
Explanation of Losses Subject to Restitution

Many victims are interested in how they can be repaid for their financial losses suffered as a result of a crime. This brochure 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. For further information on any issue discussed in this brochure, please contact the Victim Witness Unit of the U.S. Attorney's Office.

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/corporations.

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 cases, 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 victim 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 will also have the opportunity to request restitution and explain their losses in detail in a Victim Loss Statement. This statement is provided by the U.S. Probation Officer, after a defendant has been convicted at trial or pled 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. Provide receipts or other verification where possible.

Describing the Impact of the Crime

In addition, after a conviction, victims will also be asked by the presentence probation officer and/or the U.S. Attorney's Office 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. The Victim Impact Statement provides an important way for the Judge to consider losses and harm as a result of the crime.

Restitution Available To Any Eligible Victim

In any case, at sentencing, the Judge may order reimbursement to a victim for verified lost income and necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

Physical Injury as a Result of the Crime

For an offense resulting in physical injury to a victim, the Court may order payment equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care; payment equal to the cost of necessary and occupational therapy and rehabilitation; and/or reimbursement to the victim for income lost as a result of the offense.

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 principal 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.

Community Service in Lieu of Payment

In most cases, if the victim (or if the victim is deceased, the victim's estate) 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.

Federal Crime Victim Fund

In addition, a victim may at any time assign their 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?

If you are awarded restitution, keep the U.S. Clerk of Court of the U.S. Attorney's Office informed of where you live and if your address changes. You can also update your contact information using the Victim Notification System (VNS), www.notify.usdoj.gov. Any restitution payment owed will be forwarded to you as it becomes available. In the event of your death prior to restitution being paid in full, the representative of the your estate, another family member, or any other person appointed as suitable by the court, may assume your rights to the restitution.

The U.S. Attorney's Office, Financial Litigation Unit (FLU) is now charged with enforcing orders of restitution, and monitors efforts in enforcing a Judgment if defendants assets or income are identified. In the Northern District of California, in all cases filed under the Mandatory Restitution Act of 1996, or in cases prior, when restitution is ordered for at least \$500, the FLU, will file a lien.

The FLU will pursue various means to enforce restitution, as 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. In addition, 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 the 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, if the county is 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.

Additional Restitution Provisions

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 they discover a material change in the defendant's economic circumstances that affect his or her ability to pay restitution. Victims with such information should contact the U.S. Attorney's Office.

The U.S. Attorney's Office is required to certify to the Court that victims who are owed restitution are notified about such material changes. Upon receipt of such notification, the Court has the discretion to adjust the defendant's payment schedule or require payment in full, as the interests of justice require.

An order of restitution is *not* dischargeable in bankruptcy.

Other Available Remedies

Victims of violent crimes may be eligible for victim compensation which can often pay for medical and psychological costs, loss of income or support, or funeral expenses related to the crime. Contact the State of California, Crime Victim Compensation Program to apply.

In some cases victims of fraud crimes may be able to seek some recovery through a regulatory agency. In some cases, a victim may also wish to file a civil action or file in small claims court against a defendant to recoup losses caused by the crime. For advice on the wisdom of such a suit, you should consult with a private attorney of your choice, or the Small Claims court in the county in which the crime occurred. There is usually a statute of limitations which limits the time in which a civil suit can be filed.

What If I Expect Recovery of Damages from a Civil Suit, or Receive Compensation From Other Sources?

If a victim has received compensation from insurance, disability, the Crime Victims' Compensation Fund, or any other source with respect to a loss, the Court shall order that restitution be paid to the person/company who provided or is obligated to provide the compensation. However, the restitution order shall provide that all restitution is payable to actual victims first.

Any amount paid under restitution shall be reduced by any amount later recovered as compensatory damages for the same loss in any related civil proceeding.

RESOURCES WHICH MAY PROVE HELPFUL

Victim-Witness Program
U.S. Attorney's Office
Western District of North Carolina

(844) 625-6629

National Eldercare Locator Hotline
(800) 677-1116

National Center for Victims of Crime
(202) 467-8700

Office for Victims of Crime
(202) 307-5983

National Foundation for Credit Counseling
Centers
(800) 388-2227

National Organization for Victim
Assistance
(800) 879-6682

Commodities Reparation Fund
(202) 418-5250

State of North Carolina
Crime Victim Compensation Program
(800) 826-6200

THE RESTITUTION PROCESS FOR VICTIMS OF FEDERAL CRIMES



UNITED STATES
ATTORNEY'S OFFICE
WESTERN DISTRICT OF
NORTH CAROLINA

Victim/Witness Unit
Asheville: (828) 271-4661
Charlotte: (704) 344-6222
