

FEDERAL DEPOSIT INSURANCE CORPORATION
OFFICE OF INSPECTOR GENERAL
Policies and Procedures Manual

PART	IV	Investigations Policies and Procedures
SECTION	OIG-420	Legal Guidelines
CHAPTER	420.1	Victim and Witness Protection Act

1. Purpose. This chapter establishes the policies for implementing provisions of the Victim and Witness Protection Act of 1982 (VWPA), the victims' rights statutes contained in the Crime Control Act of 1990, and the 1990 Victims of Child Abuse Act (VCAA).

2. Policy. The guidelines and procedures set forth below shall be followed when dealing with matters relating to victims, witnesses, and children suspected of suffering child abuse. These guidelines provide only internal guidance and are intended to ensure that responsible officials, in the exercise of their discretion, treat victims and witnesses, and children suspected of suffering child abuse, fairly and with understanding. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal. Nor are limitations hereby placed on otherwise lawful prerogatives of the OIG.

3. Background

a. The VWPA was enacted to "enhance and protect the necessary role of crime victims and witnesses in the criminal justice process; to ensure that the Federal Government does all that is possible within limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of defendants; and to provide a model for legislation for state and local governments."

b. The Crime Control Act of 1990 demonstrates the continuing national concern for innocent victims of all crimes and reflects the view that the needs and interests of victims and witnesses had not received appropriate consideration in the Federal criminal justice system under the VWPA. The victims' rights provisions of this law mandate that officials of the Department of Justice, and other Federal agencies, engaged in the detection, investigation, or prosecution of crime, make their best effort to ensure that victims of crime are treated with fairness and respect for the victims' dignity and privacy.

c. The 1990 Victims' Rights and Restitution Act (VRRRA) creates, in effect, a Federal Victims of Crime Bill of Rights and codifies services that shall henceforth be available to victims of Federal crime. This Act does not specifically address the treatment of witnesses; however, it

reinforces and augments the VWPA in acknowledging the necessary role of witnesses in the criminal justice process and in ensuring their fair treatment by responsible officials.

d. VCAA contains extensive amendments to the criminal code affecting the treatment of child victims and child witnesses by the Federal criminal justice system. The VCAA provides, *inter alia*, a mandatory requirement for certain professionals working on Federal land, or in a Federally-operated/contracted facility, to report suspected child abuse and child sexual abuse.

e. These guidelines are intended to apply in all cases in which individual victims are adversely affected by criminal conduct or in which witnesses provide information regarding criminal activity. While special attention shall be paid to victims of serious, violent crime, all victims and witnesses of Federal crime who have suffered physical, financial, or emotional trauma shall receive the assistance and protection to which they are entitled under the law.

4. Definitions

a. A "victim" means a person that has suffered direct or threatened physical, emotional, or financial harm as a result of the commission of a crime. In the case of a business entity, victim means an authorized representative of that business. When a victim is a minor (under 18 years of age), incompetent, incapacitated, or deceased, the term victim also includes a spouse, a legal guardian, a parent, another family member, or another person designated by the court.

It should be noted that, because of the nature of Federal criminal cases, it will often be difficult to identify the victims of the offense. In some cases, there may be multiple victims; sound judgment will be required to make appropriate decisions as to the range of victim services and assistance given. As a general rule, OIG should err on the side of providing rather than withholding assistance. Federal departments and State and local agencies shall not be considered "victims" for purposes of these guidelines.

b. A "witness" is someone who has information or evidence concerning a crime, and makes that information available to a law enforcement agency. When the witness is a minor, the term "witness" includes an appropriate family member or legal guardian. The term "witness" does not include defense witnesses or those individuals involved in the crime as perpetrators or accomplices, except where an accomplice has agreed to work with the government.

c. A "serious crime" is a criminal offense that involves personal violence, attempted or threatened personal violence, or significant property loss.

d. The term "financial" or "pecuniary" harm shall not be defined or limited by dollar amount. The degree of assistance will be determined on a case-by-case basis since victims' means

vary, and that which constitutes a minimal financial loss for one might represent a devastating loss for another.

e. The term "child abuse" means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child. However, the term does not include reasonable discipline administered by a parent or legal guardian.

5. Responsibilities to Crime Victims and Witnesses

a. Victim and witness identification and notification are key components of the VWPA for the fair treatment of all victims and witnesses. In accordance with the VRRRA, special agents will make their best efforts to identify victims and witnesses. An OIG brochure entitled, "Information for Victims and Witnesses of White Collar Crime," which is available at each OI office, should be given to victims and witnesses as soon as they are identified. Victims and witnesses should be notified of the following rights and services:

- (1) the right to be treated with fairness and respect for their dignity and privacy;
- (2) the right to be reasonably protected from the accused offender;
- (3) the right to be notified of court proceedings;
- (4) the right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial;
- (5) the right to confer with attorneys for the Government in the case;
- (6) the right to restitution;
- (7) the right to information about the conviction, sentencing, imprisonment; and release of the offender.

b. Identification of Victims. In accordance with the Acts described in Section 2, reasonable and diligent efforts will be made to:

- (1) identify the victims of crime;

(2) inform the victims of their right to receive, on request, the services described below; and

(3) inform each victim of the name, title, business address, and telephone number of the responsible official to whom such a request for services should be addressed.

c. Description of Services. At the earliest opportunity after detection of a crime, every effort will be made to inform crime victims concerning:

(1) the place where the victim may receive emergency medical and/or social services;

(2) compensation or restitution for which the victim may be entitled under this or any other applicable law, and the manner in which such relief may be obtained;

(3) the availability of public and private programs which provide counseling, treatment, and other support to the victim;

(4) the right to receive reasonable protection against threat, harm or intimidation from a suspected offender; and

(5) assistance in contacting the person or office that will provide the above services. In addition, any property of a victim that is held as evidence will be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.

d. Reporting Suspected Child Abuse. The VCCA stipulates that when law enforcement personnel engaged in a professional capacity or activity on Federal land or in a Federally-operated (or contracted) facility, learn of facts that give reason to suspect that a child has suffered an incident of child abuse, shall as soon as possible make a report of the suspected abuse to a local law enforcement agency with authority to take emergency action to protect the child.

A separate statute, the Indian Child Protection and Family Violence Prevention Act (Public Law 101-530), governs reporting of child abuse in Indian Country. Pursuant to its provisions, law enforcement professionals are required to report suspected child abuse to the Federal, State or tribal agency that has the primary responsibility for child protection or the investigation of child abuse within the Indian Country involved. The statute also provides that a covered professional who, while working on Federal land or in a Federally-operated (or contracted) facility, in which children are cared for or reside, learns of facts that give reasons to suspect that a child has suffered an

incident of child abuse, but fails to report it, shall be guilty of a Class B misdemeanor (10 U.S.C. § 2258).

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