The Restitution Process

Many victims are interested in knowing how they can be repaid for the financial losses suffered as a result of a federal crime. This reimbursement is called "restitution," and is mandatory in many (but not all) federal criminal cases. Under federal law, restitution is available for the actual monetary loss that a victim sustained as a result of the defendant's criminal conduct and may be ordered for lost income, property damage, counseling, medical expenses, funeral costs or other financial costs directly related to the crime. Some financial losses, however, are not eligible for restitution, such as lost opportunity costs; fees for tax advisors, accountants, or other professionals; legal expenses for the civil recovery of financial losses; and losses for "pain & suffering".

To determine the amount of restitution to be ordered, the United States Probation Office gathers financial loss information from the investigative agent(s), the Assistant United States Attorney prosecuting the case, and victims prior to sentencing. Often this information is obtained by having victims complete a "Victim Impact Statement." Receipts and other supporting documentation should be provided to substantiate loss figures. A court may decline to order restitution if it finds that determining restitution in a case is too complex.

At sentencing, the judge enters an "Order for Restitution," directing the defendant to reimburse victims for some or all of the offense-related financial losses. Compliance with the Order of Restitution automatically becomes a condition of the defendant's probation or supervised release. However, even before the defendant is released from prison, the defendant is encouraged to begin repaying restitution by participating in the Bureau of Prison's Inmate Financial Responsibility Program. Through this program, a percentage of the inmate's prison wages applied to their restitution obligations.

Even if restitution is ordered, how likely is it I will receive any money?

A defendant who does not have assets or has little potential to make money in the future may be unlikely to make meaningful restitution. While defendants may make partial payments toward the full restitution owed, it is rare that defendants are able to fully pay the entire restitution amount owed. If and when the defendant pays, a victim may receive a number of small payments over an extended period of time.

How is restitution processed?

Restitution payments received by the United States will be processed and disbursed by the Clerk of the Court (Clerk) of the applicable United States District Court. Unless the Court has ordered otherwise, payments to victims are disbursed on a pro rata basis, meaning each payment will be divided among the victims in proportion to their losses. In general, the Clerk will not issue checks for very small sums because it is not economically sound. For example, the Clerk will not issue a check for $2.00 but, instead, will hold the funds until a check for $25, for example, can be issued.

How is restitution enforced?

The United States Attorney's Office (USAO) Financial Litigation Program (FLP) is charged with enforcing orders of restitution. FLP will pursue various methods to identify a defendant's assets and enforce restitution, as its resources permit, on behalf of identified victims for 20 years from the date of the judgment or from the defendant's release from incarceration, whichever is later. Should the defendant die prior to the expiration of this time-frame, the FLP will continue its enforcement efforts against the defendant's estate. In addition, while a defendant is under the supervision of a probation officer, that probation officer will also monitor and ensure appropriate restitution is paid, where possible.

For various reasons, collection of court-ordered restitution in criminal cases is often difficult. If victims have any information that will assist the FLP in its efforts to collect restitution, they should contact the FLP immediately. Information about a defendant's assets, income and employment can be very helpful in collecting money from an unwilling defendant.

A victim is also entitled to request from the Clerk's Office a document called an Abstract of Judgment. When properly recorded pursuant to state law (such as in a County Clerk's Office in a county where the defendant owns property), the Abstract of Judgment gives a victim a lien in the victim's own name against the defendant's property. A victim will then have similar legal rights as any other civil judgment lien creditor, meaning a victim can collect the money from the defendant themself. A victim must bear the cost of recording the Abstract of Judgment.

Where will I be receiving the restitution?

It is a victim's responsibility to make sure the Clerk's Office always has the victim's correct mailing address. If the Clerk's Office does not have the correct mailing address, a victim's share of payments from the defendant may be sent to other restitution victims or may be sent to the United States Treasury for deposit into the "Unclaimed Monies" account.

If a victim is not interested in receiving restitution, a victim may at any time assign their interest in restitution payments to the Crime Victims Fund. The Crime Victims Fund provides funding to crime victim assistance and compensation programs throughout the United States. For more information about the Crime Victims Fund, visit https://ovc.ojp.gov/about/crime-victims-fund.

Is there anything else I should be aware of regarding restitution?

The USAO will do its best to enforce the restitution imposed by the Judgement in a Criminal Case as attorneys for the United States of America. While this enforcement benefits victims of crime, neither the USAO nor the Department of Justice, nor any employee thereof, serves as an attorney for -a victim.

Victims may wish to consult with a private attorney to discuss the Court's restitution order and all enforcement mechanisms. If a victim enforces a restitution order on their own behalf and collect money from the defendant, a victim must provide that information to the FLP and to the Clerk's office.