

Victim Compensation in America: The State-Federal Partnership

Victim compensation in America has been a state government initiative and function from the very beginning, starting with the first program in California in 1965. Unlike in other countries, such as Great Britain, European Union nations, and Asian-Pacific nations, where federal governments created and still operate crime victim compensation programs for their entire nations, the federal government in the United States played no role at all in establishing programs to compensate victims of violence. It was not until 1984, nearly 20 years after California established the first program, and after 40 states were operating fully funded and functioning programs, that Congress adopted the Victims of Crime Act of 1984 (VOCA). It was 1986 when VOCA grants first went out to State Victim Compensation Programs.

When Congress enacted VOCA, its purpose was simple: to provide supplemental funding to states to ensure they could pay sufficient benefits; to guarantee that victims of federal crimes were covered (since there was no federal compensation program); and to set some minimal conditions for states to qualify for grants. That funding initially provided about 15% of the money necessary to operate each State Compensation Program, counting both benefits and administrative costs. Today, that amount has doubled to about 30% of state costs for compensating victims and running programs.

The financial burden for victim compensation in America always has been borne largely by states. So has the responsibility for setting eligibility and operational rules. In enacting clear statutory conditions for receiving supplemental grants, Congress gave no general rule-making authority to the entity created to administer VOCA, the Office for Victims of Crime (OVC). Congress recognized that the states already were operating effective programs, so state governments remained in charge of the basic rules regarding reporting and cooperation with law enforcement, filing and application procedures, and other eligibility conditions.

Congress's minimal grant standards have been met by all states for more than 40 years, and those Congressionally-set conditions have not changed substantially in 20 years. In fact, the VOCA Fix Act of 2021 contained only one change to those standards, and it was minimal: the law lifted existing language from the 2001 OVC Guidelines with regard to state independence in enforcing the Congressional mandate to “promote cooperation with the reasonable requests of law enforcement,” and placed it in the VOCA statute. That language gives states explicit authority to meet that “promote cooperation with law enforcement” requirement by, in each state’s discretion, taking into account victims’ health and safety concerns, as well as age, and cultural and linguistic factors, and anything else the state deems appropriate. This is exactly the authority given to states in the 2001 Guidelines. The only other change made to VOCA in the past 20 years came in a separate bill enacted by Congress in 2022, and that simply requires states not to foreclose filing opportunities for victims whose forensic sexual assault exams have been delayed in processing in police labs.

Any federal rule making done by the executive agency charged with handling grant functions must stay squarely within the parameters of its statute. Without explicit authorization from Congress, federal officials and employees are not allowed to make up their own minds about how a grant program should be run, or, in this situation, how state governments should operate a state program. To do otherwise would allow federal laws to be interpreted and filtered by whatever opinions or beliefs any Administration might have, as carried through by its appointed agency heads and staff, and as driven by whatever interest groups and lobbyists are invited to provide views. That is not the way democracy in America works. Congress sets the rules in law; federal agencies administer them, creating regulations to enforce what the statute provides. (This well-established approach was recently reinforced in a U.S. Supreme Court decision, *West Virginia v. EPA*.)

What are the federal VOCA grant conditions Congress placed in VOCA?

A State Crime Victim Compensation Program must do the following ten things:

1. Offer compensation to victims and survivors of criminal violence, including drunk driving and domestic violence.
2. Pay for medical care, mental health counseling, lost wages attributable to physical injury, and funerals.
3. Promote victim cooperation with the reasonable requests of law enforcement authorities. In enforcing this statutory requirement, State Programs may, in their own discretion, take into account the victim's age, psychological condition, health, and safety, as well as cultural and linguistic factors.
4. Cover any U.S. resident victimized within the State, regardless of their State of residence. (This does not apply to non-U.S.

residents, e.g., tourists; though nearly every state covers tourists and undocumented aliens, anyway – in fact, there are only 3 states that do not).

5. Cover victims of federal crimes the same as victims of State crimes, i.e., as if the crime had occurred under State jurisdiction.
6. Not pay benefits if a federal benefit program would cover the cost; this last-payer provision applies only to federal benefit programs, not generally to private insurance or donations, which States remain free to view as collateral resources.
7. Not pay benefits to any victim who owes federal criminal debt, fines, or restitution. This provision is not currently active; it is suspended until the U.S. court system establishes a database readily accessible to State Crime Victim Compensation Programs.
8. Not use VOCA funds to pay for property damage, except medical prosthetics and locks, doors, and security devices.
9. Avoid supplanting State funds with federal funds.
10. Use only 5% of each annual federal grant for administrative purposes; using grant funds for administrative costs reduces amounts available to pay benefits.

Other rules and procedures are not covered in VOCA; Congress left those to the States.

Congress also placed no requirements on the states with regard to processing times or any mandated outreach. (State Programs average between 30-90 days in processing claims; all of them have detailed Websites and make regular outreach to their partners in victim services and law enforcement.)

State Crime Victim Compensation Program rules shared by all states are as follows:

- Application filing, with time limits averaging 2 years, and good-cause waivers.
- Reporting and cooperation with law enforcement, with exceptions and waivers, especially for victims of sexual assault, domestic violence, human trafficking, and child abuse.
- Contributory conduct, requiring a look at criminal activity on the part of the victim that directly causes the injury or death, and reduction and/or denial of benefits if the victim is responsible for their own injury or death. (*Note: only 4 states look at criminal records and have the discretion to deny if the victim has a substantial recent violent criminal history.*)
- Collateral sources – last payer with regard to public and private sources, to preserve scarce funds for victims not covered by Medicaid, insurance, etc.

Every state legislature enacted these into law when the programs were created. Again, VOCA touches on only two of them – (1) reinforcing that States must promote cooperation with law enforcement, with allowances for the physical and mental health of victims, their safety, and cultural/linguistic issues, and c; and (2) that states must not pay benefits to a victim if a federal benefit program covers those costs.

How do these State and Federal rules impact victims' access to compensation?

According to OVC data submitted by the states, these rules are extremely rare reasons for denying or reducing claims:

- Less than 0.5% of claims are denied for failure to meet a filing deadline;
- Less than 2% are denied for failure to report to police, and 2.2% for lack of cooperation with law enforcement; and
- Less than 1.5% are denied for criminal activity and contributory conduct.

Data published annually by OVC shows that the programs are effective in these ways:

- **Victims of domestic violence comprise nearly half of all assault claims paid.**
- **Programs pay 19,000 applications on behalf of families in homicides; there are approximately 24,000 murders in the U.S. each year.**
- **Programs are paying \$57 million annually to cover the costs of forensic exams in sexual assaults, or nearly one-fifth of all costs paid.**

In summary, the State-Federal partnership created by VOCA brings State Crime Victim Compensation Programs and the U.S. Government together to achieve a common purpose: To help victims of violent crime in the most efficient and effective manner possible. Congress did not set up a national crime victim compensation program (except for victims of international terrorism). Instead, it left to the states what they were already doing and paying for; and it provided valuable supplemental funding to accomplish their missions.

[We should note that VOCA Compensation is entirely unlike VOCA Assistance, the other grant program administered by OVC. VOCA Assistance programs are entirely federally funded, and 100% operated under federal law and regulations. Congress gave OVC explicit authority to set the rules.]

KEY FINDINGS

State Victim Compensation Programs pay for medical and mental health costs for nearly 250,000 victims annually, as well as funerals, lost wages and support, relocation, forensic exams, crime-scene cleanup, and other expenses.

About 500,000 victims, or 10% of all violent crime victims, sustain injuries serious enough to warrant medical attention, according to DOJ's National Crime Victimization Survey. And close to 90% have a private insurance source, or Medicaid or Medicare, to cover their medical and mental health needs, so they may not need to access victim compensation programs. (The NCVS shows that 70% of violent crimes are attempts, not completed crimes, and the majority of completed crimes do not result in injuries requiring medical care.)

Eligibility rules in state compensation laws do not result in significant numbers of denials:

- Less than one-half of 1% of applications are denied for late filing
- Only 2% are denied for failure to report to police; 2% are denied for failing to cooperate
- About 1.5% are denied for victims' own criminal activity causing their injury/death.

Minorities apply for compensation in numbers twice their proportion of the general population. For example, African-Americans comprise 13.5% of the U.S. population; they are 26% of the applicants for victim compensation.

Nearly 50% of the aggravated assault claims paid are for victims of domestic violence. About 19,000 claims from families of homicide victims are paid annually (there are 24,000 murders each year in the U.S.) State Compensation Programs now pay \$60 million annually for forensic exams in sexual assault, the fourth largest expense category.

States fund 70% of the costs for operating Crime Victim Compensation Programs, including benefits and operating expenses.

State Victim Compensation Programs are governed by state laws and rules. Congress sets minimal conditions for eligibility for supplemental VOCA grant funds; these conditions have been met by all states for the past 40 years. Congress did not grant OVC any general rule-making authority. *The VOCA Fix Act of 2021 did not change or add any conditions, other than to confirm the states' existing authority to consider victims' health, safety, and other factors in promoting cooperation with police.*

FAQs: Victim Compensation in America

1. Who pays for crime victim compensation in America?

States pay for the large majority of victim compensation benefits and the administrative costs of operating a program.

While victim compensation in America is definitely a State-Federal partnership, states pay for about two-thirds of the costs, and the federal government covers about 30%. States get VOCA grants calculated at 75% of their state-dollar payout, which they spend alongside their state funds (not in replacement of those). This means a state spending \$17.5 million a year in benefits uses \$10 million in state funds, and \$7.5 million in VOCA funds – an approximate 60% - 40% State/federal split.

Plus – States bear the entire burden of administrative costs – staff salaries and benefits, office space, desks and computers, tech-vendor costs, etc. These costs can add another 20-40% to the bill of operating a compensation program and paying benefits; meaning the real costs are approximately 60-75% for state funding, and 25-40% for the federal government. Note – if a state chooses to use 5% of its VOCA grant for administrative costs, this sum must be taken from what the state otherwise would spend on benefits to victims. There is no additional administrative allowance.

2. Are large numbers of claims denied for failure to file within a specified limit; or for not reporting to police and cooperating in an investigation of the crime; or for the victim committing criminal acts that cause the victim's injury or death?

No. OVC statistics show that extremely small numbers of claims are denied for failure to meet basic eligibility requirements.

Those OVC statistics, gathered annually from the states, show the following:

- **Less than 0.5% of applications are denied for late filing.**
- **Less than 1.5% of applications are denied for victims' responsibility for the crime.**
- **About 2% of applications are denied for non-reporting to police, and 2% are denied for failure to cooperate with law enforcement authorities.**

In total, these factors account for about 6% of all applications to not be paid. Most programs waive in nearly every application that doesn't come in within a statutory timeframe, which now averages 2 years among all States. They deny only the most obvious and worst cases when it comes to the contributory conduct of criminals who engage in crimes that result in their own injury or death. A substantial majority of compensation programs no longer require victims of sexual assault, domestic violence, human trafficking or child abuse to fully cooperate with law

enforcement authorities; and many use alternatives to police reports to document that a crime in fact took place.

3. How effective are State Crime Victim Compensation Programs?

The answer is simple: State Crime Victim Compensation Programs are reaching a large percentage of victims who have incurred expenses and do not have another resource, like private medical insurance or Medicaid, to cover those costs.

Two basic factors determine whether a victim needs and gets compensation – (a) **Did the victim suffer an injury serious enough to require medical treatment and incur costs;** and (b) **Is the victim's expense covered by another source,** like private medical insurance or Medicaid, Medicare, and Indian Health Services?

The National Crime Victimization Survey conducted annually by the DOJ Bureau of Justice Statistics shows that there are approximately 5 million victimizations each year, both reported and unreported. But **“63% were attempted rather than completed crimes, and even among the completed crimes, most of the victims sustained no injury severe enough to require medical treatment,”** according to a National Institute of Justice report analyzing the data. NIJ researchers estimated that well under 1,000,000 victims of all compensable offenses might have an injury resulting in medical care and expenses.

And 90% of the nation's population now has private or public medical-insurance coverage, according to the Kaiser Family Foundation. Even considering co-pays and deductibles, NIJ researchers found that less than 400,000 victims would need help paying for medical care and other costs.

Taking these factors into account, it's clear that State Crime Victim Compensation Programs are covering a very large percentage of violent crime victims who (a) have incurred medical or other expenses; and (b) do not have another source to pay for their recovery. Crime victim compensation programs pay on approximately 200,000 applications annually, plus another 70,000 claims for forensic rape examinations (FREs).

Simply to assert that a huge percentage of crime victims do not get compensation is misleading, since it fails to take into account the factors that go into compensating victims: first, that they have a compensable cost, like a medical bill; and second, that they actually will be out-of-pocket if they do. And if the reporting-to-police requirement is factored in (a requirement that states interpret flexibly), with nearly half of the 5 million victimizations recorded by the NCVS going unreported, we would find compensation programs are even more effective in helping eligible victims.

4. What about homicides, and gun violence victims?

The data is clear that State Crime Victim Compensation Programs are very effective in helping victims of homicide and gun violence.

There are approximately 24,000 homicides in America annually, many of them the result of gun violence. State Crime Victim Compensation Programs pay more than 19,000 applications each year from families whose loved ones have been murdered. Some homicides are committed by criminals targeting other criminals, and may not be eligible, and in others, no family members come forward. But it's very clear that homicide victimization is one category in which State Crime Victim Compensation Programs reach a very large percentage of the families who suffer these tragedies.

5. Do State Compensation Programs serve victims of sexual assault and domestic violence?

Forty-six percent of all claims paid annually are for adult sexual assault and child sexual abuse victims. Adult sexual assault and child sexual abuse claims are paid at the rate of \$88 million annually, which is 22% of all compensation paid in a year. Fully 14% of all compensation payments are to cover forensic-exam costs, making exam payment the fourth largest category among all expense types (following medical, lost wages, and funerals). Domestic violence victims comprise 43% of all aggravated-assault victims receiving compensation (14% of the overall claims-paid).

Compensation programs and their managers, many of whom come from victim service backgrounds, recognize that victims of domestic violence and sexual assault face challenges in reporting and cooperating with law enforcement. Many of them now accept alternatives, such as protection orders, and forensic-rape exams, and counselors' confirmation in lieu of traditional criminal justice participation.

6. What about minority access to crime victim compensation?

OVC demographic data shows that minority groups apply in numbers twice their proportion of the population.

African Americans, for example, comprise 13% of the U.S. population; their proportion of applications nationally is 26%. This data is seen in state after state: in California, the Black proportion of the population is 5.5%; applications from Blacks are 13.5% of the total received. In Texas, the figures 12.3% of the population are African-Americans, and 22.6% of the claims are from that minority group. New York: 14.4% of the population compared to 28.7% of the claims; Florida: 15.5% of the population, and 32% of the claims are from African-Americans; and in Iowa, 4.1% of the population is African-American, but they file 12.7% of the claims.

7. Do states deny applications because a victim is an undocumented alien?

No. Fifty states treat claims from undocumented aliens like any other application.

Only 3 states deny applications if the victim is not a legal resident, and one of those (Alabama) is under Federal court order to deny those claims. There is no statutory basis in 50 states to even look at a victim's legal status, and none of the states consider crossing a border illegally as contributory conduct causing a victimization.

8. Who controls the rules for how State Crime Victim Compensation Programs operate?

State legislatures and elected officials (e.g., governors and attorneys general).

State Crime Victim Compensation Programs operate under detailed state statutory and regulatory frameworks. These were in existence in more than 40 states well before VOCA was enacted in 1984. VOCA did not change those laws; Congress established certain minimal conditions that nearly every state already met, and which every state has met for more than 40 years.

9. What authorization does OVC have from Congress to set the rules for State Crime Victim Compensation Programs?

Congress did not grant OVC general rule-making authority.

Congress set specific but minimal conditions in VOCA for State Victim Compensation Programs to qualify for grants. These standards and parameters primarily ensure that (a) federal victims would be covered like state victims; and (b) that U.S. residents traveling to states other than their own would be covered. Congress also wanted to ensure that basic components, already mandated by state laws, also were included for VOCA grant eligibility: coverage of medical and mental health costs; eligibility for victims of domestic violence and drunk driving; and a requirement to promote cooperation with law enforcement.

Congress left the states to determine operational rules relating to filing procedures and time limits; reporting and cooperation with law enforcement; assessments of criminal activity causing victimizations; and collateral resources (other than to require federal benefit programs like Medicaid and Social Security to pay first on any expenses covered by those federal programs).

Congress also placed no requirements on the states with regard to processing times or any mandated outreach. States average between 30-90 days in processing claims; all have detailed Websites and make regular outreach to their partners in victim services and law enforcement.

10. Has Congress added any new grant conditions since the OVC Guidelines were last revised in 2001?

Yes. Congress took existing language in the 2001 Guidelines and placed it in the law.

- Congress took existing language in the 2001 Guidelines, which gave states the discretion to consider the victim's age, health, safety, and cultural and linguistic factors in the program's obligation to promote cooperation with law enforcement, and placed it in the statute. This is not a mandate; instead it makes statutorily explicit what the current Guidelines already allow: complete State Program discretion and flexibility in meeting the VOCA police-cooperation requirement. In other words, this is not really a change to how states operate; they've been operating with this flexible language for more than two decades.
- States cannot deny eligibility to a victim who files a late claim (past the filing period) if the reason for that failure is a delay in a police lab processing a forensic-exam kit. Most states already would waive such claims in.

No other changes have been made in the past 22 years.

Sources:

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Office for Victims of Crime, State Performance Management Tool Annual Summaries, FY 2020

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