



*United States Attorney  
Northern District of California*

## **Understanding Restitution**

Many victims are interested in how they can be repaid for their financial losses suffered as a result of a crime. This page provides an overview of that process. The Mandatory Restitution Act of 1996 established procedures for determining the amount of restitution to which a victim may be entitled. Information on procedures for restitution for crimes which occurred before the Act was passed, (April 24, 1996) is also included.

The Act provides that 'identified' victims may be entitled to an order of restitution for certain losses suffered as a result of the commission of an offense as part of the criminal sentence imposed on the defendant, or as part of a plea agreement. Victims may be either individuals or businesses.

It is important to begin keeping a record of all expenses incurred as a result of the crime, so this information can be used in determining what costs may be ordered by a Judge to be repaid by a defendant if convicted.

### **Requesting Restitution**

Under federal law, in many types of federal crimes, it is mandatory for a defendant to pay restitution for cases occurring after April 24, 1996. For most crimes committed prior to this date, Judges have more discretion on whether to order restitution.

Unfortunately, as a practical matter, a defendant who has no money or potential to make money may be unlikely to ever make meaningful restitution to the victims of a crime.

If a defendant pleads guilty or is found guilty at trial, available information on each identified victim's loss, usually obtained by the case agent during the investigation, will be provided to the U.S. Probation Office by the U.S. Attorney's Office. A presentence probation officer is assigned to investigate the background of a defendant, and prepare a presentence report for the Judge, recommending the most appropriate sentence.

Identified victims whose losses are included in the counts of conviction or as part of a plea agreement can request restitution and explain their losses in a Declaration of Victim Loss Statement. This statement is provided to victims to complete after a defendant has been convicted at trial or has pleaded guilty.

Victims should consider closely the types of restitution allowable, as it is often limited, and **may not include damages for such things as pain and suffering**. Victims should provide receipts or other verification where possible.

## **Describing the Impact of the Crime**

In addition, after a conviction, victims will also be asked to complete a Victim Impact Statement. This statement allows victims the opportunity to report on various consequences of the offense, including financial, social, psychological and/or medical consequences. The Victim Impact Statement provides an important way for the Judge to consider losses and harm as a result of the crime.

## **Restitution for Financial Loss**

In most fraud cases, restitution may be ordered where victims of the offense of conviction have suffered the loss of money or some negotiable instrument (investor fraud offenses or offenses involving the misuse of stolen credit cards), or the damage or loss of property. The Court may order a defendant to pay an amount equal to each victim's actual losses, usually the value of the principle or property fraudulently obtained.

## **Provisions Regarding Allowable Restitution**

In most cases, attorney fees, and tax penalties are not included in court ordered restitution. The Court may order the return of property or money to a victim or to someone a victim chooses. The Court may also order restitution to persons other than victims of a convicted offense, if agreed to in a plea agreement.

If a victim dies, restitution may also be paid to a victim's estate. Documents verifying a victim's death and information on power of attorney may be requested by the U.S. Clerk of Court, prior to any restitution being paid. In cases such as these, it is very important to keep the U.S. Attorney's Victim/Witness Assistance Program or the U.S. Clerk of Court, Finance Unit informed of any address changes.

A court may decline to order restitution if it finds that determining restitution in a case is too complex.

In most cases, if the victim consents, the Court may order the defendant to make restitution by performing "service" instead of money, or to make restitution to a person or organization designated by the victim. Victims should list such suggestions on their Victim Impact Statement which is provided if a defendant is convicted of a crime for which they are an identified victim.

In addition, a victim may at any time assign his/her own interest in restitution payments to the Crime Victims Fund, through the U.S. Treasury. This fund provides funding to assist crime victim assistance and compensation programs throughout the U.S.

## **How Does a Victim Begin Receiving Money?**

For cases, in which the crimes were committed after April 24, 1996, the U.S. Clerk of Court is charged with the collection and distribution of restitution as any payment becomes available.

If you are awarded restitution, simply keep the U.S. Attorney's Office Victim/Witness Assistance Program or the U.S. Clerk of Court/Finance Unit informed of where you live and if your address changes. Any restitution payment owed will be forwarded to you as it becomes available.

The U.S. Attorney's Office, Financial Litigation Program (FLP) is charged with enforcing orders of restitution. In the Northern District of California, in cases in which a restitution order is made, the Financial Litigation Program (FLP) of the U.S. Attorney's Office will file a lien on behalf of identified victims.

The FLP will pursue various means to enforce restitution, as the judgment and its resources permit, on behalf of identified victims for 20 years from the filing date of the Judgment, (plus the time period of actual incarceration) or until the death of the defendant. While a defendant is under the supervision of a probation officer, that probation officer will also monitor and ensure appropriate restitution is paid, where possible.

## **Can Victims File a Lien Against a Defendant?**

A victim may also choose to request the U.S. Clerk of Court to issue an Abstract of Judgment certifying that a judgment has been entered in a victim's favor in the amount specified in the Judgment. A victim may then file this with the Recorder's Office for any

county in which it is believed the defendant has assets, in the state in which a defendant was convicted in federal court.

Upon its recording, the Abstract of Judgment becomes a lien upon the property of the defendant in that county/state in the same manner as a state court judgment. Victims should consult with a private attorney for specific information.

A copy of the Abstract of Judgment may be downloaded from the U.S. Clerk of Court Internet web page, or by contacting the U.S. Clerk of Court.

Victims must complete the form and submit it to the U.S. Clerk of Court before the Abstract will be "issued" by the U.S. Clerk of court.

## **Additional Restitution Provisions**

An order of restitution is not dischargeable in a defendant's bankruptcy.

Under the Act, if an identified victim discovers further losses after a judgment has been filed, that victim has 60 days after discovery of the losses, to petition the Court for an amended restitution order. This order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitution.

After a Judge has imposed a restitution order, the U.S. Attorney or an identified victim may later make a motion to the Court if he/she discovers a material change in the defendant's economic circumstances that affects his or her ability to pay restitution. Victims with such information should contact the U.S. Attorney's Office.