

# **U.S. Victims of State Sponsored Terrorism Fund**

## **Payment Calculation Explanation**

### **February 2017**

This explanation shows how the USVSST Fund applies the governing Justice for United States Victims of State Sponsored Terrorism Act (Act), 42 U.S.C. § 10609 (2015), to determine eligible claimants' award amounts. It includes discussion of the most relevant subsections of the Act, a description of the methodology, and several calculation examples. Additional information can be found by reviewing the frequently asked questions (FAQs) available on the USVSST Fund's website at [www.usvsst.com](http://www.usvsst.com).

#### **I. Selected Subsections of the Act**

The key sections of the Act that govern the calculation of an eligible claimant's compensation are found in subsection (d), titled "Payments." The exact language of these provisions, along with notes regarding their application, follows:

##### **(3) Payments to be made pro rata**

###### **(A) In general**

###### **(i) Pro rata basis**

Except as provided in subparagraph (B) and subject to the limitations described in clause (ii), the Special Master shall carry out paragraph (1), by dividing all available funds on a pro rata basis, based on the amounts outstanding and unpaid on eligible claims, until all such amounts have been paid in full.

*Note: Only eligible claims with "amounts outstanding and unpaid" are included in the calculation. Claimants who have already received full payment of their gross compensatory damages will not receive any compensation from the USVSST Fund. The USVSST Fund will allocate the available funds to the other eligible claimants using the methodology described in this paper.*

###### **(ii) Limitations**

The limitations described in this clause are as follows:

(I) In the event that a United States person has an eligible claim that exceeds \$20,000,000, the Special Master shall treat that claim as if it were for \$20,000,000 for purposes of this section.

(II) In the event that a United States person and the immediate family members of such person, have claims that if aggregated would exceed \$35,000,000, the Special Master shall, for purposes of this section, reduce such claims on a pro rata basis such that in the aggregate such claims do not exceed \$35,000,000.

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*Note: These provisions provide “caps” on the amounts eligible claimants can receive from the USVSST Fund. If an individual claimant has an eligible gross compensatory damages award amount in a qualifying judgment of more than \$20 million, the USVSST Fund will calculate his or her award as if the amount were \$20 million. Groups of immediate family members whose total compensatory damages in qualifying judgments add up to more than \$35 million are subject to a separate cap. The USVSST Fund will calculate their awards after adjusting the damage amounts so that the total eligible compensatory damage amounts for all the family members’ claims does not exceed \$35 million.*

*The USVSST Fund will apply the individual cap first, and then the family cap. For some family groups, applying the individual cap may mean that the family’s total compensatory damages no longer exceed \$35 million. For other family groups, some individuals may have their gross compensatory damage award amounts capped at \$20 million, and then further reduced when the family cap is applied. The examples later in this explanation show how this works.*

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*The next two subsections limit payments only to eligible claimants who have received payments from sources other than this Fund.<sup>1</sup> They do not apply to eligible claimants who have not received any such payments.*

**(B) Minimum Payments**

(i) Any applicant with an eligible claim described in subsection (c)(2) who has received, or is entitled or scheduled to receive, any payment that is equal to, or in excess of, 30 percent of the total compensatory damages owed to such applicant on the applicant’s claim from any source other than this Fund shall not receive any payment from the Fund until such time as all other eligible applicants have received from the Fund an amount equal to 30 percent of the compensatory damages awarded to those applicants pursuant to their final judgments or to claims under subsection (c)(2)(B) or (c)(2)(C). For purposes of calculating the pro rata amounts for these payments, the Special Master shall not include the total compensatory damages for applicants excluded from payment by this subparagraph.

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<sup>1</sup> The Act defines a source other than this Fund as any collateral source, including any life insurance, pension funds, death benefit program, payment by Federal, state, or local government (including payments from the September 11th Victim Compensation Fund (49 U.S.C. § 40101 note)), and court awarded compensation related to the act of international terrorism that gave rise to a claimant’s final judgment. USVSST Fund applicants must identify all such sources. The Special Master retains discretion in assessing any identified source other than this Fund and determining how it will factor into an award calculation. As one example, if the claimant is deceased, life insurance payments paid on personally secured policies must be identified as a source other than the Fund, but will not affect claimants’ awards. Throughout this paper, “payments from sources other than this Fund” is used exclusively to refer to those payments included in the calculations.

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*Note: This subsection applies only to claimants who have received 30 percent or more of their gross compensatory damages from sources other than this Fund. (The next subsection applies to claimants who have received less.) This is determined using the amount of payments from other sources and the gross compensatory damages (or the capped amounts described above, if applicable). The USVSST Fund cannot include these claimants in its payment calculations, because no claimants have yet received any payments from the USVSST Fund, let alone payments of 30 percent of their gross compensatory damages.*

(ii) To the extent that an applicant with an eligible claim has received less than 30 percent of the compensatory damages owed that applicant under a final judgment or claim described in subsection (c)(2) from any source other than this Fund, such applicant may apply to the Special Master for the difference between the percentage of compensatory damages the applicant has received from other sources and the percentage of compensatory damages to be awarded other eligible applicants from the Fund.

*Note: This subsection applies to claimants who have received some payments from sources other than this Fund, but these payments do not total 30 percent or more of their gross compensatory damages. The subsection requires the USVSST Fund to account for claimants' payments from sources other than this Fund when calculating awards from the USVSST Fund. The USVSST Fund will calculate its "payment percentage" (explained below) and then compare the percentage the claimant has received from sources other than this Fund to determine how much the claimant can receive from the USVSST Fund. Claimants who have received some compensation from other sources will have their award amounts reduced to reflect these payments from other sources. Claimants who have received more than the Fund payment percentage from sources other than the USVSST Fund will not receive initial payments. The examples later in this explanation show how this works.*

## II. Methodology

The sections of the Act above mandate the methodology for the award calculations. The available funds in the USVSST Fund must be distributed pro rata to all eligible claimants after accounting for the individual cap of \$20 million, the family cap of \$35 million, and compensation from sources other than this Fund.

**Payment Percentage:** For purposes of the USVSST Fund's calculations, a "payment percentage" will be computed. The payment percentage is the amount of funds available to pay to all eligible claimants<sup>2</sup> divided by compensatory damages after accounting for the individual cap of \$20 million, the family cap of \$35 million, and compensation from sources other than this Fund (see below). **For initial payments in 2017, the Fund payment percentage is 13.66 percent.**

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<sup>2</sup> The USVSST Fund allocated \$1,104,450,000 for the initial payments.

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**Payment Percentage** = Total Amount of Funds Available for Distribution to Eligible Claimants

*Divided by*

Compensatory Damages (after accounting for the individual and family caps and compensation from sources other than this Fund)

**Maximum potential Fund award amount:** In addition, the USVSST Fund will also calculate a maximum potential Fund award amount for each claimant. The maximum potential Fund award amount is the payment percentage of the claimant's compensatory damages after applying the caps. For initial payments in 2017, this is calculated by determining 13.66 percent of the post-caps amount. Thereafter, the USVSST Fund will offset the compensation from other sources, if any, to determine the USVSST Fund award payment.

The USVSST Fund payment calculation methodology is the same for all eligible claimants. There are six basic steps in the calculation.

1. Determine the amount of gross compensatory damages (or the statutory lump sum award amounts for Iran hostages and their families).
2. Apply the \$20 million individual cap, if applicable.
3. Apply the \$35 million family cap, if applicable.
4. Determine the amount of compensation received from sources other than this Fund.
5. Compute the maximum potential Fund award amount (before accounting for compensation from other sources).
6. Compute the USVSST Fund award payment (maximum potential Fund award amount less compensation from sources other than this Fund).

### III. Examples of the Calculations Used to Determine USVSST Fund Payments to Claimants Under Varying Circumstances

The following examples<sup>3</sup> show the calculations used to determine a USVSST Fund award payment. In every example, the payment percentage (explained above) is assumed to be 10 percent. **The 10 percent payment percentage in these examples is used to simplify the arithmetic. As noted above, the actual payment percentage for initial payments in 2017 is 13.66 percent.**

There are four types of claimants in these examples:<sup>4</sup>

1. Claimants Without Compensation from Other Sources
  - a. Individual Claimant (no other family members)
  - b. Individual Claimant (with family members)
2. Claimants With Compensation from Other Sources
  - a. Individual Claimant (no other family members)
  - b. Individual Claimant (with family members)

#### 1. Claimants Without Compensation from Other Sources

These individuals are subject to the individual \$20 million cap and the \$35 million immediate family cap, if applicable. The following examples show the computation of the USVSST Fund award payment under alternative scenarios.

##### *a. Individual Claimants, No Family Members, No Compensation from Other Sources*

Example #1 (chart below) shows the calculation of the USVSST Fund award payment for an individual claimant (with no immediate family members who are also eligible claimants) who has a judgment of \$45 million in gross compensatory damages. The individual cap applies to limit the eligible compensatory amount to \$20 million. The family cap does not apply. No adjustments for payments from other sources are required.

The maximum potential award amount from the USVSST Fund is \$2 million (10 percent of the \$20 million eligible compensatory amount after applying the individual cap – the family cap is not relevant here). The individual claimant did not receive compensation from other sources so the USVSST Fund pays the entire maximum potential Fund award amount as the USVSST Fund award payment.

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<sup>3</sup> These examples were prepared for illustrative purposes only and do not represent actual claims.

<sup>4</sup> As noted above, claimants who have no amounts outstanding and unpaid on their eligible claim amounts are not eligible for award payments. Further, claimants who have received 30 percent or more of their gross compensatory damages from sources other than this Fund are not included in the calculations.

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Example #1

| Category/Computation  | Individual Claimant |
|---|---------------------|
| Gross Compensatory Damage Amount                              | \$45,000,000        |
| Compensatory Damages after Applying Individual Cap            | \$20,000,000        |
| Compensatory Damages after Applying Individual and Family Cap | \$20,000,000        |
| Amount Received from Other Sources                            |                     |
| Amount  | \$0                 |
| Percent of Gross Compensatory Damages                         | 0%                  |
| Maximum Potential Fund Award Amount                           | \$2,000,000         |
| Less: Amount Received from Other Sources                      | \$0                 |
| Equals: USVSST Fund Award payment                             | \$2,000,000         |
| Grand Total: Amount Received from USVSST and Other Sources    | \$2,000,000         |

*b. Claimants with Family Members who are also Eligible Claimants, No Compensation from Other Sources*

Examples #2 and #3 show the computations when the individual has immediate family members who are also eligible claimants. Therefore, the claimant is potentially subject to both the individual and the family caps. The individual cap is applied first, which obviates the need to apply the family cap in some cases, as shown below.

In example #2 (chart below), gross compensatory damages total \$55 million for the family; therefore, the family limitation is exceeded. However, Family Member #1 with a judgment of \$45 million is the primary reason for exceeding the family cap. As for all eligible claimants, the first step in the calculation is to apply the \$20 million individual cap. When the individual cap is applied, the family's total compensatory damages are reduced to \$30 million – so the family cap is no longer triggered.

The maximum potential award amount from the USVSST Fund is \$3 million (10 percent of the compensatory damages after applying the individual and family caps). No family members received compensation from other sources. Accordingly, the USVSST Fund pays the entire potential award amount as the USVSST Fund award payment.

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| Category/Computation  | Example #2      |                 |                 |              |
|---|-----------------|-----------------|-----------------|--------------|
|   | Family Member A | Family Member B | Family Member C | Family Total |
| Gross Compensatory Damage Amount                              | \$45,000,000    | \$5,000,000     | \$5,000,000     | \$55,000,000 |
| Compensatory Damages after Applying Individual Cap            | \$20,000,000    | \$5,000,000     | \$5,000,000     | \$30,000,000 |
| Compensatory Damages after Applying Individual and Family Cap | \$20,000,000    | \$5,000,000     | \$5,000,000     | \$30,000,000 |
| Amount Received from Other Sources                            |                 |                 |                 |              |
| Amount  | \$0             | \$0             | \$0             | \$0          |
| Percent of Gross Compensatory Damages                         | 0%              | 0%              | 0%              | na           |
| Maximum Potential Fund Award Amount                           | \$2,000,000     | \$500,000       | \$500,000       | \$3,000,000  |
| Less: Amount Received from Other Sources                      | \$0             | \$0             | \$0             | \$0          |
| Equals: USVSST Fund Award payment                             | \$2,000,000     | \$500,000       | \$500,000       | \$3,000,000  |
| Grand Total: Amount Received from USVSST and Other Sources    | \$2,000,000     | \$500,000       | \$500,000       | \$3,000,000  |

Example #3 (chart below) shows the calculation in a situation where the family cap affects the calculations. As for all eligible claimants, the individual cap is applied first, but the family's total compensatory amount remains \$50 million even after that, so the family cap is still exceeded. Each family member must have his or her compensatory damages limited proportionally (pro rated shares of the \$35 million capped amount). The individual's compensatory damage amounts are reduced using the same factor – the ratio of \$35 million (the cap) divided by \$50 million (the post-individual cap total). Since Family Members A and B have the same eligible compensatory amount after applying the individual cap (\$20 million), they have the same award amount of \$14 million (\$20 million times \$35 million divided by \$50 million) after applying the family cap. Family Member C (unaffected by the individual cap) has an award amount of \$7 million after applying the family cap using the same factor (\$10 million times \$35 million divided by \$50 million).

Next, the USVSST Fund payment percentage is used to calculate the maximum potential award amount from the USVSST Fund for the individuals (10 percent of the eligible award amounts). For the entire family, this totals \$3.5 million (10 percent of the compensatory damages after applying the individual and family caps). No family members received compensation from other sources and therefore, the USVSST Fund pays the entire maximum potential award amount as the USVSST Fund award payment.

| Category/Computation  | Example #3      |                 |                 |              |
|---|-----------------|-----------------|-----------------|--------------|
|   | Family Member A | Family Member B | Family Member C | Family Total |
| Gross Compensatory Damage Amount                              | \$45,000,000    | \$25,000,000    | \$10,000,000    | \$80,000,000 |
| Compensatory Damages after Applying Individual Cap            | \$20,000,000    | \$20,000,000    | \$10,000,000    | \$50,000,000 |
| Compensatory Damages after Applying Individual and Family Cap | \$14,000,000    | \$14,000,000    | \$7,000,000     | \$35,000,000 |
| Amount Received from Other Sources                            |                 |                 |                 |              |
| Amount  | \$0             | \$0             | \$0             | \$0          |
| Percent of Gross Compensatory Damages                         | 0%              | 0%              | 0%              | na           |
| Maximum Potential Fund Award Amount                           | \$1,400,000     | \$1,400,000     | \$700,000       | \$3,500,000  |
| Less: Amount Received from Other Sources                      | \$0             | \$0             | \$0             | \$0          |
| Equals: USVSST Fund Award payment                             | \$1,400,000     | \$1,400,000     | \$700,000       | \$3,500,000  |
| Grand Total: Amount Received from USVSST and Other Sources    | \$1,400,000     | \$1,400,000     | \$700,000       | \$3,500,000  |

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**2. Claimants With Compensation from Other Sources**

These individuals are potentially subject to the individual cap of \$20 million, the family cap of \$35 million, and adjustments of the maximum potential Fund award amount to account for compensation received from other sources. The following examples show the computation of USVSST Fund award payment amounts in several of these scenarios.

*a. Individual Claimants, With Compensation from Other Sources*

Example #4 (chart below) shows the calculation of a USVSST Fund award payment for an individual claimant (no family members) who has a judgment of \$45 million and has received \$1 million from other sources. After applying the individual cap, the claimant’s eligible compensatory amount is \$20 million. Thereafter, the calculation accounts for the payment percentage and the payment from other sources.

The maximum potential award amount from the USVSST Fund is \$2 million (10 percent of the eligible compensatory amount after applying the individual and family caps – although the family cap is not relevant here). The claimant received \$1 million in compensation from sources other than this Fund and thus, the USVSST Fund award payment amount is \$1 million (the \$2 million maximum potential award amount less \$1 million received from other sources).

Example #4

| Category/Computation  | Individual Claimant |
|---|---------------------|
| Gross Compensatory Damage Amount                              | \$45,000,000        |
| Compensatory Damages after Applying Individual Cap            | \$20,000,000        |
| Compensatory Damages after Applying Individual and Family Cap | \$20,000,000        |
| Amount Received from Other Sources                            |                     |
| Amount  | \$1,000,000         |
| Percent of Gross Compensatory Damages                         | 2%                  |
| Maximum Potential Fund Award Amount                           | \$2,000,000         |
| Less: Amount Received from Other Sources                      | \$1,000,000         |
| Equals: USVSST Fund Award payment                             | \$1,000,000         |
| Grand Total: Amount Received from USVSST and Other Sources    | \$2,000,000         |

*b. Claimants with Family Members, With Compensation from Other Sources*

In example #5 (chart below), gross compensatory damages total \$55 million for the family; therefore, the family cap is exceeded. However, Family Member A with a judgment of \$45 million is the primary reason for exceeding the family cap. As for all eligible claimants, the first step in the calculation is to apply the \$20 million individual cap. When the individual cap is applied, the family’s total compensatory damages are reduced to \$30 million – so the family cap is no longer exceeded.

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The maximum potential award amount from the USVSST Fund for the entire family is \$3 million (10 percent of the compensatory damages after applying the individual and family caps). This results in maximum potential award amounts of \$2 million for Family Member A and \$500,000 each for Family Members B and C. Family Member A, with a maximum potential award amount of \$2 million, received \$1 million in compensation from other sources. Therefore, Family Member A receives a USVSST Fund award payment of only \$1 million. Family Members B and C did not receive compensation from other sources, so they receive the entire maximum potential award amount as the USVSST Fund award payments. The family is awarded a total of \$3 million.

| Category/Computation  | Example #5      |                 |                 |              |
|---|-----------------|-----------------|-----------------|--------------|
|   | Family Member A | Family Member B | Family Member C | Family Total |
| Gross Compensatory Damage Amount                              | \$45,000,000    | \$5,000,000     | \$5,000,000     | \$55,000,000 |
| Compensatory Damages after Applying Individual Cap            | \$20,000,000    | \$5,000,000     | \$5,000,000     | \$30,000,000 |
| Compensatory Damages after Applying Individual and Family Cap | \$20,000,000    | \$5,000,000     | \$5,000,000     | \$30,000,000 |
| Amount Received from Other Sources                            |                 |                 |                 |              |
| Amount  | \$1,000,000     | \$0             | \$0             | \$1,000,000  |
| Percent of Gross Compensatory Damages                         | 2%              | 0%              | 0%              | na           |
| Maximum Potential Fund Award Amount                           | \$2,000,000     | \$500,000       | \$500,000       | \$3,000,000  |
| Less: Amount Received from Other Sources                      | \$1,000,000     | \$0             | \$0             | \$1,000,000  |
| Equals: USVSST Fund Award payment                             | \$1,000,000     | \$500,000       | \$500,000       | \$2,000,000  |
| Grand Total: Amount Received from USVSST and Other Sources    | \$2,000,000     | \$500,000       | \$500,000       | \$3,000,000  |

Example #6 (chart below) shows the calculation in a situation where the family cap affects the calculation, and multiple family members received compensation from other sources. First, as for all eligible claimants, the individual cap is applied; this affects Family Members A and B. Although they have differing gross compensatory damage award amounts, each is reduced to \$20 million when the individual cap is applied. After the individual cap, the family total remains \$50 million, so the family cap is still exceeded. Each family member must have his or her eligible compensatory amount limited proportionally (pro rated shares of the \$35 million capped amount). The individuals' eligible compensatory amounts are reduced using the same factor – the ratio of \$35 million (the family cap) divided by \$50 million (the post-individual cap total). Because Family Members A and B have the same eligible compensatory amount after applying the individual cap, they have the same eligible compensatory amount of \$14 million (\$20 million times \$35 million divided by \$50 million). After applying the individual and family caps, Family Member C has an eligible compensatory amount of \$7 million using the same factor (\$10 million times \$35 million divided by \$50 million).

The maximum potential award amounts for the entire family total \$3.5 million (10 percent of the eligible claim amounts after applying the individual and family caps). However, two of the family members received payment from other sources. Family Member A received \$5 million from other sources (an amount in excess of the maximum USVSST Fund payment of \$1.4 million), so does not receive a payment from the USVSST Fund. Family Member B received a much smaller payment of only \$1 million from other sources (less than the maximum USVSST Fund award amount), so can receive a payment. The end result is that the USVSST Fund pays only \$1.1 million to the entire family – no payment to Family Member A, \$400,000 to Family Member B, and \$700,000 to Family Member C.

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| Category/Computation  | Example #6      |                 |                 |              |
|---|-----------------|-----------------|-----------------|--------------|
|   | Family Member A | Family Member B | Family Member C | Family Total |
| Gross Compensatory Damage Amount                              | \$45,000,000    | \$25,000,000    | \$10,000,000    | \$80,000,000 |
| Compensatory Damages after Applying Individual Cap            | \$20,000,000    | \$20,000,000    | \$10,000,000    | \$50,000,000 |
| Compensatory Damages after Applying Individual and Family Cap | \$14,000,000    | \$14,000,000    | \$7,000,000     | \$35,000,000 |
| Amount Received from Other Sources                            |                 |                 |                 |              |
| Amount  | \$5,000,000     | \$1,000,000     | \$0             | \$6,000,000  |
| Percent of Gross Compensatory Damages                         | 11%             | 4%              | 0%              | na           |
| Maximum Potential Fund Award Amount                           | \$1,400,000     | \$1,400,000     | \$700,000       | \$3,500,000  |
| Less: Amount Received from Other Sources                      | \$5,000,000     | \$1,000,000     | \$0             | \$6,000,000  |
| Equals: USVSST Fund Award payment                             | \$0             | \$400,000       | \$700,000       | \$1,100,000  |
| Grand Total: Amount Received from USVSST and Other Sources    | \$5,000,000     | \$1,400,000     | \$700,000       | \$7,100,000  |