



International Terrorism Victim Expense Reimbursement Program

REPORT TO CONGRESS · FEBRUARY 2006

Office for Victims of Crime

OVC
"Putting Victims First"

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NCJ 210645

The Office for Victims of Crime is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, and the Office of Juvenile Justice and Delinquency Prevention.

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Executive Summary

Over the years, hundreds of U.S. nationals, officers, and employees of the U.S. Government have been killed or injured in acts of international terrorism occurring outside the United States. These incidents of terrorism continue worldwide. Recognizing that providing assistance and support to these victims presents a number of challenges and obstacles, the United States Congress amended the Victims of Crime Act of 1984 (VOCA) [42 U.S.C. § 10601] (Public Law 98-473) by authorizing an International Terrorism Victim Expense Reimbursement Program (ITVERP)¹ so that victims of acts of international terrorism that occur outside the United States may receive reimbursement for “expenses associated with that victimization.”

Victims of acts of international terrorism that occur outside the United States face unique obstacles in securing assistance, expense reimbursement, and support, which are more readily available to victims of violent crime and domestic or international terrorism occurring within U.S. borders. Victims and family members often face immediate needs, such as covering expenses for medical treatment, funeral and burial services, short-term lodging, and emergency transportation. Language and cultural barriers can impair a victim’s ability to secure appropriate support. Moreover, resources for victim assistance vary widely from one country to the next. Many of the countries that have established victim compensation programs compensate only their own citizens, leaving U.S. citizens without financial assistance.

Although the U.S. Department of Justice (DOJ), Office for Victims of Crime (OVC) provides funding to states to administer victim compensation programs, the programs administered by each state vary; survivors of the same act of

international terrorism occurring abroad may be residents of different states and thus may receive different levels of compensation for similar injuries.

Partially in recognition of this disparity in treatment, VOCA was amended so that states are no longer required to compensate victims of international terrorism occurring outside the United States: The Federal Government will now oversee an expense reimbursement program for these victims. Additionally, by providing coverage for employees of the U.S. Government abroad, this statute authorizes payment for foreign nationals working for the U.S. Government who may be killed or injured in an international terrorist attack.

VOCA directs OVC to submit a report to Congress annually on the status and activities of the ITVERP program. Because the proposed program regulations have not been finalized, OVC has incorporated the status of ITVERP in its biennial *Report to the Nation*. These reports have included an overview of the program, its purpose, the categories of eligible recipients, and interim measures developed by OVC to address the emergency assistance needs of victims of international terrorism outside the United States. This new report covers in greater detail the challenges and obstacles faced in developing this program, a compendium of the groundwork laid thus far, and the emergency assistance provided to victims in the interim while program regulations are being finalized.

Once the program is fully operational and victims begin to receive expense reimbursement as outlined in the statute, OVC will address the following detailed information in an annual ITVERP report to Congress. An analysis of the resulting

statistics will serve as a measurement for assessing the success of the program. ITVERP reports will include—

- (1) An explanation of the procedures for filing and processing applications for expense reimbursement.
- (2) A description of the procedures and policies instituted to promote public awareness about the program.
- (3) A complete statistical analysis of the victims assisted under the program, including the following:
 - (a) The number of applications for reimbursement submitted.
 - (b) The number of applications approved and the amount of each award.

- (c) The number of applications denied and the reasons for denial.
 - (d) The average length of time needed to process an application for reimbursement.
 - (e) The number of applications for reimbursement pending and the estimated future liability of the program.
- (4) An analysis of future program needs and suggested program improvements.

In August 2005, the proposed ITVERP regulations were published in the *Federal Register* for a 60-day comment period.

Support for Crime Victims

The Office for Victims of Crime (OVC) is a component of the Office of Justice Programs (OJP). OJP provides federal leadership in developing the Nation's capacity to prevent and control crime, improve criminal and juvenile justice systems, increase knowledge about crime and related issues, and assist crime victims. Through programs developed and funded by its bureaus and offices, OJP works to form partnerships among federal, tribal, state, and local government officials to control drug abuse and trafficking; reduce and prevent crime; rehabilitate neighborhoods; improve the administration of justice in America; meet the needs of crime victims; and address problems such as gang violence, prison crowding, juvenile crime, and domestic violence.

OVC was created by the U.S. Department of Justice (DOJ) in 1983 and formally established by Congress in 1988 through an amendment to the Victims of Crime Act of 1984 (VOCA) [42 U.S.C. § 10601] (Public Law 98-473). OVC's mission is to enhance the Nation's capacity to assist victims of crime and to provide leadership in changing attitudes, policies, and practices to promote justice and healing for all victims of crime. VOCA also established the Crime Victims Fund (the Fund), the sole source of funding for VOCA-authorized programs. The fund comprises the fines, penalties, and special assessments imposed on convicted federal defendants and gifts, bequests, and donations. The Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132) amended VOCA to authorize OVC to establish an Antiterrorism Emergency Reserve to assist victims of terrorism and mass violence. The OVC Director is authorized to set aside up to \$50 million in reserve for this purpose.

OVC accomplishes its mission through the administration of the Fund and the Antiterrorism

Emergency Reserve, and by supporting direct services, providing training programs, and sponsoring demonstration and evaluation projects that have national and international impact. OVC publishes, disseminates, and encourages replication of materials that highlight promising practices in support of crime victims worldwide. OVC sponsors fellowships and clinical internships to educate, sensitize, and enhance the capabilities of individuals dedicated to providing assistance to crime victims.

"I want to express my thanks and sincere gratitude to all who assisted with the new reimbursement process."

—A recipient of mental health counseling who had lost a son in Iraq

OVC works with international, national, military, tribal, state, and local victim assistance and criminal justice agencies, as well as other professional organizations to promote fundamental rights and comprehensive services for crime victims. OVC not only administers funding, but also develops policy and provides training and technical assistance to states, localities, and other federal agencies on effective responses to crime victims and supports public awareness and education on critical victim issues. The largest amount of OVC funding is provided to state agencies to administer programs for assisting crime victims: victim compensation and victim assistance formula grant programs.

OVC makes annual awards to each state, the District of Columbia, the U.S. Virgin Islands, Guam, and Puerto Rico to support crime victim compensation programs. The VOCA crime victim compensation formula grant program reimburses victims for crime-related expenses such as

medical costs, mental health counseling, funeral and burial costs, lost wages, or loss of support. Although each state compensation program is administered independently, most programs have similar eligibility requirements and offer comparable benefits. Maximum awards generally range from \$10,000 to \$25,000. Compensation is paid only when other financial resources, such as private insurance and offender restitution, do not cover the loss. Some expenses, including theft, property damage, and property loss, are not covered by most compensation programs.

Each compensation program operates under state statutes and rules that generally require victims to cooperate with the reasonable requests of law enforcement and to submit a timely application to the compensation program. VOCA funds supplement state efforts to compensate crime victims. The formula for VOCA compensation is based on an allotment of 60 percent of the state payments to crime victims in the previous year.

VOCA victim assistance grants are also awarded each year to states to support community-based

organizations that serve crime victims. More than 6,000 grants are made to domestic violence shelters, rape crisis centers, child abuse programs, and victim service units in law enforcement agencies; prosecutors' offices; hospitals; and social service agencies. These programs provide services including crisis intervention, counseling, emergency shelter, criminal justice advocacy, and emergency transportation. States are required to give priority to programs serving victims of domestic violence, sexual assault, and child abuse. Additional funds must be set aside for underserved victims, such as survivors of homicide victims and victims of drunk driving crashes.

All states, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico receive a base victim assistance amount of \$500,000 each. The territories of the Northern Mariana Islands, Guam, and American Samoa receive a base amount of \$200,000 each. Additional funds are distributed based on population.

U.S. Victims of International Terrorism Abroad: Challenges and Obstacles

Over the years, hundreds of U.S. nationals, officers, and employees have been killed or injured in acts of international terrorism occurring outside the United States. These incidents—such as the bombing of Pan Am flight 103 over Lockerbie, Scotland, in 1988; the Khobar Towers bombing in Saudi Arabia in 1996; the bombing of the American Embassies in Kenya and Tanzania in 1998; the attack on the U.S.S. Cole in Yemen in 2000; the attacks in Bali, Indonesia, in 2002; the housing complex bombing in Saudi Arabia and the U.N. Headquarters bombing in Baghdad, Iraq, in 2003; and terrorist attacks in Afghanistan, Iraq, Egypt, and London, England, in 2004 and 2005—left hundreds dead and injured. Violent and unexpected acts of international terrorism outside the United States leave victims and their families with devastating, often fatal, physical wounds and debilitating emotional wounds. Nothing can prepare an innocent victim for the horror of a terrorist act, its long-term physical and emotional impact, and its often-resulting annihilation of a sense of security in the world. Nothing can prepare the family of an international terrorism victim for the shock and terror associated with the unexpected and violent death or injury of a loved one overseas.

While victims of acts of international terrorism abroad have much in common with victims of other types of violent crime, they face some unique challenges based on the nature, extent, and location of the crime. Domestic and international terrorism can involve the calculated or random murders of many innocent victims, have multiple perpetrators, and result in massive death, injury, violence, destruction, and mayhem.

At times, victims are targeted based on their real or perceived affiliations with a government. At other times, they are targeted simply because they are present in a building or aircraft affiliated with a particular government. International terrorism victims appear to experience extraordinarily high levels of emotional distress, due in part to the unique issues associated with the trauma and magnitude of politically motivated violent crime. In terrorist acts that occur outside the United States, injured victims often find themselves thousands of miles away from appropriate medical and mental health care, and families of victims may be separated by vast distances and face unexpected expenses and heart-wrenching delays in reuniting with their loved ones.

“At a time like this, we thank God there are people like you on this earth. Thank you so much for all your help.”

—Response of a family member of a victim who died in Yemen, for funeral and burial assistance

Although victims of all violent crimes experience a range of physical, emotional, legal, and financial needs, victims of acts of international terrorism occurring outside the United States often face unique obstacles in securing financial assistance to meet those needs. Often, families of these victims face extraordinary hardships in securing funds to transport the body of a loved one home for burial. Survivors of such terrorism often face enormous challenges in securing appropriate medical and mental health care

outside the United States. Victims and family members may face the need for immediate international travel and later long-term travel expenses associated with participating in the criminal justice process. Communication is often limited, and access to resources can be daunting. Language, legal, and cultural barriers impair victims' and service providers' abilities to secure appropriate support. Moreover, local governmental infrastructures and the resources of nongovernmental organizations vary considerably in different countries and, as a result, countries' abilities to respond to terrorist incidents and provide crisis intervention and services to victims vary widely. Few countries have established victim compensation programs, and those that do rarely compensate noncitizens.

"It's fitting that a Federal Government program should provide financial assistance to American victims of international terrorism, rather than relying on various state compensation agencies. Uniform benefits and procedures may make it easier for victims to access compensation and be fully compensated for their losses."

*—Dan Eddy, Executive Director,
National Crime Victim Compensation Boards*

Once overseas, victims, survivors, and their families face unexpected difficulties coordinating and securing the state-administered and philanthropic assistance, compensation, and support that are more readily available to victims of violent crime and terrorism occurring within U.S. borders. The Uniting and Strengthening America by Providing Appropriate Tools Required To Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) [H.R. 3162, S.1510] (Public Law 107-56) eliminated the requirement for state crime victim compensation programs to pay compensation to victims in cases of international terrorism. As currently proposed, ITVERP will be the primary reimbursement source for these victims. State crime victim compensation programs are not restricted from providing compensation to victims of international terrorism abroad, however. If a state chooses to compensate residents who are victims of international terrorism outside the United States, it may consider federal ITVERP payments as collateral source payments that diminish the state's payment obligations. Moreover, international terrorism victims are not required to apply to state compensation programs before filing an application for reimbursement under ITVERP. Accordingly, the state compensation programs retain their status as the payers of last resort. This program is intended to replace compensation programs administered by the states only to the extent that they reimburse expenses associated with acts of international terrorism occurring outside the United States.

VOCA Authority and Funding for ITVERP

VOCA's programs and activities are authorized by VOCA, as amended. The specific authority to implement the International Terrorism Victim Expense Reimbursement Program (ITVERP) falls under the provisions of VOCA, Title II, § 1404C [42 U.S.C. § 10603c]. These provisions authorize the Director of OVC, a component of OJP, to establish a program to reimburse eligible victims of acts of terrorism that occur outside the United States for expenses associated with that victimization.

To be eligible to receive reimbursement under this program, an individual victim of international terrorism abroad must be either (1) a national of the United States or (2) an officer or employee of the U.S. Government on the date on which the act of terrorism occurred. In addition, the statute expressly requires that the individual victim must have suffered "direct" physical or emotional injury or death as a result of an act of international terrorism occurring on or after December 21, 1988, with respect to which an investigation or prosecution was ongoing or was commenced after April 24, 1996. As currently proposed, the Attorney General shall determine whether there is a reasonable indication that an act of international terrorism has occurred, after consultations with other relevant Federal Government agencies.

Victim Reimbursement

As authorized by VOCA, ITVERP is designed to reimburse victims of acts of international terrorism occurring abroad on or after December 21, 1988, for related expenses based on a structure that reflects model state programs. In evaluating claims, ITVERP will take into account the unique nature and impact of international terrorism victimization and the unusual additional

expenses (such as long-distance travel for burial) that victims, survivors, and family members of international victims often incur. Under ITVERP, victims of acts of international terrorism occurring outside the United States on or after December 21, 1988, will file streamlined expense reimbursement claims directly with OVC, rather than with the victims' home states. OVC then will process the claims using an expense reimbursement structure to ensure that victims receive fair and equitable reimbursement for similar expenses.

Expense-Based Program Compared With Compensation Program

The statute provides that eligible victims of international terrorism may be reimbursed "for expenses associated with that victimization." The language of the statute restricts the ITVERP program to one that directly reimburses victims for actual out-of-pocket expenses, such as funeral, burial, or mental health counseling expenses. Thus, under this proposed rule, victims can only receive payment for reimbursable expenses. Losses such as pain and suffering, lost wages, loss of enjoyment of life, and loss of consortium are not considered reimbursable expenses.

The devastating impact of the September 11, 2001, terrorist attacks in the United States and the resulting creation of the September 11th Victim Compensation Fund brought the issue of "compensation" to the hearts and minds of not only the victims and their surviving family members but the public as well. Concerns have been raised that the ITVERP program for victims of international terrorism outside the United States should replicate the September 11th fund. Nevertheless, the statute authorizing the September 11th fund differed radically from the statute

authorizing ITVERP in the scope of “compensation” that was mandated. ITVERP was specifically devised as an expense-based program, whereas the September 11th fund was not limited to expense reimbursement. In addition, funding authorized by Congress for the September 11th victims was much more extensive than the funding available in the Crime Victims Fund Antiterrorism Emergency Reserve for ITVERP.

Collateral Source Offset

Under the terms of the statute, the amount of reimbursement to a victim must be reduced by any amount that the victim receives in connection with the same act of international terrorism under Title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986. In preparing draft regulations, OJP/OVC looked at the types of compensation and benefits that are considered collateral sources under that Act, section 1051(b) [10 U.S.C. § 1051(b)], which provides that—

Any compensation otherwise payable to a person under this section in connection with any disability or death shall be reduced by any amount payable to such person under any other program funded in whole or in part by the United States in connection with such disability or death, except that nothing in this subsection shall result in the reduction of any amount below zero.

OJP/OVC has determined that sources that provide reimbursement for specific expenses reimbursed under ITVERP—e.g., health, property, and funeral insurance—are considered collateral sources. Life insurance proceeds are not considered a collateral source, as they do not compensate for specific expenses. This definition of collateral sources is consistent with other provisions relating to crime victim compensation programs under VOCA.

OJP/OVC has focused on developing proposed program regulations that are consistent with the authorizing legislation, while taking into account the unusual challenges facing victims of international terrorism abroad. OJP/OVC plans to process victim claims using an expense reimbursement structure to

ensure that victims receive fair and equitable reimbursement for similar expenses incurred. In addition to the proposed regulations, OJP/OVC has taken preliminary steps to identify victims who may be eligible for reimbursement based on acts of terrorism dating back to December 21, 1988, as specified in the statute. OJP/OVC has continued to update this database of potentially eligible victims and other relevant information so it can notify victims and distribute applications for benefits quickly once the regulations are finalized.

Allocation of Funds— Set-Aside in Antiterrorism Emergency Reserve

OVC set aside money deposited into the Crime Victims Fund in an emergency fund of \$20 million in 1996 (the Antiterrorism and Effective Death Penalty Act of 1996). With the passing of the USA PATRIOT Act in 2001, the fund was named the Antiterrorism Emergency Reserve. Section 621 of the USA PATRIOT Act amended VOCA to authorize the Director of OVC to set aside up to \$50 million (from the amount transferred to the Crime Victims Fund for use in response to the terrorist atrocities of September 11, 2001) as the Antiterrorism Emergency Reserve, which specifically would be available only for victim assistance or compensation related to acts of terrorism or mass violence [42 U.S.C. § 10601(d)(5)(A) & (B)]. Unlike other OVC funding, these funds (used to establish the Antiterrorism Emergency Reserve) were tax dollars transferred to OVC at the direction of the President.²

The USA PATRIOT Act amendment expressly authorizes the OVC Director to replenish the Antiterrorism Emergency Reserve in subsequent fiscal years by using up to 5 percent of the amount remaining in the Crime Victims Fund in any fiscal year after distributing amounts otherwise available for that year (i.e., after the formula and discretionary grants and statutory earmarks have been made, subject to the annual appropriations-statute limitation, commonly referred to as the “Cap” on the amount available for distribution from the Crime Victims Fund—year 2005

[found at section 618 of Division B of Public Law 108-99]). At no point may the Reserve exceed \$50 million [Id. § 10601(d)(5)(A)]. Amounts in the Antiterrorism Emergency Reserve “may be carried over from fiscal year to fiscal year,” and the statute expressly provides that, “[n]otwithstanding certain provisions of law, including the Cap (as it may exist from year to year), unless the same should expressly refer to this section, any such amounts carried over shall not be subject to any limitation on obligations from amounts deposited to or available in the [Crime Victims] Fund” [Id. § 10601(d)(5)(C)].

The foregoing provisions create a régime under which the Federal Government quickly can bring resources to bear (without using tax dollars) for emergency assistance in the wake of terrorist violence. (The Crime Victims Fund is funded by fines, not tax dollars.)

Currently, the OVC Director is authorized to hold certain amounts from the Crime Victims Fund in reserve for the following purposes²:

- ◆ To support compensation and assistance services for victims of domestic terrorism or mass violence.
- ◆ To support assistance services to victims of international terrorism.
- ◆ To fund directly an ITVERP.

To date, assistance to these victims has included the medical evacuation of injured victims to medical facilities, repatriation of remains, funeral and burial expenses, mental health counseling, and emergency travel. Other assistance has supported travel and lodging for criminal justice proceedings, the establishment of case-specific Web sites, toll free telephone lines, family briefings, and the establishment of remote sites for closed-circuit viewing of trial proceedings by victim families.

In Fiscal Year (FY) 2005, \$50 million was set aside in the Antiterrorism Emergency Reserve for victims of terrorism or mass violence both within and outside the United States. Thus far in FY 2005 (through June 1, 2005), OVC has obligated

\$684,641. Included in this total is annual funding for the OVC Victim and Family Assistance Call Center (\$129,034); emergency assistance for victims of terrorism outside the United States (\$2,613), including emergency travel and mental health counseling; a contract for victim support (\$100,000) in an open and competitive bidding process to replace the current contract, which expires at the end of FY 2005; a Reimbursable Agreement with the FBI (\$100,000) to establish an emergency fund for victims of terrorism and mass violence outside the United States for preparation and return of remains, emergency medical evacuation, emergency travel, and other assistance.

“In my situation, it is so painful to deal with these issues and the mundane realities of everyday life when all I really want to do is mourn for my husband. I appreciate the government’s sensitivity to this by always getting back to me so quickly with information. I sincerely mean this. None of us know when we will fall and how far and I hope someday I can help someone else get up and start over.”

*—Spouse of man who died in Saudi Arabia,
in response to receiving mental health counseling
and assistance with funeral/burial expenses*

In addition, OVC has given \$250,000 to the Minnesota Department of Public Safety for victim compensation for the mass violence school shooting at Red Lake High School; \$63,000 to the Georgia Criminal Justice Coordinating Council for victim compensation following the mass violence courtroom shootings and carjackings in the Atlanta area, and \$39,994 for miscellaneous expenses for administrative support, publications, and training and technical assistance through its Training and Technical Assistance Center.

As outlined here, the Antiterrorism Emergency Reserve funding will be used primarily for ITVERP. However, this funding is also used for meeting the immediate and ongoing challenges of serving victims in the United States and

abroad in the aftermath of terrorism and mass violence. Under OVC's Antiterrorism and Emergency Assistance Program for Terrorism and Mass Violence Crimes (AEAP), OVC offers the following assistance to meet the immediate and extended needs of victims and their communities after a terrorism and mass violence crisis:

- ◆ Crisis response grants that provide funds to help victims build adaptive capacities, decrease stressors, and reduce symptoms of trauma immediately after the event.
- ◆ Consequence management grants that provide supplemental funds to help victims recover from the traumatic event and restore their sense of equilibrium.

- ◆ Criminal justice support grants that facilitate victim participation in an investigation or prosecution directly related to the terrorism or mass violence event.
- ◆ Compensation grants that provide supplemental funds to victim compensation programs for reimbursing victims for out-of-pocket expenses related to their victimization.
- ◆ Training and technical assistance that provides tools to help federal, state, and local authorities identify victims' needs and necessary resources, coordinate services to victims, develop strategies for responding, and address related issues.

"At a time when victim families are in acute distress, the challenges of dealing with a crime which occurred in a foreign country are overwhelming. Families want their loved one home as soon as possible. A family's lack of financial resources to overcome these challenges should not result in painful delays, or in having to settle for cremation when that is not their wish or burial in another country. Providing practical, compassionate assistance to victims and families in these situations has a direct impact on their ability to cope, their lifelong memories about the tragedy, and how they feel about their government."

—Federal Bureau of Investigation spokesperson

Via AEAP, using monies from the Antiterrorism Emergency Reserve, nearly 22,000 victims, crisis responders, and family members have been assisted by state agencies and local programs in the aftermath of the September 11, 2001, terrorist attacks in the United States. Approximately 37,000 victims were assisted through OVC's Call Center, and 1,800 victims and family members received travel support through OVC's 9/11 Victim and Family Travel Assistance Center. More recently, AEAP funding has supplemented state crime victim compensation programs in Minnesota in the aftermath of the 2005 Red Lake High School shootings and in Georgia for the mass violence, courtroom shootings and carjackings in the Atlanta area.