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White Collar Crime**U.S. Budget**

With federal prosecutors pulling down record-setting criminal fines in corporate crime cases, the federal Crime Victims Fund is accumulating a massive surplus, authors Jay L. Himes and Robin A. van der Meulen of Labaton Sucharow LLP write.

The problem is that the statutes severely limit how the fund (which has reached \$9 billion and is growing fast) can be spent. The authors propose a fix.

What's Located in Washington, Part of the Government and Rolling in Dough?

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We've all seen the headlines with the jaw-dropping corporate criminal fines:

■ **"BP Exploration and Production Inc. Pleads Guilty, Is Sentenced to Pay Record \$4 Billion for Crimes Surrounding Deepwater Horizon Incident"**

■ **"Taiwan-Based AU Optronics Corporation Sentenced to Pay \$500 Million Criminal Fine for Role in LCD Price-Fixing Conspiracy"**

■ **"SAC Management Companies Agree to Plead Guilty to All Counts in Criminal Indictment, Pay \$1.8 Billion, and Terminate SAC Capital's Investment Advisory Business"**

News reports such as this, showcasing the U.S. Department of Justice's success in securing federal criminal convictions and in obtaining huge fines, have become commonplace.

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Ever wonder where all the DOJ's criminal fine money goes? The U.S. Treasury's general coffers, perhaps?

Nope.

The federal department or agency with regulatory authority over the unlawful conduct?

No, again.

Maybe the U.S. DOJ itself?

Buzz. Wrong.

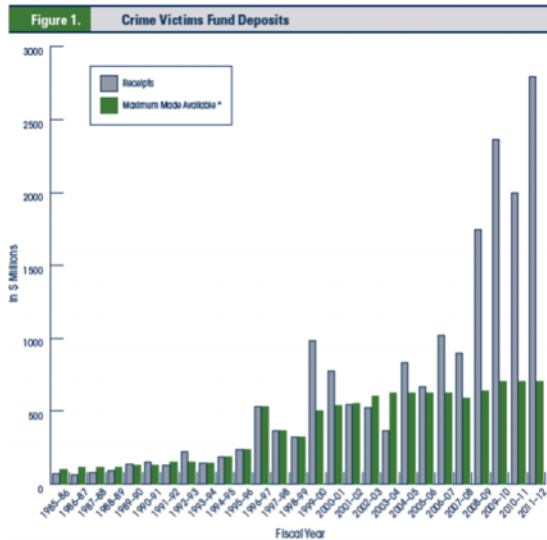
The lucky beneficiary of substantially all criminal fines collected by the DOJ is the "Crime Victims Fund" (CVF). The CVF is a separate fund within the U.S. Treasury, established by the Victims of Crime Act of 1984 and controlled by the Office for Victims of Crime (OVC). The OVC uses the money in the CVF to support programs that aid the victims of violent crime and their families. Sounds pretty good so far, right?

The rub is this: the grants that OVC can make yearly are capped by federal statute, and the cap is sufficiently low that the CVF surplus is mushrooming. When the current fiscal year began on Oct. 1, 2013 (FY 2014), the CVF had a surplus of \$8,954,000,000—one projected by the Office of Management and Budget to grow by over \$1,000,000,000 a year.¹ That's "B" as in "billion."¹ The

¹ Office of Management and Budget, The Appendix, Budget of the United States Government, Fiscal Year 2015, Dep't of Justice, at 774 (OMB FY 2015 Appendix), <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/jus.pdf>. The OVC's website refers to the surplus as "almost \$9 billion." Office for Victims of Crime, About OVC,

yearly ratio between DOJ fines received and CVF grants distributed is so out of whack that in recent years the OVC has distributed only 25-50 percent of the money available to victim compensation and assistance programs. The rest sits idle in what is referred to as the “rainy day” fund.² Meanwhile, the DOJ, whose very investigations and prosecutions produce the criminal fines, has been hit with funding cuts and hiring freezes!

A picture—this one from OVC’s website—is worth a thousand words:³



*When the Fund was authorized in 1984, a cap was placed on how much money could be deposited for the first 8 years (FY 1985 through FY 1993). Congress lifted the cap for FY 1994 through FY 1999. Starting in FY 2000, Congress placed annual caps on obligations to protect against wide fluctuations in receipts and ensure a stable level of funding in the future.

“A billion here, a billion there, and pretty soon you’re talking real money.”⁴ \$9,000,000,000 and growing—“you’re talking real money.” Congress needs to look at and, we believe, fix the CVF. We first review the CVF’s history, purposes and operations. Then, we offer a proposal to address the massive balance that the CVF has accumulated.

I. History of the Federal Victims of Crime Act

The movement for crime victims’ rights in the U.S. began in the mid-1960s when California created a vic-

Crime Victims Fund, <http://www.ojp.usdoj.gov/ovc/about/victimfund.html>. See also U.S. Dep’t of Justice, FY 2013 Agency Financial Report at II-52, II-85 (Dec. 2013) (FY 2013 AFR), <http://www.justice.gov/ag/annualreports/afr2013/afr2013.pdf> (reporting CVF’s total net position as \$10,057,641,000); National Association of VOCA Assistance Administrators, VOCA Funding, <http://navaa.org/budget/index.html> (reporting the surplus at \$9,531,000,000). The basis for these differing reported amounts is unclear. Regardless, the CVF surplus is big.

² Congressional Research Service, Memorandum to Sen. Tom Coburn, at 8 (Dec. 17, 2013) (CRS Memo), http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File_id=f5c3a294-5075-4c0c-aa07-9facb45c9994.

³ Office of Victims of Crime, Crime Victims Fund, Figure 1 – Crime Victims Fund Deposits, <http://ojp.gov/ovc/pubs/crimevictimsfundfs/intro.html>.

⁴ Attributed to Illinois Senator Everett Dirksen, but never confirmed as in fact spoken. See The Dirksen Center, http://www.dirksencenter.org/print_emd_billionhere.htm.

tim compensation program.⁵ Prior to this, victims were often forgotten and had almost no rights, let alone did they receive compensation or assistance. Victims were not even kept informed of investigations into the crimes committed upon them. They were often not permitted in the courtroom for trials. And they received no services to assist in coping with their ordeal. The California program, the first in the nation, collected money from fines and penalties paid by criminal offenders and used it to assist crime victims.⁶

By the early 1970s, local dissatisfaction with the criminal justice system’s response to victims produced programs to offer emotional support and advocacy services to victims of violent crime, particularly crimes of domestic violence, sexual assault, and child abuse.⁷ These programs typically afforded emergency services, needs assessments and referrals, safety planning, counseling services, help with shelter and other emergency needs, advocacy with justice and other agencies, and related other services.⁸ Victims support and advocacy groups that formed around this time—such as Families and Friends of Missing Persons, Parents of Murdered Children, Mothers Against Drunk Driving—lobbied for government to support victims programs.⁹

By 1979, there were compensation programs in 28 states.¹⁰ Most, however, were insufficiently funded and thus provided limited benefits.¹¹ Compensation restrictions meant that many victims waited months or even years before claims were paid.¹² Eventually, state officials realized that government action was necessary to ensure victim assistance. Again, California was a leader when, in 1980, it became the first state to establish state funding for victim assistance programs.¹³

Federal interest developed as well. In April 1981, President Reagan declared a National Victims’ Rights Week, and a year later he formed a Presidential Task Force on Victims of Crime to assess the needs of crime victims.¹⁴ The Task Force concluded that “[t]he innocent victims of crime have been overlooked, their pleas

⁵ The Honorable Jon Kyl *et al.*, *On the Wings of Their Angels: The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims’ Rights Act*, 9 LEWIS & CLARK L. REV. 581, 584 (2005).

⁶ California Victim Compensation Government Claims Board, History, http://www.allgov.com/usa/ca/departments/government-operations-agency/victim_compensation_government_claims_board?agencyid=182.

⁷ Lisa C. Newmark, *Crime Victims’ Needs and VOCA-Funded Services: Findings and Recommendations from Two National Studies*, The Institute for Law and Justice, Alexandria, Virginia, at 6 (Mar. 2004), <https://www.ncjrs.gov/pdffiles1/nij/grants/214263.pdf>.

⁸ *Id.*

⁹ Dr. Marlene Young & John Stein, *The History of the Crime Victims’ Movement in the United States*, 2005 NCVRW RESOURCE GUIDE, at 5-7 (Dec. 2004), https://www.ncjrs.gov/ovc_archives/ncvrw/2005/pdf/historyofcrime.pdf.

¹⁰ *Id.* at 2.

¹¹ David L. Roland, *Progress in the Victim Reform Movement: No Longer the “Forgotten Victim,”* 17 PEPP. L. REV. 35, 43 (1989).

¹² *Id.* at 43-44.

¹³ Young & Stein, *supra* n.9, at 5.

¹⁴ Young & Stein, *supra* n.9, at 6; The Final Report of the President’s Task Force on Victims of Crime, at ii, Government Printing Office, Washington, D.C. (Dec. 1982) (The Final Report), <http://ojp.gov/ovc/publications/presdntstskforcrprt/87299.pdf>.

for justice have gone unheeded, and their wounds—personal, emotional, and financial—have gone unattended.”¹⁵

As one recommendation to address these concerns, the Task Force urged federal legislation to fund state victim compensation and local assistance programs.¹⁶ Congress responded by enacting the Victims of Crime Act (VOCA) in 1984, which established a base of federal funding to states for victim compensation and assistance.¹⁷ A later VOCA amendment established the Office for Victims of Crime (OVC) as part of the Office of Justice Programs (OJP),¹⁸ a DOJ unit that “provides federal leadership in developing the Nation’s capacity to prevent and control crime, administer justice, and assist victims.”¹⁹ The OVC administers the funds available under VOCA.²⁰

II. Overview of the Crime Victim Fund (CVF)

VOCA established the CVF as a source of grants to supplement state programs that provide financial assistance and reimbursement to crime victims, and to encourage victim cooperation and participation in the criminal justice system.²¹ To fund the grants, VOCA mandates that certain federal criminal prosecution recoveries be placed in a separate fund within the U.S. Treasury.²² Today, deposits into the CVF come from the following sources:

- Criminal fines, with exceptions for funds related to certain environmental, railroad, unemployment insurance, and postal service violations;
- Forfeited appearance bonds;
- Special forfeitures of collateral profits from crime;
- Special penalty assessments from convicted individuals and corporations; and
- Gifts, donations, and bequests by private parties, as provided by the USA Patriot Act of 2001.²³

Criminal fines account for roughly 98 percent of the CVF’s receipts.²⁴

While funds distributed by OVC in fiscal year 1985-86 were a modest \$64.7 million, over the next 20 years OVC awarded more than \$4.2 billion to state victim compensation and assistance programs.²⁵ Thus, the CVF has become a major funding source for victim ser-

vices throughout the country.²⁶ More than 3.5 million crime victims are served yearly.²⁷

Annual deposits into the CVF have increased from under \$100 million in 1985 to over \$2.8 billion in 2012, the largest yearly deposit in the CVF’s history.²⁸ Together with the nearly \$2 billion in deposits in FY 2011, the CVF took in almost \$4.8 billion during FY 2011 and FY 2012.²⁹ By comparison, during that same period, OVC distributed from the CVF \$808 million to VOCA-funded assistance programs, while paying \$359 million to crime victims as compensation or restitution. The total distributions—roughly \$1.2 billion—are only 25 percent the CVF deposits during this two-year period.³⁰ For FY 2013, CVF received \$1.5 billion and distributed \$705 million – less than half.³¹

Note, also, that the CVF receives only part of the money that the federal government collects for violations of law. The DOJ, for example, also recovers civil “penalties” and other settlement payments, but those funds are not distributed to the CVF. JPMorgan and the DOJ recently announced a settlement of \$13 billion arising from the housing market crash—the largest settlement with a single entity in U.S. history.³² None of that money will go into the CVF because the settlement is civil, not criminal, and the settlement paid, therefore, is not a “criminal” fine. Asset forfeitures, which the DOJ also recovers, likewise are not transferred to the CVF.³³ Similarly, recoveries in civil proceedings brought by such agencies as the SEC, the FTC, and Department of the Treasury are not transferred to the CVF.

III. Distributions From the CVF

The Cap on Distributions: When the CVF was formed in 1984, Congress capped the amount of the fund’s *deposits* for its first eight years.³⁴ During this time, the annual cap ranged from \$100 million to \$150 million.³⁵ Congress lifted the cap on deposits in 1993 and allowed the CVF to receive from DOJ all criminal fines, special assessments, and forfeited bail bonds to support crime victim program activities.³⁶ During the first 15 years of the CVF’s existence, the total deposits for each fiscal year were distributed in the following year.³⁷

²⁶ OVC Fact Sheet, Crime Victims Fund, <http://www.ovc.gov/pubs/crimevictimsfundfs/intro.html>.

²⁷ Office for Victims of Crime, 2013 OVC Report to the Nation at 34, Exhibit 7 (2013 OVC Report), http://www.ojp.usdoj.gov/ovc/pubs/reporttonation2013/crim_vict_fnd.html.

²⁸ *Id.* at 5.

²⁹ *Id.*

³⁰ *Id.* at 6.

³¹ FY 2013 AFR, *supra* n.1, at II-52.

³² Press Release, Dep’t of Justice, *Justice Department, Federal and State Partners Secure Record \$13 Billion Global Settlement with JPMorgan for Misleading Investors About Securities Containing Toxic Mortgages* (Nov. 19, 2013), <http://www.justice.gov/opa/pr/2013/November/13-ag-1237.html>.

³³ See generally Dep’t of Justice, *Asset Forfeiture Program, The Fund*, http://justice.gov/jmd/afp/02fundreport/02_2.html.

³⁴ Office of Victims of Crime, *About OVC, Crime Victims Fund*, <http://www.ojp.usdoj.gov/ovc/about/victimsfund.html>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

¹⁵ The Final Report, *supra* n.14, at ii.

¹⁶ Young & Stein, *supra* n.9, at 7.

¹⁷ Pub. L. 98-473, Title II, § 1402, Oct. 12, 1984, codified at 42 U.S.C. § 10601 et seq.

¹⁸ Pub. L. 100-690, Title VII, § 7123(a), Nov. 18, 1988, codified at 42 U.S.C. § 10605.

¹⁹ Office of Justice Programs, 2013 Financial Guide, Forward, <http://ojp.gov/financialguide/index.htm>.

²⁰ 42 U.S.C. § 10605 (1988).

²¹ Victims of Crime Act Victim Compensation Program, Final Program Guidelines, 66 Fed. Reg. 27,161 (May 16, 2001).

²² 42 U.S.C. § 10601 (2006).

²³ Office for Victims of Crime, OVC Fact Sheet, Crime Victims Fund (OVC Fact Sheet), Primary Source of Revenue, <http://www.ojp.usdoj.gov/ovc/pubs/crimevictimsfundfs/intro.html#PrimarySources>; see also 42 U.S.C. § 10601(b) (2006).

²⁴ CRS Memo, *supra* n.2, at 8.

²⁵ Newmark, *supra* n.7, at 1, 8.

Starting in 2000, in response to deposit fluctuations, Congress capped CVF **distributions** in order to maintain the fund as a stable source of support for future services.³⁸ Initially the cap was \$500 million per year, since increased to \$730 million for FY 2013.³⁹ Increases for FY 2014, up to \$800 million, have been proposed.⁴⁰ So, to reiterate, today, deposits into the CVF are not capped, but distributions from the CVF are.

Within the yearly cap, Congress has earmarked a few programs for CVF support. By statute, the CVF must fund the Children's Justice Act as well as victim-witness coordinators in both the U.S. Attorneys' Offices and in the FBI, and the federal Victim Notification System.⁴¹ Then, the CVF uses the remaining money in the cap for: (1) victim compensation (47.5%); (2) victim assistance (47.5%); and (3) discretionary grants (5%).⁴² Yearly awards are based on CVF receipts during the preceding year.⁴³ We outline each use of funds.

Victim Compensation Grants: All U.S. states and territories have a crime victim compensation program that provides financial assistance to victims of both federal and state crimes, and all similarly receive VOCA compensation grants.⁴⁴ The CVF compensation program supplements state funds for reimbursing victims of violent crimes for out-of-pocket expenses that result from the crime.⁴⁵ These include medical and dental costs, funeral and burial costs, mental health counseling, crime scene cleanup, and forensic sexual assault exams.⁴⁶ Under VOCA, each state compensation program receives an annual grant equal to 60 percent of the amount awarded by the state itself to victims of crime during the fiscal year preceding the year of the deposits in the CVF (two years prior to the grant year).⁴⁷ Various VOCA and OVC program guidelines establish grant eligibility criteria that each state must satisfy.⁴⁸

Victim Assistance: The CVF victim assistance program supports those states that supply services directly to victims.⁴⁹ All states and most territories receive annual VOCA assistance grants consisting of a statutorily-mandated base amount plus additional funds based on population.⁵⁰ The base amount for each state, the Dis-

trict of Columbia, the U.S. Virgin Islands, and Puerto Rico is \$500,000 annually, with a \$200,000 base for the Northern Mariana Islands, Guam, and American Samoa.⁵¹ Victim assistance includes crisis intervention, emergency shelter, emergency transportation, counseling, and criminal justice advocacy.⁵²

Discretionary Grants: VOCA authorizes OVC to use discretionary funds for, among other things, research and training, program development, and compliance efforts.⁵³

Above the Cap: Finally, independent of the cap, the CVF may also distribute up to 5 percent of its remaining funds to replenish the \$50 million Antiterrorism Emergency Reserve Fund, created to assist victims in extraordinary circumstances.⁵⁴ Congress conferred this authority in 1995 following the Oklahoma City bombing.⁵⁵ Most recently, after the 2013 Boston Marathon bombings, the OVC distributed \$8,355,648 from the CVF to organizations providing direct support to assist the victims, witnesses, and first responders.⁵⁶

IV. It's Raining

Federal government offices responsible for investigating and prosecuting criminal violations have been hit with budget cuts, hiring freezes, and mandatory employee furloughs. The DOJ alone faced cuts of over \$1.6 billion for fiscal year 2013 due to sequestration,⁵⁷ with projected cuts of \$2.1 billion for 2014.⁵⁸ In addition, the hiring freeze put in place in 2011 by the U.S. Attorney General means that U.S. Attorney's Offices cannot hire **any** new employees—not even to replace departing personnel.⁵⁹ As of September 2013, DOJ had lost over 3,505 staff since January 2011 due to budget constraints.⁶⁰ Likewise, the federal courts, which manage and try federal criminal cases, have had to cut their

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ National Association of VOCA Assistance Administrators, VOCA Funding, Current Status/Action News, FY 2014, <http://navaa.org/budget/index.html>.

⁴¹ OVC Fact Sheet, Fund Support for Victim Services, <http://www.ovc.gov/pubs/crimevictimsfundfs/intro.html#FundSupport>; see also Lisa N. Sacco, *The Crime Victims Fund: Federal Support for Victims of Crime*, Congressional Research Service, at 5 (Aug. 22, 2012), <https://www.hsdl.org/?view&did=721949>.

⁴² Sacco, *supra* n.41, at 5, 8.

⁴³ CRS Memo, *supra* n.2, at 8.

⁴⁴ OVC Fact Sheet, Primary Source of Revenue, <http://www.ojp.usdoj.gov/ovc/pubs/crimevictimsfundfs/intro.html#PrimarySources>.

⁴⁵ *Id.*

⁴⁶ 42 U.S.C. § 10602(b) (2006).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ OVC Fact Sheet, Primary Source of Revenue, <http://www.ojp.usdoj.gov/ovc/pubs/crimevictimsfundfs/intro.html#PrimarySources>; see also 42 U.S.C. § 10603 (2009).

⁵⁰ OVC Fact Sheet, Primary Source of Revenue, <http://www.ojp.usdoj.gov/ovc/pubs/crimevictimsfundfs/intro.html#PrimarySources>.

⁵¹ 42 U.S.C. § 10603 (2009).

⁵² OVC Fact Sheet, Primary Source of Revenue, <http://www.ojp.usdoj.gov/ovc/pubs/crimevictimsfundfs/intro.html#PrimarySources>.

⁵³ 42 U.S.C. § 10603d (2009); see also Sacco, *supra* n.41, at 10.

⁵⁴ Victims of Crime Act, Crime Victims Fund, Briefing Background 2014, Prepared by National Association of VOCA Assistance Administrators, at 3; Press Release, Dep't of Justice, *Attorney General Announces \$8.3 Million to Support Victims of Boston Marathon Bombing* (Jan. 13, 2014), <http://www.justice.gov/opa/pr/2014/January/14-ag-039.html>. Briefly, following an act of terrorism or mass violence, jurisdictions can apply for an Antiterrorism and Emergency Assistance Program (AEAP) grant award for crisis response, criminal justice support, crime victim compensation, and training and technical assistance expenses. *Id.*

⁵⁵ Press Release, *Attorney General*, *supra* n. 54.

⁵⁶ *Id.* OVC has also used the CVF to provide assistance following the shootings in Newtown, CT (2012); Oak Creek, WI (2012); Aurora, CO (2012); Tucson, AZ (2011); Binghamton, NY (2009); and at Virginia Tech, VA (2007). *Id.*

⁵⁷ FY 2013 AFR, *supra* n.1, at I-24.

⁵⁸ NYCLA Task Force on Judicial Budget Cuts, Statement of Loretta E. Lynch, U.S. Attorney for the Eastern District of New York (Dec. 2, 2013) (Lynch Statement), <http://www.justice.gov/usao/nye/pr/2013/doc/New%20York%20County%20Lawyers%20Association.pdf>.

⁵⁹ *Id.*

⁶⁰ FY 2013 AFR, *supra* n.1, at I-24.

budgets.⁶¹ At the same time, money from federal criminal fines is piling up in the CVF—unavailable to support the offices that bring the very cases from which the CVF’s deposits are derived. The situation is Kafkaesque.

The U.S. Attorney’s Office for the Eastern District of New York, for example, recovered \$902 million in FY 2013 on a budget of just \$38 million.⁶² Similarly, the U.S. Attorney’s Office for the Southern District of New York recently entered into a plea agreement with SAC Capital that calls for a \$1.2 billion criminal penalty—an amount roughly equal to 24 times the office’s annual budget of about \$50 million.⁶³ For FY 2012, all the U. S. Attorney’s Offices collected \$3.035 billion in criminal fines, felony assessments and restitution – over a billion dollars more than their combined budget.⁶⁴ In FY 2013, criminal collections were \$2.2 billion even with budget cuts.⁶⁵

Take, as another example, the Antitrust Division of the Department of Justice. During FY 2013 the Division obtained \$1.02 billion in criminal fines.⁶⁶ Over the last ten fiscal years, the Division has averaged nearly \$675 million in yearly criminal fines – more than ten times its average annual appropriation of \$60 million (net of the Division’s share of fees collected under Hart-Scott-Rodino).⁶⁷ Indeed, during the last five fiscal years, the Antitrust Division yearly average was still higher – nearly \$850 million versus an average appropriation of about \$85 million annually (again, net of HSR fees).⁶⁸

Penny-Wise and Pound-Foolish. If these offices were law firms, they would be the most profitable in the nation. Reducing federal law enforcement funds is penny-wise, pound-foolish. As U.S. Attorney Loretta E. Lynch has stated: “In the ultimate irony, by cutting the United States Attorney’s Offices, sequestration will effectively cut revenue to the government.”⁶⁹

Since the mid-2000’s, yearly receipts have way outpaced the maximum amount available to distribute each year, and the CVF’s accumulated surplus has skyrocketed. More specifically, over the last five fiscal years, the CVF received \$10.4 billion and distributed \$3.45 billion – roughly 1/3.⁷⁰ Today, the current yearly cap, set at \$730 million, is but 8 percent of the CVF’s cumulative \$9 billion surplus. At the same time, continued

surplus growth is predictable as major fines already imposed are paid to the DOJ in installments, as is often the case, and as new criminal convictions are obtained and fines levied going forward.⁷¹ In fact, the Office of Management and Budget projects CVF balances of \$10.2 and \$11.3 billion in FY 2014 and FY 2015.⁷² Absent significant change, the CVF’s cumulative surplus is unlikely to be exhausted.

Saving for a rainy day is one thing. Accumulating for Noah’s flood is something else. What considerations warrant continuing to shovel money into the \$9 billion CVF—money that cannot even be spent because federal law caps yearly distributions? None have been advanced. It behooves Congress to fix the operations of the CVF.

V. What to Do?

Federal criminal fine receipts in recent years have rendered dysfunctional not only the current cap on yearly CVF distributions, but more important the structure of the CVF itself. Congress should be able to fashion an approach that allows the CVF to continue distributing funds at levels that increase yearly, while still reserving for “rainy day” purposes a sensible portion of any yearly excess in receipts – not all of it, however. Whatever then remains should either be distributed by the CVF to congressionally-designated recipients – the DOJ or the federal courts, for instance – or else paid to the U.S. Treasury for unrestricted use.⁷³

Few would dispute the pressing need to fund programs that compensate and assist crime victims at increasing levels. From 2010 to 2011, the rate of violent victimization increased 17 percent, from 19.3 to 22.5 victimizations per 1,000 persons age 12 or older.⁷⁴ The rate of property crime increased 11 percent, from 125.4 per 1,000 households in 2010 to 138.7 in 2011.⁷⁵ This upward trend is expected to continue. One straightforward way to increase funds for victims would be to authorize the CVF to distribute money to the states in response to demonstrated need, rather than based simply on the amount that a state has spent on victim programs in the past, as currently exists. This sort of approach would better direct funds to deserving state programs upon a showing of need. It would also incent states to develop and distinguish their programs as especially worthy of additional CVF funding.

Pursuing the CVF’s core mission of funding support programs for crime victims is appropriately the first priority. So, a substantial cap should be established as the base level for yearly grants. That base could be subject to yearly increases (or decreases), determined perhaps

⁶¹ Letter to Congress from 87 U.S. Chief Judges (Aug. 13, 2013), <http://news.uscourts.gov/sites/default/files/Chief-Judges-Letter-to-Joseph-Biden.pdf>.

⁶² Lynch Statement, *supra* n.58.

⁶³ NYCLA Task Force on Judicial Budget Cuts, Prepared Testimony of U.S. Attorney Preet Bharara (Dec. 2, 2013), <http://www.justice.gov/usao/nys/pressspeeches/2013/BhararaNYCLATestimony.php?print=1>.

⁶⁴ Lynch Statement, *supra* n.58.

⁶⁵ Press Release, Dep’t of Justice, *Justice Department Collects More Than \$8 Billion in Civil and Criminal Cases in Fiscal Year 2013* (Jan. 9, 2014), <http://www.justice.gov/opa/pr/2014/January/14-ag-020.html>.

⁶⁶ Statement of William J. Baer & Ronald T. Hosko, Subcommittee on Antitrust, Competition Policy & Consumer Rights, Committee on the Judiciary, United States Senate at 2 (Nov. 14, 2013), <http://www.justice.gov/atr/public/testimony/301680.pdf>.

⁶⁷ *Id.* at 3.

⁶⁸ *Id.*

⁶⁹ Lynch Statement, *supra* n.58.

⁷⁰ CRS Memo, *supra* n.2, at 9, Table 1. See generally 2013 OVC Report, *supra* n.27, at 30, Exhibit 1.

⁷¹ 2013 OVC Report, *supra* n.27, at 5.

⁷² OMB FY 2015 Appendix, *supra* n.1, at 774.

⁷³ Our research has not turned up any public commentary on the CVF surplus, nor any proposals to deal with it. During the last year of President Bush’s administration, when the surplus was roughly \$2 billion, there was a proposal for reduction and transfer of the “unobligated balance” (about \$1.3 billion) to the U.S. Treasury, which Congress rejected. See Celinda Franco, Congressional Research Service, Report RL32579, “Victims of Crime Compensation and Assistance: Background and Funding” (Jan. 24, 2008) http://assets.opencrs.com/rpts/RL32579_20080124.pdf.

⁷⁴ Office of Justice Programs, Victims of Crime, <http://www.ojp.gov/programs/victims.htm>.

⁷⁵ *Id.*

as a percentage of receipts so that the CVF would not require continued congressional monitoring.

After assuring that the CVF discharge its core function, prudence counsels in favor maintaining a reserve. However, the existing surplus of \$9 billion (and growing) strikes us as hard to justify. Setting the reserve contribution as a particular percentage of the excess of CVF receipts less distributions would again allow the CVF to operate without continual congressional monitoring. Once distributions are made and the reserve contribution provided for, whatever remains of CVF yearly receipts should be put to good use, not left to accumulate in the CVF.⁷⁶

⁷⁶ By way of rough example, after paying its expenses the Federal Reserve System turns over its yearly earnings to the U.S. Treasury. See *The Federal Reserve System, Purposes and Functions*, at 11 (2005), http://www.federalreserve.gov/pf/pdf/pf_1.pdf#page=20.

One thing that the DOJ and the individual U.S. Attorneys' Offices have demonstrated in recent years is that vigorous criminal law enforcement pays for itself many times over. The federal enforcers whose criminal cases keep the CVF operating, and the federal courts who manage and try the criminal cases filed, need adequate funding to achieve the important goals of public safety, deterrence, and punishment that the criminal justice system promotes. Both would be particularly suitable recipients for the CVF surplus.

VI. Conclusion

In a time of severe budget constraints, the CVF is all dressed up with nowhere to go. Congress needs to fix that. It needs to assure that the CVF achieves its core purposes, while ending the seemingly needless accumulation of funds that are not being put to good use – and, under prevailing law, cannot be.