

for the IRS to collect the tax is the date agreed upon in the previously executed extension agreement, plus 89 days, plus the period during which the IRS is prohibited from collecting due to the bankruptcy proceeding, plus 6 months.

(e) *Date when levy is considered made.* The date on which a levy on property or rights to property is considered made is the date on which the notice of seizure required under section 6335(a) is given.

(f) *Effective date.* This section is applicable on September 6, 2006.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: August 22, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 94

[Docket No.: OJP (OJP)—1368]

RIN 1121-AA63

International Terrorism Victim Expense Reimbursement Program

AGENCY: Office of Justice Programs, Justice.

ACTION: Final rule.

SUMMARY: The Office of Justice Programs (“OJP”) is finalizing the following regulation with minor modifications as a result of comments concerning the original notice of proposed rulemaking published at 70 FR 49518–49525, on August 24, 2005. This regulation implements provisions of the Victims of Crime Act of 1984 (the “VOCA”) (42 U.S.C. 10601 *et seq.*), which authorize the Director of the Office for Victims of Crime (“OVC”), a component of OJP, to establish an International Terrorism Victim Expense Reimbursement Program (hereinafter referred to as the “ITVERP”) to reimburse eligible “direct” victims of acts of international terrorism that occur outside the United States for “expenses associated with that victimization.”

DATES: This final rule is effective October 6, 2006.

FOR FURTHER INFORMATION CONTACT: Barbara Walker, Senior Policy Analyst, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW.,

Washington, DC 20531; by telephone, at: 1-800-363-0441; or by e-mail, at: ITVERP@usdoj.gov.

SUPPLEMENTARY INFORMATION: As authorized by the VOCA, OVC generally provides Federal financial assistance to states for the purpose of compensating and assisting victims of crime, provides funds for training and technical assistance services for victims of Federal crime, and provides funding and services for victims of terrorism and mass violence. This program is funded by fines, fees, penalty assessments, and bond forfeitures paid by federal offenders, as well as gifts from private individuals, deposited into the Crime Victims Fund in the U.S. Treasury.

On August 24, 2005, at 70 FR 49518, OJP published a proposed rule to implement the provisions of the (ITVERP). All comments concerning this rule were to be received by October 22, 2005. As a result of that publication, OVC received sixteen public comments. Eight of the comments came from individuals who had been victims of acts of international terrorism that occurred abroad. Two came from national victim assistance organizations, one of which represents the VOCA-funded victim assistance organizations in the fifty-six relevant jurisdictions. Three comments were from individual state victim compensation boards, one was from a Federal agency, one was from a professional trade organization, and one was from an interested individual. Other than a few syntactical or grammatical changes of a technical, non-substantive nature, after careful review of all comments, OVC has made only two minor modifications, clarifying the definition of “victim” in § 94.12(u)(2) (reworded to clarify which persons may be considered victims) and expanding the definition of “collateral source” in 94.12(c)(2).

OVC offers the following issue analysis to provide additional details on the purpose and operation of the ITVERP.

Twelve individuals or representatives of groups submitted comments regarding the scope of coverage of the program. These comments generally asked for the coverage of the program to be expanded in various ways. As detailed below, OVC thoughtfully considered each of these comments.

As noted in the Notice of Proposed Rulemaking, OVC recognizes that little or no support may be given by other countries to American nationals who are victims of acts of international terrorism events that occur abroad and that state programs differ in how they treat residents who are victimized abroad.

Moreover, victims of acts of international terrorism that occur outside the United States face unique obstacles in securing assistance and support. Against this background of variation in compensation levels, the authorizing statute indicates that the major purpose of the ITVERP is to reimburse “victims of acts of international terrorism that occur outside the United States for *expenses* associated with that victimization” (42 U.S.C. 10603c(b) (emphasis added)). Thus, the program—by statute—is intended to ensure a basic level of support for immediate and out-of-pocket expenses associated with such victimization.

OVC also wishes to note that the ITVERP will cover a broader range of expenses than the types of emergency expenses that have been provided to date through the existing discretionary program operated by the FBI in conjunction with the Department of State and OVC. Some emergency claims that were previously denied may thus fall within the ITVERP’s scope. Therefore, victims who have received prior emergency assistance may wish to review their prior payments in relation to the limits established by this program, and submit such additional claims to the ITVERP, if warranted.

Additional Categories and Increased Limits

Eight of the comments requested an expansion of the categories of reimbursable expenses, and one requested an increase of the limits of the existing categories. Requests for specific types of expenses are discussed below, but, as noted above, the goal of the program—by statute—is to provide a basic level of support for American nationals who are victims of acts of international terrorism that occur outside the United States. OVC encourages victims to avail themselves of additional sources of compensation, which may include reimbursements either from other sources above the ITVERP limitations or for categories of expenses not covered by the ITVERP. Closely adhering to the statutory mandate of reimbursement for expenses provides greater stability to the program. By keeping the ITVERP focused on direct, out-of-pocket expenses, consistent with the statutory authorization, OVC can ensure that funding will be available for all victims in the dreadful event that another act of international terrorism should occur overseas involving a large number of eligible victims.

Lost Wages and Loss of Support

Seven comments requested that the program be expanded to include lost wages among the reimbursable expenses. This request was often coupled with a request that the program cover loss of support. Three of these comments came from state victim compensation boards, two came from national victim assistance organizations, one came from a Federal agency, and one came from an injured victim. Three of the comments noted that although states (which cover lost wages and loss of support) are not required to compensate victims of international terrorism, many continue to do so. Thus, they conclude, such victims will need to apply to both State and Federal programs to receive compensation in those categories. The commenters point out, however, that not all state programs provide the same level of compensation.

As designed by OVC, the ITVERP sets a standard level of expense reimbursement assistance, but allows a victim to seek assistance from several sources, which necessarily means filing a claim or application for each source. Inasmuch as the program—by statute—is not intended to be comprehensive, of necessity it does not foreclose access to other sources of support or compensation. Although states are no longer required by the VOCA to provide assistance to victims of acts of international terrorism that occur outside the United States, they certainly may do so. In particular, states may offer compensation beyond the limits set by the ITVERP, or they may choose to fund categories of expenses not considered reimbursable under the ITVERP, such as lost wages and loss of support. As with noneconomic losses (such as pain and suffering or attorney's fees), lost wages and loss of support are not immediate and out-of-pocket expenses, and thus, by statute, are not covered under the ITVERP.

Family Members

Four comments (two by state victim compensation boards, one by a national victim assistance group, and one by a federal agency) either asked for clarification of the intended coverage for family members or suggested that the ITVERP's scope be expanded to define additional family members as victims. Although state compensation statutes tend to define a wider range of family members as victims, the ITVERP's authorizing statute clearly limits reimbursement to victims who "suffered direct physical or emotional injury or death" (42 U.S.C. 10603c(a)(3)(A)(i)). These "direct victims" may be

reimbursed for expenses in any category up to the allowable cap.

In limited circumstances, as noted in the statute (42 U.S.C. 10603c(a)(3)(B)), and clarified in the regulation's definitions (§ 94.12(u)(2)), the following family members of persons who "suffered direct physical or emotional injury or death" may be considered victims in their own right: (1) Spouse; (2) children; (3) parents; (4) siblings; and (5) other persons at the discretion of the Director, provided such persons have established sufficient ties to the direct victim. (An example of an "other person" might be a grandparent who had been rearing a child who was killed in an act of international terrorism.) This expansion of the definition of victim occurs only in the following three circumstances: (1) When the direct victim dies as a result of the act of terrorism; (2) when the direct victim is under 18 years of age (or is incompetent or incapacitated) at the time of the act of terrorism; or (3) when the direct victim is rendered incompetent or incapacitated at the time or as a result of the act of terrorism. Because of the expense-based nature of the program, these additional victims would directly qualify only for mental health care, within the ITVERP limits. Nevertheless, a family member who is considered a victim in his own right, and thus able to file a claim for mental health counseling, may also file a claim on behalf of the direct victim if he is also the victim's representative (*i.e.*, a family member or legal guardian authorized to file the claim).

Aside from close family members who may be considered victims in their own right (see 42 U.S.C. 10603c(a)(3)(B)), family members or others may be reimbursed for expenses paid on behalf of the direct victim. Although the direct victim or one family member (or legal guardian) will be authorized to file the actual claim and receive the reimbursement, the funds may then be distributed among others who have paid for reimbursable expenses on behalf of the direct victim. Thus, for example, one family member may pay the victim's medical expenses, another may pay travel expenses for the victim, and a third may file the claim as the victim's representative. The family member filing the claim would receive the reimbursement under the ITVERP and would then act as a fiduciary to distribute the money to the appropriate family members who had actually paid the expenses.

A brief example may help to further illustrate. Suppose an individual were injured in a qualifying act of international terrorism. If the victim

were not younger than 18 years of age, incompetent, incapacitated, or deceased, a single claim for reimbursable expenses could be filed by either the victim or the victim's representative. This claim could include reimbursable expenses actually paid by one or more other individuals, such as medical expenses or the travel expenses of up to two family members to assist the victim in the country where the act of terrorism took place. Although such expenses were initially paid by others, the claim for reimbursement would be based on the injury suffered by the person who is the direct victim. Other family members, such as the spouse, children, or parents of the victim, would not be eligible to file a claim on their own behalf for mental health counseling or other assistance. If the direct victim were younger than 18 years of age, incompetent, incapacitated, or deceased, then a single claim would still be made on behalf of the direct victim. This claim would still include any expenses paid by others on behalf of the victim, such as funeral expenses or the emergency travel of up to two family members. In addition, family members such as the spouse, children, parents, and siblings of the direct victim, would also be able to file individual claims for mental health counseling on their own behalf. Such additional victims would not be eligible for other expense reimbursement as part of their individual claim. They would, however, still be able to receive reimbursement for expenses paid under the claim of the direct victim.

Tuition, Childcare, and Travel Expenses

Five comments (three by victims, one from a state victim compensation board, and one from a federal agency) involved suggestions for reimbursement in categories that are already covered by the ITVERP under certain circumstances. For example, tuition payments are considered a reimbursable expense for the direct victim if the schooling is related to retraining required as a direct result of the injury. This may include, for example, training for using TDD equipment, prosthetic limbs, Braille, and other vision and physical aids. Similarly, expenses for rehabilitation training to assist victims in adjusting to a new work environment would be reimbursed under the ITVERP. (See the table in the Appendix to Subpart A for examples.)

One commenter suggested expanding this existing education coverage to include tuition for a surviving spouse to return to school. Another suggestion was for future tuition for the children of

a deceased victim. Because the ITVERP is restricted by statute to direct reimbursement to victims for actual out-of-pocket expenses resulting from the act of international terrorism, such expenses related to normal educational needs of the victim or surviving family members cannot be covered.

Along similar lines, immediate childcare costs may be considered reimbursable miscellaneous expenses when they are necessary for the children of the direct victim, or for the children of a deceased victim's family members who travel to the country where the act of international terrorism occurred to care for the victim or recover the victim's remains. Long-term childcare expenses, however, are more akin to personal expenses than immediate direct expenses attributable to the act of terrorism, and for that reason they cannot be covered by the ITVERP.

Emergency travel for up to two family members is a reimbursable miscellaneous expense in a variety of circumstances. This includes traveling to care for the direct victim or to recover the deceased victim's remains. Travel expenses will be covered to the country where the incident occurred, in most instances, but it may be to other locations depending on the circumstances (e.g., travel to a hospital in another country to which the victim has been evacuated).

Funeral and Burial Expenses

A family member of a deceased victim inquired as to the specific items allowable as funeral expenses. Reimbursable expenses include a variety of costs associated with the return and disposition of the victim's remains, including markers, flowers, and costs related to memorial services, up to the cap on costs. Activities of a religious nature that are reasonably related to funeral and burial expenses are reimbursable. Other than the category cap, the primary limitation in this category is that the expense be for a "reasonably related activity."

One comment by a professional trade group suggested that the definition of "burial costs" be expanded to be more consistent with the FTC regulatory provision on funerals (16 CFR 453 (1999)). The commenter wanted to ensure that the ITVERP regulation would not limit burial options for a family, such as the choice between an "earth burial" or cremation. As noted above, the coverage of burial costs is intended to be as inclusive as possible of all customs, cultures, and religious faiths. As an integral part of the grieving process, no family should be constrained by this program in

observing appropriate burial customs in a manner and method decided by the family. To this end, and upon review of the language in the FTC rule, OVC does not believe that limiting reimbursement to the current language adopted by the FTC would be appropriate. Rather, OVC continues to read the existing language expansively, as a method to provide for wide coverage of burial expenses, consistent with the specific needs of each family. As noted previously, the ITVERP does not limit those options, other than to impose a reasonable spending cap of \$25,000 for merchandise or activities reasonably related to funeral and burial costs, which can be directed according to the wishes of the family.

Interim Emergency Payments

One commenter, a victim of international terrorism, requested that the program make interim emergency payments. The ITVERP already allows for interim emergency payments when the Director of OVC determines such payment is necessary to avoid or mitigate substantial hardship. Once the ITVERP becomes operational, such interim emergency payments will be possible for victims of future acts of international terrorism.

Insurance

One comment by a victim pointed out that insurance carriers exclude costs associated with acts of international terrorism, or may cancel policies following a terrorist event. Changes to insurance industry practices would need to be effected by other legislative action and are beyond the purview of these regulations.

Taxes

One victim suggested that under the ITVERP any final taxes owed by a deceased victim should be forgiven by the Internal Revenue Service, as they were for victims of the 9/11 attacks and the Oklahoma City bombing. Although the Victims of Terrorism Tax Relief Act of 2001 currently forgives final taxes for deceased victims of specified terrorist attacks, coverage with respect to other acts of international terrorism outside the United States would require an amendment to the Act or new legislation.

Individuals receiving reimbursements under the ITVERP should consult the Internal Revenue Service (and state taxing authorities, as appropriate) to determine the tax status of such reimbursements. The IRS has in the past limited tax exposure in situations of state compensation payments. It is anticipated that once OJP adopts final

regulations for the ITVERP program, OVC will request that the IRS independently determine the appropriate tax status for expense reimbursements under the ITVERP.

Category Caps

Five comments (three from victims, one from a Federal agency, and one from an interested individual) suggested that some or all of the category caps were too low, particularly for the mental health category. The purpose of the ITVERP is to help victims mitigate certain economic losses occasioned by the terrorist event. Placing caps on reimbursement categories helps to ensure that funds will be available for future victims of international terrorism abroad. By statute, the program is not designed to insure against all losses. For example, reimbursement for property loss is intended to help victims replace items that are necessary for immediate daily living. The expectation is that families living abroad or on extended travel would avail themselves of the opportunity to purchase additional medical or travel insurance and insure items of substantial value (e.g., home, household goods, automobile). Similarly, funding for mental health counseling is intended to provide immediate counseling intervention, not long-term therapy. As with lost wages, which are not reimbursable under the ITVERP, programs funded under the Victims of Crime Act of 1984 (VOCA) may provide compensation in additional categories or in amounts above the ITVERP caps, and victims are encouraged to apply to such state programs.

Collateral Sources

Seven of the comments (three from state victim compensation boards, one from a national victim advocacy group, one from a federal agency, and two from victims) were related to collateral sources as defined in § 94.12(c) and described in § 94.25. Four of the comments requested clarification of the relationship between the ITVERP and state compensation programs. Two comments concerned payments received from a foreign government. The seventh comment concerned prior payments made under another Federal statute.

The Uniting and Strengthening America by Providing Appropriate Tools Required To Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107-56, eliminated the requirement for state crime victim compensation programs to pay compensation to victims in cases of international terrorism abroad. Accordingly, the ITVERP is the primary

federally-funded reimbursement source for these victims. State crime victim compensation programs may elect to continue to provide compensation to victims of international terrorism abroad in categories not covered under the ITVERP, or in amounts beyond the ITVERP's category caps. If a state chooses to compensate residents who are victims of international terrorism outside the United States, it does so as a payer of last resort. Although the state may consider federal ITVERP payments as collateral source payments that diminish its payment obligations, state supplemental compensation payments will not reduce Federal payment obligations. In other words, if the state chooses to provide additional payments to victims who have received specific payments under the ITVERP, those payments will be considered supplemental support and not collateral sources for purposes of the Federal program. If the ITVERP and the state program provide reimbursement for identical expenses, the ITVERP is considered the initial payer. Moreover, international terrorism victims are not required to apply to state compensation programs before filing an application for reimbursement under the ITVERP. This policy is in line with the current practice and permits state compensation programs to retain their status as the payers of last resort.

For example, suppose that after an international terrorist event a victim were to apply for and receive full reimbursement under an ITVERP category, but outstanding expenses remain. A state compensation program is not required by VOCA to make additional payments under that category. The state may, however, elect to make supplemental payments (under that category) to the victim. Additionally, for expenses under categories that are not covered under the ITVERP, the state compensation programs may continue to reimburse the victim within the state's approved limit. Furthermore, any such supplemental or additional payments may be counted in a state's certified payout of victim compensation expenses, and therefore eligible for inclusion in the calculation of future state compensation awards under VOCA.

Two comments (both from victims) asked for clarification of the extent to which payments from a foreign government would affect ITVERP payments to victims. One commenter suggested that the regulations would cause hardship to victims if foreign payments are counted as collateral sources. Section 94.25 of the regulation specifically provides that any payment

from the United States or a foreign government in the form of general compensation (e.g., a lump sum or structured payment) will be considered a collateral source. As such, an award under the ITVERP would be reduced by the amount of payment(s) by the foreign government (or the claimant would subrogate the United States to the extent of the ITVERP award if it is paid first). If, however, the payment from the United States or a foreign government is for reimbursement of a specific category of expenses that is not covered under the ITVERP or is a supplemental reimbursement beyond the ITVERP category cap, the reimbursement will not be considered a collateral source, and will not reduce the reimbursement the claimant receives from the ITVERP. Although unsatisfied judgments against foreign governments may be collateral sources under the final rule, in principle the ITVERP award is not intended to limit victims' options in seeking collateral source payments from other sources to cover otherwise non-compensated expenses. The intent is to ensure that funds are available to reimburse the basic expenses of victims, by not allowing the receipt of money from more than one source to cover the same expense. This may result in a slight reduction in reimbursements for some victims. In any event, further to the foregoing discussion (and comments from the Department of State), some clarifying changes have been made to the definition of *collateral sources* in the final rule.

ITVERP is an expense reimbursement program. As such, ITVERP funds are available to reimburse the victim for specific expenses (as opposed to a general compensation program). To ensure fiscal integrity, the program is designed to prevent duplication of payments. Thus, reimbursements by collateral sources for specific expenses below the cap are not exempted as there can only be one reimbursement for each specific expense. Nevertheless, the intent is that under no circumstances should total reimbursements under ITVERP exceed actual expenses. Where expenses are less than the ITVERP reimbursement plus any collateral sources, the claimant would be required to return the excess ITVERP payment. In the event that expenses are covered by another source, the claimant cannot be reimbursed for the same expense under ITVERP.

A comment from a Federal agency expressed concern about whether victims might receive a compensatory damage award from another Federal government source, such as the U.S. Treasury, and still be eligible for

reimbursement under the ITVERP. As noted above, a victim would not be eligible under § 94.25 to receive reimbursement from the ITVERP for an expense for which he has already received reimbursement. Compensatory damage awards, by definition, typically make payment based on specific losses incurred. In cases where there are such awards, the ITVERP would not reimburse a victim for those expenses already covered by the award. If, however, a Federal government payment constituted supplemental reimbursement for a specific expense beyond the maximum amount reimbursed for that expense covered by the ITVERP, such payment would not be considered a collateral source, and would not diminish the amount to which a victim would otherwise be entitled under the ITVERP.

Victims Covered

One comment by a victim indicated concern that the ITVERP would be uniformly applied to United States citizens as well as eligible noncitizens. The ITVERP statute specifically defines "victim" to include someone who is "a national of the United States or an officer or employee of the United States Government," 42 U.S.C. 10603c(a)(3)(A)(ii), which expressly includes certain non-citizens. In addition, as previously noted in the section on *Family Members*, if the direct victim was younger than 18 years of age, incompetent, incapacitated, or deceased, additional family members would be considered victims for purposes of obtaining mental health counseling (42 U.S.C. 10603c(a)(3)(B)). Such family members need not be United States citizens or officers or employees of the United States to be eligible. The commenter also questioned whether reimbursement should be available only to innocent victims. The statute addresses this issue by creating an express statutory exception that "in no event shall an individual who is criminally culpable for the terrorist act or mass violence receive any compensation under this section, either directly or on behalf of a victim" (42 U.S.C. 10603c(a)(3)(C)).

Application Requirements

Three comments (one from a national victim assistance group, one from a federal agency, and the third from a victim) related to application procedures. The national organization expressed its support for the statutory provision allowing retroactive filing of claims back to December 1988, and for the provision allowing for extensions (at the discretion of the Director) of the

three-year deadline for filing applications (see § 94.32).

The national organization and the victim suggested that it was difficult for claimants who may be operating in a state of shock to remember to retain original receipts, especially after a substantial amount of time has elapsed. Although the regulation requires original receipts for the expenses to be reimbursed, § 94.31 takes into account situations where original receipts may not be available. In such cases (at the discretion of the Director of OVC), the claimant may submit an itemized list of expenses along with a certification that the original receipts are unavailable and a statement attesting that the items and amounts submitted in the application are true and correct to the best of the claimant's knowledge.

Confidentiality

One of the state victim compensation boards submitted a comment expressing concern about the confidentiality of the information submitted by the claimants. Specifically, the commenter was concerned that the initial ITVERP application, any supporting documents, and the appeal material would become a public record. The organization was concerned that measures should be taken to safeguard the privacy of the victim and the victim's family.

Application materials and other supporting documents received from claimants will be maintained in accordance with the U.S. Department of Justice's applicable Privacy Act System of Records notice. The Freedom of Information Act contains an exemption that protects the privacy rights of individuals by prohibiting the disclosure of information that would constitute a clearly unwarranted invasion of privacy. In addition, 42 U.S.C. 10604(d) specifically prevents release of such information, except pursuant to Federal law.

Emergency Responders

Two comments (one from a national victim assistance organization and one from an interested individual) requested additional clarification of the term "emergency responder." Section 94.41(u)(1) indicates that "victim" has the meaning given in 42 U.S.C. 10603c(a)(3)(A). Because of the statutory requirement of "direct physical or emotional injury as a result of international terrorism," the term "victim" is understood to include three basic groups of individuals (all of whom are required by the Statute to be either United States nationals, or officers or employees of the United States Government): (1) Those who were

present during the act of terrorism (i.e., those who might be thought of as traditional victims); (2) individuals who were present during the immediate aftermath of the act which would include those who immediately assist at the site (e.g., "good Samaritans"); and (3) emergency responders who assisted in efforts to search for and recover other victims. The common definition of "emergency responders" includes those who are mission-essential personnel involved in the search and rescue or recovery of other victims. Traditionally, this includes police officers, firefighters, and medical personnel engaged in these activities. Others may also be included depending on the circumstances of the act of terrorism; for example, if the act resulted in a collapsed building, structural engineers and construction workers would likely be directly involved in the rescue and recovery efforts.

Claim Filing

One comment by a state victim compensation board requested clarification regarding whether multiple claims may be opened in the name of one victim, and if not, how the ITVERP would select the qualified claimant for each victim. As an expense reimbursement program, the ITVERP is designed to ensure that those who pay for certain expenses on behalf of a victim are reimbursed. There must be some limitation, however, to reduce the administrative burden in implementing this program, while at the same time ensuring that the appropriate individuals are reimbursed. The regulation establishes an effective system for achieving those goals by requiring, except in extraordinary circumstances, that a single claim be filed by each individual victim (or his representative if the victim is younger than 18 years of age, incompetent, incapacitated, or deceased). For that reason, there shall ordinarily be only one claimant with respect to each victim. A claimant submitting a claim for reimbursement as the victim's representative must certify that he is a family member or legal guardian authorized to submit the claim. When multiple sources have contributed toward payment of the victim's expenses, limiting reimbursement to a single claimant entrusts the victim (or the victim's representative) with the fiduciary obligation to distribute reimbursements, as appropriate, within the funding caps of the regulation.

The only exception to the principle of a single claimant or previously-authorized representative relates to interim emergency payments. Section

94.41 of the regulation allows for the possibility that in emergency situations there may be a need for others, such as a family member or consular officer, to submit a claim on behalf of the victim, to facilitate immediate treatment or travel. In such emergency situations, the claimant is considered a representative of the victim for that limited emergency purpose only. After the emergency has passed, the victim (or his representative, if the victim is younger than 18 years of age, incompetent, incapacitated, or deceased) would be substituted as the claimant and would submit all subsequent or supplemental claims.

As previously noted in the *Family Members* section, if the direct victim is younger than 18 years of age, incompetent, incapacitated, or deceased, § 94.12(u)(2) specifies those family members who may also be considered victims. In such cases, these additional victims are eligible for reimbursement for mental health counseling and could file individual claims in their own right.

State Department Handling of Funds

One comment by a state victim compensation board requested clarification regarding how a U.S. Embassy would handle the collection and distribution of funds on behalf of a victim in the limited circumstance when a consular officer is authorized to file a claim on behalf of a victim. The commenter specifically wondered if the funds would be put in trust for the victim. Section 94.12(t) specifies that a U.S. consular officer or U.S. embassy official may receive money on behalf of a victim only if "no family member or legal guardian is available to file a claim for an interim emergency payment on behalf of a victim under § 94.41." A review of instances in which a U.S. consular officer would need to file for such emergency expenses confirms that all such transfers are expected to occur according to currently established U.S. Department of State rules, which require strict accountability through use of a trust. Because the Department of State has already established strict accountability rules to govern the disbursement of funds on behalf of American citizens abroad, the Department of Justice will honor those rules in implementing the ITVERP.

In the rare circumstance in which the amount of funds in an emergency disbursement exceeds the actual amount necessary (e.g., medical evacuation costs were less than expected), excess funds would be transferred back to the Antiterrorism Emergency Reserve of the Crime Victims Fund. Those funds would again be available for

supplemental claims, provided the expenses were under the cap for that category.

Travel Warnings

One comment from an interested individual expressed concern that the eligibility restriction found in § 94.21(c)(3)(iii) would exclude all victims of an act of international terrorism if the act occurred in a country for which the Department of State has issued a travel warning. Although § 94.21(c)(3)(iii) indicates a restriction of eligibility based on travel warnings, the restriction depends on two pre-conditions. First, § 94.21(c)(3) requires that the victim “(As a non-U.S. Government employee), [was] acting as an advisor, consultant, employee, or contractor, in a military or political capacity.” Thus, U.S. Government employees would not be excluded by the restriction of § 94.21(c)(3); in addition, a non-U.S. Government employee would be eligible unless that individual were working in a military or political capacity. Second, the § 94.21(c)(3)(iii) restriction applies only to countries where the travel warning was issued in relation to “armed conflict.” The Department of State maintains a list of countries for which it has issued travel warnings, some of which relate to armed conflict and others of which do not; these warnings may be accessed via the Internet at <http://www.travel.state.gov/travel>. (Please note that under § 94.21(c)(4) eligibility is predicated on the fact that a victim has not engaged in grossly reckless conduct which contributed materially to his death or injury.)

For example, the Department of State issued a travel warning for Nigeria on December 1, 2005, based on “increasing crime in Lagos, as well as unrest in the Delta”; in contrast, the travel warning issued on November 22, 2005, for Haiti was based on concern over “violent confrontations between armed groups”: If an incident were declared an act of international terrorism, the warning for Nigeria would not trigger a restriction in eligibility under the ITVERP, but the warning for Haiti could trigger a restriction on eligibility if the non-U.S. employee was acting as an advisor, consultant, employee, or contractor, in a military or political capacity.

Regulatory Certifications

Executive Order 12866—Regulatory Planning and Review

This regulation has been drafted and reviewed in accordance with Exec. Order No. 12866, section 1(b), 58 FR 51, 735 (Sept. 30, 1993), Principles of

Regulation. OJP has determined that this regulation is a “significant regulatory action” under Executive Order No. 12866, and accordingly, this regulation has been reviewed by the Office of Management and Budget.

Executive Order 13132—Federalism

This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Exec. Order No. 13132, 64 FR 43, 255 (Aug. 4, 1999), it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Cost/Benefit Assessment

This regulation has no cost to state, local, or tribal governments, or to the private sector. The ITVERP is funded by fines, fees, penalty assessments, and forfeitures paid by federal offenders, as well as gifts from private individuals, deposited into the Crime Victims Fund in the U.S. Treasury, and set aside in the Antiterrorism Emergency Reserve Fund, whose funds may not be obligated in an amount above \$50 million in any given year. The cost to the Federal Government consists both of administrative expenses and amounts reimbursed to victims. Both types of costs depend on the number of claimants, prospective as well as retroactive. Although spending is anticipated to be higher in the initial years as a result of the number of potential retroactive claimants (approximately 900), the program will not spend more than the statutory maximum of \$50 million each year.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. This regulation has no cost to State, local, or tribal governments, or to the private sector. The ITVERP is funded by fines, fees, penalty assessments, and bond forfeitures paid by Federal offenders, as well as gifts from private individuals, deposited into the Crime Victims Fund in the U.S. Treasury. Therefore, an analysis of the impact of this regulation on such entities is not required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act of 1995

The collection of information requirements contained in this regulation has been submitted to the

Office of Management and Budget, pursuant to the Paperwork Reduction Act (44 U.S.C. 3506). Applicants seeking reimbursement from this program will be required to submit an official application form (the International Terrorism Victim Expense Reimbursement Program Application), that has been created by OVC. This application is a new information collection instrument that will be used to collect necessary information from and about the victims and claimants regarding expenses incurred by them, to be used by OVC in making a reimbursement determination. The total number of initial respondents (including both direct victims and family members) for this collection is estimated to be 2,000. This represents the estimated number of claimants who are currently eligible to request reimbursement under the ITVERP. The total initial public burden associated with this initial information collection is estimated to be approximately 1,500 hours. The amount of time for an average respondent to respond/reply is estimated to be approximately 45 minutes.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 28 CFR Part 94

Administrative practice and procedures, International terrorism, Victim compensation.

Accordingly, for the reasons set forth in the preamble, Title 28 of the Code of Federal Regulations is amended to add a new part 94, to read as follows:

PART 94—CRIME VICTIM SERVICES

Subpart A—International Terrorism Victim Expense Reimbursement Program

Introduction

Sec.

94.11 Purpose; construction and severability.

94.12 Definitions.

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- 94.51 Request for reconsideration.
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**Appendix to Subpart A—International
 Terrorism Victim Expense Reimbursement
 Program (ITVERP) Chart of Expense
 Categories and Limits**

Subpart B—[Reserved]**Subpart C—[Reserved]****Subpart D—[Reserved]**

Authority: Victims of Crime Act (VOCA), Title II, Secs. 1404C and 1407 (42 U.S.C. 10603c, 10604).

**Subpart A—International Terrorism
 Victim Expense Reimbursement
 Program**

Introduction**§ 94.11 Purpose; construction and severability.**

(a) The purpose of this subpart is to implement the provisions of VOCA, Title II, Sec. 1404C (42 U.S.C. 10603c), which authorize the Director (Director), Office for Victims of Crime (OVC), a component of the Office of Justice Programs (OJP), to establish a program to reimburse eligible victims of acts of international terrorism that occur outside the United States, for expenses associated with that victimization.

(b) Any provision of this part held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this part and shall not affect the remainder thereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

§ 94.12 Definitions.

The following definitions shall apply to this subpart:

(a) *Child* means any biological or legally-adopted child, or any stepchild, of a deceased victim, who, at the time of the victim's death, is—

- (1) Younger than 18 years of age; or
- (2) Over 18 years of age and a student, as defined in 5 U.S.C. 8101.

(b) *Claimant* means a victim, or his representative, who is authorized to sign and submit an application, and receive

payment for reimbursement, if appropriate.

(c) *Collateral sources* means sources that provide reimbursement for specific expenses compensated under this subpart, including property, health, disability, or other insurance for specific expenses; Medicare or Medicaid; workers' compensation programs; military or veterans' benefits of a compensatory nature; vocational rehabilitation benefits; restitution; and other state, Federal, foreign, and international compensation programs: except that any reimbursement received under this subpart shall be reduced by the amount of any lump sum payment whatsoever, received from, or in respect of the United States or a foreign government, unless the claimant can show that such payment was for a category of expenses not covered under this subpart. To the extent that a claimant has an unsatisfied judgment against a foreign government based on the same act of terrorism, the value of that unsatisfied judgment shall be counted as a lump sum payment for expenses covered under this subpart, unless the claimant agrees to waive his right to sue the United States government for satisfaction of that judgment.

(d) *Deceased means* individuals who are dead, or are missing and presumed dead.

(e) *Dependent* has the meaning given in 26 U.S.C. 152. If the victim was not required by law to file a U.S. Federal income tax return for the year prior to the act of international terrorism, an individual shall be deemed to be a victim's dependent if he was reliant on the income of the victim for over half of his support in that year.

(f) *Employee of the United States Government* means any person who—

- (1) Is an employee of the United States government under Federal law; or
- (2) Receives a salary or compensation of any kind from the United States Government for personal services directly rendered to the United States, similar to those of an individual in the United States Civil Service, or is a contractor of the United States Government (or an employee of such contractor) rendering such personal services.

(g) *Funeral and burial* means those activities involved in the disposition of the remains of a deceased victim, including preparation of the body and body tissue, refrigeration, transportation, cremation, procurement of a final resting place, urns, markers, flowers and ornamentation, costs related to memorial services, and other reasonably-associated activities,

including travel for not more than two family members.

(h) *Incapacitated* means substantially impaired by mental illness or deficiency, or by physical illness or disability, to the extent that personal decision-making is impossible.

(i) *Incompetent* means unable to care for oneself because of mental illness or disability, mental retardation, or dementia.

(j) *International terrorism* has the meaning given in 18 U.S.C. 2331. As of the date of these regulations, the statute defines the term to mean "activities that—

(1) Involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

(2) Appear to be intended—

(i) To intimidate or coerce a civilian population;

(ii) To influence the policy of a government by intimidation or coercion; or

(iii) To affect the conduct of a government by mass destruction, assassination, or kidnaping; and

(3) Occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum."

(k) *Legal guardian* means legal guardian, as the term is defined under the laws of the jurisdiction of which the ward is or was a legal resident, except that if the ward is or was a national of the United States, the legal guardianship must be pursuant to an order of a court of competent jurisdiction of or within the United States.

(l) *Medical expenses* means costs associated with the treatment, cure, or mitigation of a disease, injury, or mental or emotional condition that is the result of an act of international terrorism. Allowable medical expenses include reimbursement for eyeglasses or other corrective lenses, dental services, rehabilitation costs, prosthetic or other medical devices, prescription medication, and other services rendered in accordance with a method of healing recognized by the jurisdiction in which the medical care is administered.

(m) *Mental health care* means mental health care provided by an individual who meets professional standards to provide these services in the jurisdiction in which the care is administered.

(n) *National of the United States* has the meaning given in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)). As of the date of these regulations, the statute defines the term to mean “(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.”

(o) *Officer of the United States government* has the meaning given in 5 U.S.C. 2104.

(p) *Outside the United States* means outside any state of the United States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other possession or territory of the United States.

(q) *Parent* means a biological or legally-adoptive parent, or a step-parent, unless his parental rights have been terminated in the jurisdiction where the child is or was a legal resident, except that if the child or either parent is a national of the United States, the termination must be pursuant to an order of a court of competent jurisdiction of or within the United States.

(r) *Property loss* refers to items of personal property (other than medical devices, which are included in the category of “medical expenses”) that are lost, destroyed, or held as evidence.

(s) *Rehabilitation costs* includes reasonable costs for the following: physiotherapy; occupational therapy; counseling, and workplace, vehicle, and home modifications.

(t) *Representative* means a family member or legal guardian authorized to file a claim on behalf of a victim who is younger than 18 years of age, incompetent, incapacitated, or deceased, except that no individual who was criminally culpable for the act of international terrorism shall be considered a representative. In the event that no family member or legal guardian is available to file a claim for an interim emergency payment on behalf of a victim, under § 94.41, a U.S. consular officer or U.S. embassy official within the country may act as a representative, consistent with any limitation on his authority contained in 22 CFR 92.81(b).

(u) *Victim* has the meaning given in 42 U.S.C. 10603c(a)(3)(A), it being understood that the term “person” in that section means the following:

(1) (i) An individual who was present during the act of terrorism;

(ii) An individual who was present during the immediate aftermath of the act of terrorism; or

(iii) An emergency responder who assisted in efforts to search for and recover other victims; and

(2) The spouse, children, parents, and siblings of a victim described in paragraph (u)(1) of this Section, and other persons, at the discretion of the Director, shall be considered “victims”, when the person described in such paragraph—

(i) Dies as a result of the act of terrorism;

(ii) Is younger than 18 years of age (or is incompetent or incapacitated) at the time of the act of terrorism, or;

(iii) Is rendered incompetent or incapacitated as a result of the act of terrorism.

§ 94.13 Terms.

The first three provisions of 1 U.S.C. 1 (rules of construction) shall apply to this subpart.

Coverage

§ 94.21 Eligibility.

(a) Except as provided in paragraphs (b) and (c) of this section, reimbursement of qualified expenses under this subpart is available to a victim of international terrorism or his representative, pursuant to 42 U.S.C. 10603c(a)(3)(A). For purposes of eligibility for this program only, the Attorney General shall determine whether there is a reasonable indication that an act was one of international terrorism, within the meaning of that section.

(b) Reimbursement shall be denied to any claimant if the Director, in consultation with appropriate Department of Justice (DOJ) officials, determines that there is a reasonable indication that either the victim with respect to whom the claim is made, or the claimant, was criminally culpable for the act of international terrorism.

(c) Reimbursement may be reduced or denied to a claimant if the Director, in consultation with appropriate DOJ officials, determines that the victim with respect to whom the claim is made contributed materially to his own death or injury by—

(1) Engaging in conduct that violates U.S. law or the law of the jurisdiction in which the act of international terrorism occurred;

(2) Acting as a mercenary or “soldier of fortune”;

(3) (As a non-U.S. Government employee), acting as an advisor, consultant, employee, or contractor, in a military or political capacity—

(i) For a rebel or paramilitary organization;

(ii) For a government not recognized by the United States; or

(iii) In a country in which an official travel warning issued by the U.S. Department of State related to armed conflict was in effect at the time of the act of international terrorism; or

(4) Engaging in grossly reckless conduct.

§ 94.22 Categories of expenses.

The following categories of expenses, generally, may be reimbursed, with some limitations, as noted in § 94.23: medical care; mental health care; property loss; funeral and burial; and miscellaneous expenses (including temporary lodging, emergency travel, and transportation). Under this subpart, the Director shall not reimburse for attorneys’ fees, lost wages, or non-economic losses (such as pain and suffering, loss of enjoyment of life, loss of consortium, etc.).

§ 94.23 Amount of reimbursement.

Different categories of expenses are capped, as set forth in the chart below. Those caps may be adjusted, from time to time, by rulemaking. The cap in effect within a particular expense category, at the time that the application is received, shall apply to the award.

§ 94.24 Determination of award.

After review of each application, the Director shall determine the eligibility of the victim or representative and the amount, if any, eligible for reimbursement, specifying the reasons for such determination and the findings of fact and conclusions of law supporting it. A copy of the determination shall be mailed to the claimant at his last known address.

§ 94.25 Collateral sources.

(a) The amount of expenses reimbursed to a claimant under this subpart shall be reduced by any amount that the claimant receives from a collateral source in connection with the same act of international terrorism. In cases in which a claimant receives reimbursement under this subpart for expenses that also will or may be reimbursed from another source, the claimant shall subrogate the United States to the claim for payment from the collateral source up to the amount for which the claimant was reimbursed under this subpart.

(b) Notwithstanding paragraph (a) of this section, when a collateral source provides supplemental reimbursement for a specific expense, beyond the maximum amount reimbursed for that expense under this subpart, the claimant’s award under this subpart shall not be reduced by the amount paid by the collateral source, nor shall the

claimant be required to subrogate the United States to the claim for payment from the collateral source, except that in no event shall the combined reimbursement under this subpart and any collateral source exceed the actual expense.

Program Administration

§ 94.31 Application procedures.

(a) To receive reimbursement, a claimant must submit a completed application under this program requesting payment based on an itemized list of expenses, and must submit original receipts.

(b) Notwithstanding paragraph (a) of this Section, in cases involving incidents of terrorism preceding the establishment of this program where claimants may not have original receipts, and in cases in which the claimant certifies that the receipts have been destroyed or lost, the Director may, in his discretion, accept an itemized list of expenses. In each such case, the claimant must certify that original receipts are unavailable and attest that the items and amounts submitted in the list are true and correct to the best of his knowledge. In the event that it is later determined that a fraudulent certification was made, the United States may take action to recover any payment made under this section, and pursue criminal prosecution, as appropriate.

§ 94.32 Application deadline.

The deadline for an application is three years from the date of the act of international terrorism. At the discretion of the Director, the deadline for filing a claim may be extended to a date not later than three years from the date of the determination that there is a reasonable indication that an act of international terrorism has occurred, under § 94.21(a). For claims related to acts of international terrorism that occurred after December 21, 1988, but

before the establishment of this program, the application deadline is three years from the effective date of these regulations.

§ 94.33 Investigation and analysis of claims.

The Director may seek an expert examination of claims submitted if he believes there is a reasonable basis for requesting additional evaluation. The claimant, in submitting an application for reimbursement, authorizes the Director to release information regarding claims or expenses listed in the application to an appropriate body for review. If the Director initiates an expert review, no identifying information for the victim or representative shall be released.

Payment of Claims

§ 94.41 Interim emergency payment.

Claimants may apply for an interim emergency payment, prior to a determination under § 94.21(a). If the Director determines that such payment is necessary to avoid or mitigate substantial hardship that may result from delaying reimbursement until complete and final consideration of an application, such payment may be made to cover immediate expenses such as those of medical care, funeral and burial, short-term lodging, and emergency transportation. The amount of an interim emergency payment shall be determined on a case-by-case basis, and shall be deducted from the final award amount.

§ 94.42 Repayment and waiver of repayment.

A victim or representative shall reimburse the program upon a determination by the Director that an interim emergency award or final award was: Made to an ineligible victim or claimant; based on fraudulent information; or an overpayment. Except in the case of ineligibility pursuant to a

determination by the Director, in consultation with appropriate DOJ officials, under § 94.21(b), the Director may waive such repayment requirement in whole or in part, for good cause, upon request.

Appeal Procedures

§ 94.51 Request for reconsideration.

A victim or representative may, within thirty (30) days after receipt of the determination under § 94.24, appeal the same to the Assistant Attorney General for the Office of Justice Programs, by submitting a written request for review. The Assistant Attorney General may conduct a review and make a determination based on the material submitted with the initial application, or may request additional documentation in order to conduct a more thorough review. In special circumstances, the Assistant Attorney General may determine that an oral hearing is warranted; in such cases, the hearing shall be held at a reasonable time and place.

§ 94.52 Final agency decision.

In cases that are not appealed under § 94.51, the Director's determination pursuant to § 94.24 shall be the final agency decision. In all cases that are appealed, the Assistant Attorney General shall issue a notice of final determination, which shall be the final agency decision, setting forth the findings of fact and conclusions of law supporting his determination.

Appendix to Subpart A—International Terrorism Victim Expense Reimbursement Program (ITVERP); Chart of Expense Categories and Limits

There are five major categories of expenses for which claimants may seek reimbursement under the ITVERP: (1) Medical expenses, including dental and rehabilitation costs; (2) Mental health care; (3) Property loss, repair, and replacement; (4) Funeral and burial costs; and (5) Miscellaneous expenses.

Expense categories	Subcategories and conditions	Expense limits
Medical expenses, including dental and rehabilitation costs.	Victim's medical care, including, without limitation, treatment, cure, and mitigation of disease or injury; replacement of medical devices, including, without limitation, eyeglasses or other corrective lenses, dental services, prosthetic devices, and prescription medication; and other services rendered in accordance with a method of healing recognized by the jurisdiction in which the medical care is administered. Victim's cost for physiotherapy; occupational therapy; counseling; workplace, vehicle, and home modifications.. For example, if a victim were to sustain a physical injury, such as blindness or paralysis, which would affect his ability to perform current professional duties, physical rehabilitation to address work skills would be appropriate.	Up to \$50,000.

Expense categories	Subcategories and conditions	Expense limits
Mental health care	Victim's (and, when victim is a minor, incompetent, incapacitated, or deceased, certain family members') mental health counseling costs.	Up to 12 months, but not to exceed \$5,000.
Property loss, repair, and replacement	Includes crime scene cleanup, and replacement of personal property (not including medical devices) that is lost, destroyed, or held as evidence.	Up to \$10,000 to cover repair or replacement, whichever is less.
Funeral and burial costs	Includes, without limitation, the cost of disposition of remains, preparation of the body and body tissue, refrigeration, transportation of remains, cremation, procurement of a final resting place, urns, markers, flowers and ornamentation, costs related to memorial services, and other reasonably associated activities.	Up to \$25,000.
Miscellaneous expenses	Includes, without limitation, temporary lodging up to 30 days, local transportation, telephone costs, etc.; with respect to emergency travel, two family members' transportation costs to country where incident occurred (or other location, as appropriate) to recover remains, care for victim, care for victim's dependents, accompany victim to receive medical care abroad, accompany victim back to U.S., and attend to victim's affairs in host country.	Up to \$15,000.

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—[Reserved]

Dated: August 28, 2006.

Regina B. Schofield,
Assistant Attorney General, Office of Justice Programs.

[FR Doc. E6-14678 Filed 9-5-06; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AM15

New and Material Evidence

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) rules regarding the reconsideration of decisions on claims for benefits based on newly discovered service records received after the initial decision on a claim. The revision will provide consistency in adjudication of certain types of claims.

DATES: *Effective Date:* This amendment is effective October 6, 2006.

FOR FURTHER INFORMATION CONTACT:

Maya Ferrandino, Consultant, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington DC 20420, (202) 273-7211.

SUPPLEMENTARY INFORMATION: On June 20, 2005, VA published in the **Federal**

Register (70 FR 35388) a proposal to revise VA's rules regarding the reconsideration of decisions on claims for benefits based on newly discovered service records received after the initial decision on a claim. Interested persons were invited to submit written comments on or before August 19, 2005. We received comments from the National Organization of Veterans' Advocates and three members of the public.

We are making two changes to 38 CFR 3.156(c)(2) based on internal agency reconsideration. First, we are revising the title of the Joint Services Records Research Center (JSRRC). In the proposed rulemaking, we stated the title as Center for Research of Unit Records (CRUR), which is incorrect. Instead, we will state the correct title in the regulation, which is Joint Services Records Research Center. Second, we are inserting the word "because" after "or" in the first sentence of § 3.156(c)(2) to improve readability. We are not altering the substantive content of the paragraph by making these changes.

One commenter stated that she supported this rulemaking and that clarification of the rules currently in § 3.156 is needed. We appreciate this comment and believe that this rulemaking will improve the clarity of that regulation.

One commenter stated that in the proposed rule, we use the phrase "whichever is later" in numerous places. The commenter stated that if we are clarifying retroactive effective dates, the term should be "former", as it would mean "before the date VA uses to base the effective date."

At § 3.156(c)(3), the proposed regulation states:

An award made based all or in part on the records identified by paragraph (c)(1) of this section is effective on the date entitlement arose or the date VA received the previously decided claim, whichever is later, or such other date as may be authorized by the provisions of this part applicable to the previously decided claim.

As stated in the proposed rulemaking, proposed § 3.156(c)(2) is derived from current 38 CFR 3.400(q), regarding effective dates for awards based on new and material evidence. Section 3.400, VA's regulation regarding effective dates, uses the terminology "date of receipt of the claim or the date entitlement arose, whichever is the later." This language is derived from 38 U.S.C. 5110, the authorizing statute for effective dates, which states that "the effective date of an award * * * shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application therefor." The statute and the current regulation thus require that the effective date of the award be the later of the date of entitlement or the date VA received the application for the benefit. As such, the use of the term "later" in the proposed regulation is consistent with the statute and VA's long-standing terminology regarding effective dates. We believe the phrase "whichever is later" is well understood by claimants, their representatives, and VA staff. We therefore make no change based on this comment.

One commenter stated that VA should clearly define the phrases "effective on the date entitlement arose or the date VA received the previously denied claim, whichever is later," "or such other date", and "except as it may be affected by the filing date of the initial claim."