

# U.S. Victims of State Sponsored Terrorism Fund Payment Calculation Explanation December 2018

This explanation shows how the U.S. Victims of State Sponsored Terrorism Fund (USVSST Fund) applies the governing Justice for United States Victims of State Sponsored Terrorism Act (Act), 34 U.S.C. § 20144 (2015), to determine eligible claimants' award amounts. It includes discussion of the most relevant subsections of the Act, a description of the methodology, and 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. Payments are Pro Rata

The key sections of the Act that govern the calculation of an eligible claimant's compensation are found in subsection (d), titled "Payments." In general, the USVSST Fund pays eligible claimants *pro rata*<sup>1</sup> based on the compensatory damage award in qualifying judgments.<sup>2</sup> Only eligible claims with "amounts outstanding and unpaid" are included in the calculation. Act § (d)(3)(A)(i). Claimants who have already received full payment of their compensatory damages will not receive any compensation from the USVSST Fund.

## II. Individual and Family Caps

Certain provisions of the Act limit payments if compensatory damage amounts exceed certain amounts: \$20 million for individuals, and \$35 million for the total of immediate family members' claims. These provisions provide "caps" on the amounts eligible claimants can receive from the USVSST Fund.<sup>3</sup>

If an individual claimant has an eligible compensatory damage 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.

*Example:* An individual claimant's compensatory damage amount is \$25 million in the judgment. When calculating payments, the USVSST Fund must treat this claim as the statutory maximum for an individual claim: \$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

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<sup>1</sup> "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." Act § (d)(3)(A)(i).

<sup>2</sup> See also Act § (c)(1)-(2).

<sup>3</sup> "(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." Act § (d)(3)(A)(i).

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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.

*Example:* Five family members have individual judgments of \$10 million each. (See chart below). The family's total damages are therefore \$50 million, which exceeds the Act's family cap of \$35 million. When calculating payments, the USVSST Fund must allocate the statutory maximum for family claims among the family members. Therefore, the USVSST Fund must treat each family member's claim as if it is \$7 million (\$35 million allocated among the five family members' equal claims).

|                              | <b>Family Member A</b> | <b>Family Member B</b> | <b>Family Member C</b> | <b>Family Member D</b> | <b>Family Member E</b> | <b>Family Total</b> |
|------------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|---------------------|
| <b>Judgment Award Amount</b> | \$10 million           | \$50 million        |
| <b>After Family Cap</b>      | \$7 million            | \$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.

*Example:* Three family members have judgments; one has a \$45 million damage amount; the other two have \$5 million. See chart below. The USVSST Fund must treat the individual's claim of \$45 million as the statutory individual maximum, \$20 million. After applying the individual cap, reducing the \$45 million damage amount to \$20 million, the family cap is not triggered.

|                              | <b>Family Member A</b> | <b>Family Member B</b> | <b>Family Member C</b> | <b>Family Total</b> |
|------------------------------|------------------------|------------------------|------------------------|---------------------|
| <b>Judgment Award Amount</b> | \$45 million           | \$5 million            | \$5 million            | \$55 million        |
| <b>After Individual Cap</b>  | \$20 million           | \$5 million            | \$5 million            | \$30 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.

*Example:* Three family members have judgments; one has a \$45 million damage amount; one has \$25 million; and one has \$10 million. See chart below. The USVSST Fund must treat Family Member A's claim of \$45 million as the statutory maximum, \$20 million. The USVSST Fund must also treat Family Member B's claim of \$25 million as the statutory maximum, \$20 million. After applying the individual cap, the family cap is

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triggered because the total still exceeds the statutory maximum of \$35 million. The USVSST Fund allocates the \$35 million family cap among the family members in proportion to their individual compensatory damage awards, after applying the individual caps.

|                              | <b>Family Member A</b> | <b>Family Member B</b> | <b>Family Member C</b> | <b>Family Total</b> |
|------------------------------|------------------------|------------------------|------------------------|---------------------|
| <b>Judgment Award Amount</b> | \$45 million           | \$25 million           | \$10 million           | \$80 million        |
| <b>After Individual Cap</b>  | \$20 million           | \$20 million           | \$10 million           | \$50 million        |
| <b>After Family Cap</b>      | \$14 million           | \$14 million           | \$7 million            | \$35 million        |

### III. Payments from Other Sources

Certain provisions of the Act limit payments to eligible claimants who have received payments from sources other than this Fund.<sup>4</sup> They do not apply to eligible claimants who have not received any such payments.

One subsection applies only to claimants who have received 30 percent or more of their compensatory damages from sources other than this Fund. It provides that these claimants “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.”<sup>5</sup> This is determined using the amount of payments from other sources and the 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, nor will any claimants after the second round of payments have received, payments of 30 percent of their

<sup>4</sup> The Act defines a source other than this Fund as “all collateral sources, 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.” Act § (j)(6). All USVSST Fund applicants must identify all such other 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.

<sup>5</sup> “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.” Act § (d)(3)(B)(i).

compensatory damages from the USVSST Fund. (The payment percentages for the first two rounds of payments combined are 17.85 percent.<sup>6</sup>)

*Example:* A claimant has compensatory damages of \$10 million, and has received \$4 million from sources other than this Fund. Because this claimant has received 40 percent of her damages, she will not receive a payment from the USVSST Fund.

A separate subsection applies to claimants who have received some payments from sources other than the USVSST Fund, but these payments do not total 30 percent or more of their gross compensatory damages.<sup>7</sup> The subsection requires the USVSST Fund to account for claimants' payments from sources other than this Fund when calculating awards from the USVSST Fund.

As explained in the methodology below, the USVSST Fund will calculate the “maximum potential payment amount” due from the USVSST Fund. Claimants who have received some compensation from other sources will have their award amounts reduced from this maximum to reflect these payments from other sources. Claimants who have received more than the maximum potential payout amount from sources other than the USVSST Fund will not receive payments. *See also* Section V, calculation examples, below.

#### **IV. Methodology for Calculating Payments**

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. This section explains the fundamental methodology of calculating awards.

**Payment Percentage:** For purposes of the USVSST Fund's calculations, a “payment percentage” is computed. The payment percentage is the amount of funds available to pay to all eligible claimants<sup>8</sup> divided by compensatory damages after accounting for the individual cap of \$20 million, the family cap of \$35 million, compensation from sources other than the USVSST Fund, and prior payments from the USVSST Fund (see below). **For second-round payments in 2019, the USVSST Fund payment percentage is 4.2 percent.**<sup>9</sup>

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<sup>6</sup> The payment percentage for the initial round of payments was 13.6561 percent (generally rounded to 13.66 percent in USVSST Fund communications). The payment percentage for the second round of payments is 4.1955 percent (rounded to 4.2 percent in USVSST Fund communications). The payment percentage total for both rounds is 17.8516 percent, rounded here to 17.85 percent.

<sup>7</sup> “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.” Act § (d)(3)(B)(ii).

<sup>8</sup> The USVSST Fund allocated \$1.095 billion for the second round of payments.

<sup>9</sup> The USVSST Fund has rounded this from the 4.1955 percent figure used in the actual calculations.

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

*Divided by*

Compensatory Damages (after accounting for the individual and family caps, compensation from sources other than the USVSST Fund, and prior payments from the USVSST Fund)

**Maximum potential USVSST Fund award amount:** When performing payment calculations, the USVSST Fund also calculates a maximum potential USVSST Fund payment amount for each claimant. The maximum potential USVSST Fund award amount is the payment percentage of the claimant's compensatory damages after applying the caps. For claimants participating in only the second round, this is the second-round payment percentage (4.2 percent). For claimants participating in both the initial and the second rounds of payments, this is the total payment percentage of both rounds (17.85 percent). Thereafter, the USVSST Fund will offset the compensation from other sources and prior USVSST Fund payments, if any, to determine the USVSST Fund award payment.

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

1. Determine the amount of gross compensatory damages.
2. Apply the \$20 million individual cap, if applicable.
3. Apply the \$35 million family cap, if applicable.
4. Compute the maximum potential USVSST Fund award amount (before accounting for compensation from other sources and from the USVSST Fund).<sup>10</sup>
5. Determine the amount of compensation received from sources other than the USVSST Fund.
6. Determine the amount of compensation received from the USVSST Fund.
7. Compute the USVSST Fund award payment (maximum potential Fund award amount less compensation from sources other than this Fund and payment received from the USVSST Fund).

*Note: For claimants who are not subject to the individual or family caps, and do not have any payments from sources other than the USVSST Fund, their USVSST Fund payment amounts in any round will equal the payment round's payment percentage of their eligible compensatory damage awards. In the initial round, these claimants received 13.66 percent of their compensatory damage awards. In the second round, these claimants will receive 4.2 percent of their compensatory damage awards. Nevertheless, their payments are calculated using this multi-step methodology.*

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<sup>10</sup> For claimants participating in only the second round, this is the second-round payment percentage (4.2 percent). For claimants participating in both the initial and the second rounds of payments, this is the total payment percentage of both rounds (17.85 percent).

**V. Examples of the Calculations Used to Determine USVSST Fund Payments to Eligible Claimants under Varying Circumstances**

The following examples<sup>11</sup> show the calculations used to determine a USVSST Fund award payment for claimants participating in the second round of payment. In these examples, **the 10 percent payment percentage for the initial round, and the 5 percent payment percentage for the second round are used to simplify the arithmetic. The actual payment percentages for initial and second-round payments were 13.66% and 4.2%, respectively.** The examples show calculations for four situations:

1. Claimant in Both Rounds with No Payment from Other Sources
2. Claimant in Both Rounds with Payment from Other Sources
3. Claimant in Round Two Only with No Payment from Other Sources
4. Claimant Round Two Only with Payment from Other Sources

Example 1:

**Claimant in Both Rounds with No Payment from Other Sources**

|   |    |            |               |
|---|----|------------|---------------|
| Gross Compensatory Damage Amount (no caps apply)  | \$ | 10,000,000 |               |
| Amount Received from Other Sources  | \$ | -          |               |
| Percent of Gross Compensatory Damages   |    |            | 0%            |
| Initial-round payment; 10% of damages = \$1M  | \$ | 1,000,000  |               |
| Second-Round Calculation:   |    |            |               |
| Payment Round Claimant First Appeared   |    |            | initial round |
| Effective Payment Percent (Equals the sum of Initial and 2nd Round payment percentage, 10% + 5%)                        |    |            | 15%           |
| Maximum Potential Payment Amount Due From USVSST<br>(Equals Effective Payment Percentage of gross compensatory damages) | \$ | 1,500,000  |               |
| Less: Amount Already Received from Prior USVSST Payments  | \$ | 1,000,000  |               |
| Less: Amount Received from Other Sources  | \$ | -          |               |
| Equals: Amount Received from USVSST in Second Round   | \$ | 500,000    |               |

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<sup>11</sup> These examples were prepared for illustrative purposes only and do not represent actual claims.

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Example 2:

**Claimant in Both Rounds with Payment from Other Sources**

|  |    |            |
|--|----|------------|
| Gross Compensatory Damage Amount (no caps apply) | \$ | 10,000,000 |
| Amount Received from Other Sources               | \$ | 1,200,000  |
| Percent of Gross Compensatory Damages            |    | 12%        |

Claimant receives no first-round payment; 10% of damages = \$1M  
 Claimant's \$1.2M in other source payments exceeds this

Second-Round Calculation:

|  |    |               |
|--|----|---------------|
| Payment Round Claimant First Appeared  |    | initial round |
| Effective Payment Percent (Equals the sum of 1st and 2nd Round payment percentage, 10% + 5%) |    | 15%           |
| Maximum Potential Payment Amount Due From USVSST   | \$ | 1,500,000     |
| (Equals Effective Payment Percentage of gross compensatory damages)                          |    |               |
| Less: Amount Already Received from Prior USVSST Payments                                     | \$ | -             |
| Less: Amount Received from Other Sources   | \$ | 1,200,000     |
| Equals: Amount Received from USVSST in Second Round  | \$ | 300,000       |

Example 3:

**Claimant in Round Two Only with No Payment from Other Sources**

|  |    |            |
|--|----|------------|
| Gross Compensatory Damage Amount (no caps apply) | \$ | 10,000,000 |
| Amount Received from Other Sources               | \$ | -          |
| Percent of Gross Compensatory Damages            |    | 0%         |

Claimant receives no initial-round payment; did not participate

Second-Round Calculation:

|   |    |           |
|---|----|-----------|
| Payment Round Claimant First Appeared                               |    | 2nd round |
| Effective Payment Percent (2nd Round only payment percentage, 5%)   |    | 5%        |
| Maximum Potential Payment Amount Due From USVSST                    | \$ | 500,000   |
| (Equals Effective Payment Percentage of gross compensatory damages) |    |           |
| Less: Amount Already Received from Prior USVSST Payments            | \$ | -         |
| Less: Amount Received from Other Sources                            | \$ | -         |
| Equals: Amount Received from USVSST in Second Round                 | \$ | 500,000   |

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Example 4:

**Claimant Round Two Only with Payment from Other Sources**

|  |    |            |
|--|----|------------|
| Gross Compensatory Damage Amount (no caps apply) | \$ | 10,000,000 |
| Amount Received from Other Sources               | \$ | 1,200,000  |
| Percent of Gross Compensatory Damages            |    | 12%        |

Claimant receives no initial-round payment; did not participate

Second-Round Calculation:

|   |    |           |
|---|----|-----------|
| Payment Round Claimant First Appeared   |    | 2nd round |
| Effective Payment Percent (2nd Round only payment percentage, 5%)   |    | 5%        |
| Maximum Potential Payment Amount Due From USVSST<br>(Equals Effective Payment Percentage of gross compensatory damages) | \$ | 500,000   |
| Less: Amount Already Received from Prior USVSST Payments  | \$ | -         |
| Less: Amount Received from Other Sources  | \$ | 1,200,000 |
| Equals: Amount Received from USVSST in Second Round   | \$ | -         |