

# Crime Victim Compensation

## QUARTERLY

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### INSIDE

- **Successful National Held in Atlanta in October**
- **Fiscal Cliff Clouds VOCA Funding for 2013**
- **Victims Rights Week 2013 New Challenges, New Solutions**
- **A Guide to the VOCA Guidelines**

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## Funding Questions Persist For Victim Compensation Programs

**A**s compensation programs look toward the future, questions remain about whether they'll have sufficient funds to meet victims' needs. Association surveys and discussions at our recent National Training Conference in Atlanta indicate that while the large majority of programs are doing reasonably well in terms of getting revenue necessary to pay current claims, many managers are concerned about future trends, both on the income and the demand sides.

Revenue is down in many states. Nearly every compensation program depends on offender fees and fines of some nature, typically a certain amount per conviction; and since the number of crimes has declined steadily for two decades, the base from which revenue can be drawn has been reduced. Yet claims are up — almost 50% in the past decade; and medical costs alone have grown an annual average of 4%. (Medical bills are close to 60% of what compensation programs spend their money on.) These two diverging trends — less income from fewer crimes, yet more claims and higher costs — are working to the disadvantage of many states' bottom lines.

National health-care reform, which post-election is a certainty, has been seen as a potential reducer of the need for victim compensation, since presumably more

Americans will be covered by insurance or Medicaid. But the Affordable Care Act's effect was diluted by the Supreme Court's decision last summer, when the Court declared that Medicaid expansion could not be forced on the states. And many states are choosing not to expand Medicaid, which puts more of an onus on the individual mandate to buy insurance as a means to increase the number of insured. Will states be successful in setting up insurance exchanges as required by the law? Will Americans in large numbers buy insurance on those exchanges? How will larger employers react to new requirements that they provide insurance or pay penalties? Will premiums and/or deductibles go up, so

that even if more people have insurance, they'll still come to compensation programs for whatever their insurance doesn't cover? The Affordable Care Act decreases funding to hospitals for emergency services (because more Americans were supposed to be covered by insurance, this funding wasn't seen as necessary). But undocumented aliens will remain uninsured, since they're not eligible for any of the benefits of the Affordable Care Act; and all the people who go without insurance or Medicaid also will continue generating hospital bills. It's an uncertain future as we enter the new year.



*As we end one year and begin another, we recall challenges and achievements in the past year, and look forward to facing new challenges in the future. We had a successful conference in October in Atlanta, meeting with our VOCA assistance colleagues and staff from the Office for Victims of Crime. We also brought compensation managers and staff together at two Regionals, in Nashville and Seattle. In 2013, we will continue planning and implementing these valuable gatherings to share ideas and strategies and learn more about how we can improve our programs.*

*We've also engaged in other efforts to work closely with related groups and allies in the victims field. Our executive director attended the Victims Committee meeting of the National District Attorneys Association this past summer, and he participates on an ongoing basis in an "appropriations group" of victims organizations working actively to increase funding to the states via VOCA and VAWA. Recently, compensation and VOCA assistance managers from the Mid-Atlantic and Northeast spent a day with each other and OVC Director Joye Frost, discussing current and future needs in providing services to victims. A similar meeting is planned for February, where we'll discuss*

*federal compensation-grant guidelines, as well as the implementation of Vision 21 (OVC's soon-to-be-released planning document). We will take every opportunity we can to represent compensation-program interests within the victim services field, working together with our colleagues to improve the way we all serve victims.*

*The recent shooting in Newtown, along with other mass-casualty crimes this year, remind us of the importance of our work, and we pause at year's end to think about the victims of these crimes, and to honor those who work hard to help them. We know our colleagues in Connecticut*

*will meet the challenges in dealing with this tragedy, just as many have you have done in similar situations over the past year.*

*I want to thank our Board members whose terms expired this year — Bryan Nix, Cheryle Hall, Janet Kennedy, and Kristy Ring — and welcome new Board members Cassie Jones, Kate Hudson, Susan Sudduth, and Suzanne Breedlove. We look forward to working with them in serving our membership. Finally, I want to thank you for your support and your active participation, because it is through you that our organization remains strong.*

*We hope you have a great 2013 —*

*Gene McCleskey*

## President's Message from Gene McCleskey

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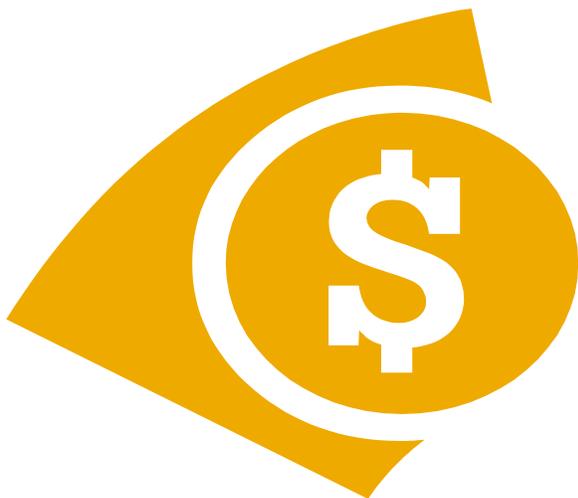
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# Fiscal Cliff Negotiations Cloud VOCA Funding Picture for 2013

## *Congress Must Resolve “Cliff” Concerns Before VOCA Picture Becomes Clearer*

Not much has changed in the last few months since we reported that Congress has approved a continuing resolution (CR) to guide federal spending for the current fiscal year through March. Unless Congress acts otherwise, the CR not only keeps VOCA funding at its current cap of \$705 million, it also creates uncertainty about when VOCA grants may be awarded. Normally, OVC waits until a final number is provided on how much the VOCA cap is for the fiscal year before calculating grant awards, but with a CR only going through March, there’s no definitiveness on what the cap for VOCA for the entire year will be.

Congressional action on the VOCA cap — the House has approved a slight increase to \$720 million for FY 2013, and a Senate Appropriations Committee has proposed a \$775 million cap — mean little if the CR continues in effect. In addition, “fiscal cliff” negotiations are ongoing as the end of the year approaches. It’s unclear how the potential sequestration government-wide of 7.6% could affect VOCA grants, but such sequestrations have not previously affected state compensation grants from being at their full 60% of state payout.



***National Crime Victims Rights Week  
April 21-27, 2013  
New Challenges. New Solutions.***

## **Transitions . . .**

*Ann Meola is now the director of the Massachusetts Attorney General’s Victim Compensation and Assistance Division, having served as deputy director since 2008. With training both as a lawyer and in social work and counseling, Ann has experience in juvenile trial court and in various capacities with working with the elderly. Lisa Solecki will continue working for the A.G. as Chief of the Victim Witness Services Division.*

*Mary Mallo is the new Bureau Chief of the Crime Victim Compensation Program within the Illinois Attorney General’s Crime Victims Services Division, directed by Cynthia Hora. A lawyer, Mary has been working in the Cook County District Attorney’s Office. The Illinois A.G.’s program works with the state Court of Claims in processing compensation claims.*

## ***National Conference Brought 250 from all 50 States to Atlanta in October***

The Association’s members explored the most current and pressing issues facing compensation programs in four days of workshops, presentations, and informal discussions. We joined with our colleagues in the National Association of VOCA Assistance Administrators in presenting the conference, with grant support from the federal Office for Victims of Crime.

In small-group settings and roundtable discussions, managers, claims staff, and Board members were able to compare approaches and strategies on efficient processing, effective outreach, accurate decision making, technological improvements, new benefits, eligibility trends, and other important topics.

We’ll let everyone know when plans for our 2013 National and Regionals are in place. Thank you for your support!

# A Guide to the Guidelines

**T**he Office for Victims of Crime in the U.S. Department of Justice is in the process of writing, for the first time, Federal Regulations to govern use of grant funds under the Victims of Crime Act of 1984 (VOCA). Previously, “guidelines” have been used to serve this purpose, the last version being published in the Federal Register in 2001.

The Victims of Crime Act of 1984 (VOCA) authorizes valuable supplemental funding to each state compensation program that meets certain basic conditions. But the large majority of compensation funding comes from state sources -- chiefly criminal fines -- and all authority to make decisions on individual claims rests with state programs, using state law to make those determinations. Still, compensation program managers must be cognizant of how to keep their programs eligible for VOCA grants by meeting the conditions described in the current Guidelines and in any new Regulations to come.

Since VOCA has not changed substantially in the dozen years since the last guidelines were published, it isn’t expected that we’ll see major changes in the new “regulations.” One change since 2001, not reflected in the guidelines, is that VOCA dropped the mandate for each state to cover crimes of terrorism against state residents in foreign countries, so it is likely this portion of the current guidelines will be deleted. States are free to continue covering residents who are victims of terrorism abroad, and in fact all states currently do by state law; it simply isn’t mandated by federal law anymore.

*Another statutory change since 2001, not mentioned in the Guidelines,* is that you’re instructed by VOCA to deny payments to federal offenders who are delinquent in paying fines and restitution – **but this provision becomes effective only if and when the U.S. ever develops a readily accessible database providing criminal debt tracking information.** So far this hasn’t happened, and we don’t think such a database is even in development. So while the new Regulations may refer to this, there is no mandate to do anything about this currently.

The current Guidelines start with a “preamble” which includes encouragement to compensation pro-

grams to cover crimes and victims that are not included in VOCA’s statutory requirements, such as crimes involving threats but not physical injury, like stalking; witnesses to violence, like children who see domestic violence; economic crimes like fraud; and state residents who are victims of crime outside the U.S. But OVC cautions that “the identification of these issues does not constitute a mandate or requirement of states beyond the statutory requirements,” so states are free to determine whether they will provide this eligibility and coverage.

The formal Guidelines begin after the preamble, and provide this direction in meeting grant eligibility requirements:

**Compensable Crimes and Victims.** You must offer compensation to victims and survivors of victims of criminal violence, but no specific compensable crimes are mandated except for drunk driving and domestic violence (these crimes are singled out for special attention because there was a time in the 1980s when a number of programs didn’t cover these offenses). You’re also directed to cover crimes involving damage to religious property, especially when racially motivated, but your coverage need only be for costs relating to the physical injury or death that might be involved, *not* for the property damage itself. You’re free to cover any other crimes, including nonviolent economic crimes, if you wish to. In fact, current OVC guidelines encourage you to do so, without making it mandatory, and you can use federal funds for nonviolent crimes, or include state payments for those crimes in your payout total for purposes of calculating your federal grant.

**Compensable Expenses.** You must pay for medical expenses, mental health counseling, and lost wages if those are attributable to physical injury, and you must cover funeral expenses as well. Beyond these, you can cover anything else you like, and the OVC Guidelines list a few of those: travel and transport to secure bodies of deceased victims from another country or state; temporary lodging; necessary building modification and equipment to accommodate physical disabilities resulting from a compensable crime; replacement or repair of windows and locks – but not doors; crime-scene cleanup – but



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# A Guide to the Guidelines *(continued)*

not replacement of lost or damaged property, except for locks, and windows, and clothing and bedding held as evidence; attorneys fees; forensic sexual assault exams; and financial counseling services. But again, you can pay for other items; the OVC Guidelines do not preclude you from paying for other things . . . with one exception:

**Property Damage:** VOCA prohibits the use of federal funds for only one thing: property damage. You can use state funds to pay for property damage, but you cannot include payments for property damage in the state-dollar total used to calculate your VOCA grant. There are a few exceptions: property damage does not include eyeglasses and medical and dental prostheses, and items necessary for security, such as windows and locks. It's important to remember that VOCA doesn't prohibit paying for items that would be considered property, but rather only for repairing property damage. You're allowed to pay for modifications to vehicles and homes for disabled victims, for example. But repairing or replacing property would be forbidden, except for locks and windows, and medical prostheses.

### **Victim Cooperation.**

You must "promote victim cooperation with the reasonable requests of law enforcement authorities," but this does not mean you need to require a police report. You're free to be flexible, taking into account the victim's health and safety concerns, her age and psychological condition, as well as cultural and linguistic barriers. Requiring that sexual assault victims only submit to a forensic examination is enough; so are reports to child and adult protective services. Essentially, you're free to interpret what "victim cooperation" means according to your own state law and rules, so long as you do something to promote it.

**Nonsupplantation.** You can't use federal funds to supplant state funds otherwise available for compensating victims; however, simply spending your VOCA grant is never considered supplantation. As a practical matter, no state has ever been accused of supplantation, even though the vagaries of state budgets may mean reductions and increases of state funding from one year to the next. It is very difficult to imagine any scenario in which a state could be accused of supplantation – and that is probably why this has never happened.

**Residents.** You must offer eligibility to any of your residents who are victims of crimes in other U.S. states that do not have compensation programs that are eligible for VOCA grants (basically, any state that doesn't have a compensation program). This provision had some meaning when VOCA was first enacted in 1984, because there were a few states without programs then. But now every state has a program, except for the Pacific territories of Guam, American Samoa, and the Marianas; so only if one of your residents is victimized there do you have to worry about covering that person. **Note: The current guidelines need to be updated to reflect that there no longer exists any statutory mandate to cover your residents who are victims of terrorist crimes overseas.** This mandate was removed back in 2001 when OVC created its International Terrorism Victim Expense Reimbursement Program (ITVERP).

**Nonresidents.** You must offer eligibility to any nonresident on the basis of the same criteria used to make awards to residents.

**It is unclear whether this means foreign residents, or undocumented aliens.** The question isn't whether you can cover foreigners, or undocumented aliens; you definitely can. But the guidelines prior to 2001 said that this provision

applied only to U.S. citizens; the reference to U.S. citizens was dropped in 2001, but no affirmative language was added to clarify whether this was intentional or not.

**Federal Crimes.** You must cover victims of federal crimes, but only to the same extent you'd cover a victim of that crime if it had occurred under state jurisdiction. This doesn't mean you have to cover all federal crimes, such as nonviolent or white-collar offenses; but only that you can't exclude someone just because the crime happened to occur in a national park, or on an Indian reservation, or a military base. In other words, if the crime would be covered if it was under state jurisdiction, then it can't be excluded simply because it falls under federal jurisdiction.

**Unjust Enrichment.** You can't deny domestic violence victims solely because they share a residence with the offender or because they're in the same family. However, you can deny a claim if you believe your payment would "unjustly enrich" an offender substantially (for example, if he is living



# A Guide to the Guidelines *(continued)*

with the victim, and the payment would be appropriated by him or used to support him in a *substantial way*), so long as you have written rules that guide your decision making in this area.

**Collateral Federal Benefit Programs.** One VOCA provision is directed more toward federal benefit programs than state compensation programs: VOCA says your payment of compensation to a victim should not affect that victim's eligibility for any federal benefit the victim has been receiving or could qualify for, so long as your payment and that federal benefit, added together, don't exceed the victim's actual loss from the crime. The federal benefit can't be reduced, either.

**Payer of Last Resort.** Your program is a last payer in relationship to all federal benefit programs. If a victim's expense or loss would be covered by a federal benefit program like Medicaid, Veterans Administration, Indian Health Services, or Social Security, as well as by your program, you "shall not pay" that compensation, and the federal benefit shall be paid "without regard to the existence" of your program. While other federal benefit programs may protest that they also have last-payer provisions in their governing laws, VOCA wins out, since its last-payer provision is Congress's most specific directive on this issue. A Congressional Report also specifically names Medicaid, V.A., and I.H.S. as examples of programs that should pay first before state victim compensation.

Note, however, that *there is nothing in VOCA that makes your program a last payer with regard to private insurance or any other collateral resource other than a federal program.* You must rely on your own state law to establish your last-payer status with insurance benefits.

State Certifications and Administrative Requirements

**Administrative Requirements.** A full discussion of OVC's administrative requirements would require a lengthier exposition than allowed here, but we can touch on a few points:

**Required Reports:** There are three major reports that you must complete:

(1) An annual *Performance Report*, due December 30 of each year, that provides statistical information about your claims and payouts.

(2) An annual *State Certification Form*, due when you file your grant application each spring. This form calculates the amount of state funds used to pay benefits in the most recently ended federal fiscal year, and becomes the basis for your VOCA grant in the next fiscal year. For example, if you submit the Certification Form in the spring of 2013 when you apply for your federal fiscal year 2013 grant, and provide FY 2012 data on the form, the form will be used to calculate your federal grant for fiscal year 2014.

(3) The *Quarterly Financial Report*, which is submitted every three months through OVC's grant management system (GMS).

The State Certification Form requires that states deduct any amounts gained through recovery of restitution or subrogation income. A credit is allowed

only for salaries and benefits of anyone employed more than 75% on fund recovery. Obviously, this creates a kind of "penalty" or disincentive for recovering restitution from offenders of victims who have submitted claims – and note that this deduction only applies to this type of restitution, not from any other source of income. Most states gain their revenue from various types of criminal

fees, fines, or assessments, and this deduction does not include that income. The Association has sought a change in this requirement, and it is likely that OVC's decision will be contained in the new Regulations.

Administrative costs taken from VOCA funds are limited to 5% of each year's grant. They can be spent on a wide variety of items, including extra personnel, automation improvements, training and outreach, automation, and memberships in organizations like this Association. The key thing is that a state cannot simply shift current state administrative expenditures onto the federal grant; any use of federal administrative funds must be in addition to current state administrative spending. To prove this, a state is instructed to establish a baseline level of current administrative spending, so it can demonstrate that use of the VOCA 5% allowance is *in addition* to that baseline.

*This narrative is intended to provide practical advice; it is not an official document, and only OVC is authorized to interpret what constitutes compliance with the Guidelines.*

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# *Training Calendar*

# *2013*

## **National Training Conference**

### ***Fall, 2013***

*National Conference information will be available soon*

## NACVCB Regional Conferences

*will be planned for the spring of 2013*

*More information will be sent to all member programs*