from amounts deposited to or available in the Fund” unless Congress explicitly states otherwise and that replenishment of the AER shall come from amounts in the Fund balance *after* the statutory amounts for the other VOCA funded programs are distributed.¹¹ In other words, the VOCA statute requires the AER to be treated as being “above the cap.” However, it is unclear whether the Administration’s recommended FY 2007 VOCA cap of \$625 million includes the Antiterrorism Emergency Reserve. If, despite the clear meaning of the VOCA statute, the proposed cap is meant to include the AER, then the actual effective cap could be as low as \$575 million which could result in a substantial reduction, perhaps as much as 15 percent, in state VOCA victim assistance formula grants. Although only minimal amounts have been obligated from the AER during the past few years, it is anticipated that AER obligations will increase significantly as OVC fully implements the International Victims Terrorism Expense Reimbursement Program. It would therefore be very helpful to clarify that, consistent with congressional intent, that the Antiterrorism Emergency Reserve is to be “above the cap” so as not to penalize state victim assistance formula grants.
2. The recently enacted VAWA/DOJ Reauthorization Act¹² created two new offices within the Office of Justice Programs (OJP), the Office of Audit, Assessment and Management and the Community Capacity Development Office. Each of these new offices is authorized to reserve up to three percent of OJP grant programs. While it is uncertain how the functions of these new offices will benefit crime victims or victim assistance programs, it is pretty certain that funding for these offices will reduce the amount available for state VOCA victim assistance grants. If these new offices were to take the full six percent authorized for these new offices, the amount available for state VOCA formula grants would be cut by as much as \$30 million.

Whenever Congress authorizes additional programs to receive a portion of the Crime Victims Fund, it reduces the amount otherwise available for state victim assistance grants. This happened in FY 2000 when Congress added support for U.S. Attorney’s victim/witness coordinators, in FY 2001 when it did the same for F.B.I. victim assistance specialists and in FY 2002 when it added Fund support for the federal Victim Notification System. Because state victim assistance grants are calculated last, they must absorb these additional Fund costs. And, as happened twice, unless the annual cap is increased sufficiently to offset these additional costs, real cuts in state assistance grants

¹¹ 42 U.S.C. 10601(d)(5)

¹² Pub. L. 109-233

I hope that Congress will be mindful of the potential impact the costs associated with the Antiterrorism Emergency Reserve and the new OJP offices may have on state assistance grants when establishing the cap on total FY 2007 Crime Victims Fund obligations.

Thank you for the opportunity to shares my views with the Subcommittee.

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