



MEMORANDUM

TO: State DV Coalitions and members
FROM: NNEDV Public Policy team
DATE: August 18, 2016
RE: NNEDV Summary of the Final VOCA rule
28 CFR Part 94 [Docket NO: OJP (OVC) 1523], RIN 1121-AA69
Effective Date: August 8, 2016

On July 8, 2016, the Office for Victims of Crime (OVC) at the U.S. Department of Justice, released the *Final Rule on the Victims of Crime Act Victim Assistance Program* ("Final Rule") which updates and clarifies allowable and mandatory activities for State Administering Agencies (SAAs) and sub-recipients (grantees).

OVC issued a Proposed Rule in October of 2013, to replace the 1997 VOCA Victim Assistance Grant Program Final Program Guidelines ("Guidelines"). In response, NNEDV solicited input from the field and crafted our official comments on the Proposed Rule. Many of our comments were considered by OVC and incorporated into the Final Rule.

The Final Rule increases flexibility for the types of services that States can fund and the SAAs maintain significant discretion over funding decisions. The preamble states that OVC anticipates States will continue to allocate the majority of VOCA funding to victim services for certain types of crime (intimate partner violence (IPV), sexual assault (SA), and child abuse) at consistent levels and that any potential for reallocations would be relatively minor. OVC highlights the benefits of newly allowable services in addressing needs of underserved and unserved victims.

Highlights of the Final Rule

- Allowable direct services are expanded, such as transitional housing, relocation expenses, more in-depth legal services, and services to incarcerated victims (that does not trigger the PREA penalty).
- Confidentiality provisions included mirror VAWA and FVPSA.
- Encouraged but not mandated subgrantee funding competition.
- Coordination of activities is allowable as an activity to support direct services.
- State strategic planning is maintained as an allowable activity.

Unfortunately the 25% matching requirement is maintained, though the waiver process is outlined. Additionally, though we recommended a voluntary services provision, it was not included in the Final Rule.

Please see below for summary of provisions. We have noted sections that have been changed from the Propose Rule in the Final Rule.

General Provisions

§94.101 Purpose and scope; future guidance; construction and severability; compliance date (pages 44528-44529)

This section describes to which funds the Final Rule applies.



- The rule applies upon its effective date to all OVC grants made after that date, except for funding under such grants that was obligated before the effective date. VOCA Assistance grants typically have an award period that extends retroactively to October 1st of the fiscal year of the award, thus there may be funds under grants made after the effective date that were obligated by the SAA prior to the effective date, and subsequently ratified by OVC's approval of the grant.
- The Final Rule does not apply retroactively. However, OVC will permit SAAs to apply the provisions that expand SAA discretion in the use funds (*e.g.*, the Final Rule permits SAAs to fund a greater range of transitional housing services than the Guidelines permit) to VOCA assistance funding under OVC grants made before the effective date of the rule that is obligated on or after the effective date.

§ 94.102 Definitions (page 44529)

- Crime victim/victim of crime: remains unchanged from Guidelines and is broad definition.
- Spousal abuse:
 - includes "domestic and intimate partner violence" as per comments; spousal abuse is statutory, so the rule maintains it but adds other clarifying terms;
 - Removed "dating violence" as it is covered by intimate partner violence (IPV);
 - IPV covers LGBT relationships.
- Victim of child abuse:
 - *Means a victim of crime, where such crime involved an act or omission considered to be child abuse under the law of the relevant SAA jurisdiction. In addition, for purposes of this program, victims of child abuse may include, but are not limited to, child victim of: Physical, sexual or emotional abuse; child pornography-related offenses; neglect; commercial sexual exploitation; bullying; and/or exposure to violence.*
 - According to the preamble: "it is OVC's express intent that the definition should not be misconstrued to mean that failure to leave an abusive relationship, in the absence other action constituting abuse or neglect, is itself abuse or neglect."
 - "Children exposed to violence" is maintained in line with DOJ's Defending Childhood initiatives.
 - States can spend on adults victimized as children but such spending cannot be counted as the child abuse category.

See the regulations for definitions of: Direct services or services to victims, Director, Project, State Administering Agency, Sub-recipient, Victim of federal crime, VOCA, VOCA fund/VOCA funding, and VOCA grant.

SAA Program Requirements

Purpose of State Level VOCA funding – SAA eligibility

§94.103 General (pages 44529-44530)

This section outlines the program requirements of the State Administering Agency (SAA).



- (a) Direct services:
- SAAs can fund direct services and administration/training.
 - SAAs have sole discretion for which organizations will receive funds, subject to minimum statutory and regulatory requirements.
 - SAAs must fund direct services regardless of victims' participation in criminal justice process and victims' eligibility for services not dependent on immigration status.
- (b) SAA eligibility certification: This section describes the criteria SAAs must meet and certify annually, including:
- 1) Priority given to programs providing assistance to victim of sexual assault, spousal abuse, or child abuse.
 - 2) Funds will be made available to programs serving underserved victims.
 - 3) VOCA state funds will not be used to supplant State and local government funds otherwise available for crime victim assistance.
- (c) Pass through funds: States are able to determine if they establish a pass-through agency. The Rule clarifies parameters of administration funds with regard to pass-through agencies.
- (d) Strategic planning: The Rule reinstated allowable state strategic plans. The Rule states that strategic plans should consider the following:
- range of direct services throughout the State and within communities;
 - sustainability of such services;
 - unmet needs of crime victims;
 - demographic profile of crime victims;
 - coordinated, cooperative response of community organizations in providing organizing direct services;
 - availability of direct services throughout the criminal justice process, as well as to victims who are not participating in criminal justice proceedings; and
 - extent to which other sources of funding are available for direct services.
- (e) Coordination: SAAs are encouraged to coordinate activities with VOCA Victim Compensation, VAWA STOP, victim assistance coalitions, federal agencies and other relevant organizations.
- (f) Compliance with other rules and requirements: SAAs must comply with other guidance, VOCA statute, and all applicable provisions of DOJ Grants Financial Management and government wide-grant rules.
- (g) Access to records:
- SAAs shall, upon request, and consistent with 2 CFR 200.336, permit OVC access to all records relation to the use of VOCA funding.
 - NOTE: NNEDV's Safetynet and Policy teams will provide further guidance on VOCA confidentiality.



§94.104 Allocation of Subawards (page 44530)

The Rule maintains the priority categories of 1) sexual assault, 2) spousal abuse, and 3) child abuse. SAAs shall allocate a minimum of 10% of each year's VOCA grant to each of the priority categories of victims

NOTE: this is per victim type, not per service agency type.

(c) As identified by 10603 (a)(2)(B), States can count underserved victims of priority categories as either underserved or priority but not both. Underserved designation can be by demographic or by crime type. Underserved categories are contemplated in the preamble but not enumerated in actual Rule, as this can change over time. See preamble page 44519 for further details.

(d) SAAs must submit a written request with good cause (using data that makes the case) if they would like an exception to required allocations above. OVC notes that this is very rarely used.

(e) Sub-award process:

- State administrators have sole discretion as to which organizations receive funding and must maintain a documented method for selecting all grants.
- **Sub-awarded grant competition is not required**, though still encouraged when feasible. The Rule encourages competitions to have an open solicitation of applications and a documented determination process, based on objective criteria set in advance. The Proposed Rule contemplated requiring competition and we advocated against required competition.

The Final Rule encourages States to develop a funding strategy and requires states to have a documented method of making funding decisions.

SAA may use no more than 10% of the annual VOCA grant to fund its own direct service projects. States can apply for a waiver from the Director if they would like to exceed this limit.

§ 94.105 Reporting requirements (page 44530)

- Subgrant award reports: SAAs submit to OVC (but pull information from subgrantees) for each VOCA-funded project. SAA must also submit a report for pass-through entities.
- Performance report: SAAs are required to submit quarterly reports.
- SAAs are obligated to report fraud, waste, abuse and similar misconduct. The SAA must alert OVC of any such issues and refer credible evidence to DOJ/OIG, keep OVC apprised of on-going investigations.

§94.106 Monitoring Requirements (page 44530)

The preamble states that: *The final rule requires SAAs to develop and implement monitoring plans based on a default of regular desk monitoring, and biennial on-site monitoring, of all sub-awards. OVC also adds a requirement that such monitoring plans contain a risk assessment plan. The rule, consistent with 2 CFR 200.331(b), (d) and (e), continues to permit SAAs to develop and implement alternative monitoring plans (e.g., quarterly reports and desk audits instead or in addition to site visits), and further clarifies that SAAs may also implement alternative monitoring timeframes as well. OVC believes that biennial on-site monitoring is a reasonable timeframe that balances resource demands with effective oversight, but SAAs may propose alternative plans. OVC recognizes that certain sub-recipients may have a long established*



history of appropriately administering a sub-award and may therefore require less intensive scrutiny than a relatively new sub-recipient or an established sub-recipient providing new services.

SAA Use of Funds for Administration and Training

§94.107 Administration and training (page 44530)

The Final Rule limits spending on Administration and training to 5% of the State formula award. Sub-recipients can use VOCA funds to train volunteers on direct service provision. The use of VOCA funds for such training will not count against the limit.

§94.108 Prohibited Supplantation of funding for administrative costs (page 44530)

SAAs may not use VOCA funding to supplant State administrative support for the State crime victim assistance program. As per DOJ/Grants Financial Guide, such supplantation is the deliberate reduction of

State funds because of the availability of VOCA funds. If State decreases administrative support to State crime victims assistance program, the SAA must submit an explanation.

§94.109 Allowable administrative costs (page 44531)

Include: salaries and benefits of SAA staff, training of SAA staff, monitoring compliance of VOCA grantees, reporting, program evaluation, program audit costs, technology-related costs, membership in crime victims' organizations, strategic planning, coordination and collaboration efforts, publications, and general program improvements.

§94.110 Allowable training costs (page 44531)

The Final Rule added training managers and boards as allowable costs. It maintains that training academies for victim assistance are allowable.

Sub-recipient program requirements

This section was clarified in the Final Rule and separates "State Administrative Agency" from "sub-recipient."

§94.111 Eligible Crime Victims Assistance programs (page 44531)

This section references the statutory eligibility for VOCA at 42 U.S.C. 10603 (b)(1). The section clarifies the statute, explaining that eligible entities must comply with additional state criteria and reporting requirements.

§94.112 Types of eligible organizations and organizational capacity (page 44531)

(a) Eligible programs:

- Are not limited to entities whose sole purpose is victim services.
- Faith-based and neighborhood programs, while eligible, must follow all applicable laws.
- Crime victim compensation programs may be funded to provide direct services such as crisis intervention, counseling, and providing information, referrals and follow-up for crime victims.



- SAAs can provide funds to victims service organizations located in an adjacent State but must provide notice to the SAA of the adjacent State and coordinate to ensure effective services, monitoring/reporting/compliance).
- Direct service programs run by the SAA must not exceed 10% of the funds and adhere to sub-recipient cost rules.

(b) *Organizational capacity of the program:*

This section follows the statute. The Final Rule states:

- Record of effective services to victims of crime and support from sources other than the Crime Victims Fund. A program has demonstrated a record of effective direct services and support from sources other than the Crime Victims Fund when, for example, it demonstrates the support and approval of its direct services by the community, its history of providing direct services in a cost-effective manner, and the breadth or depth of its financial support from sources other than the Crime Victims Fund.
- Substantial financial support from sources other than the Crime Victims Fund. A program has substantial financial support from sources other than the Crime Victims Fund when at least twenty-five percent of the programs funding in the year of, or the year preceding the award comes from such sources, which may include other federal funding programs. If the funding is non-federal (or meets the DOJ Grants Financial Guide exceptions for using federal funding for match), then a program may count the used funding to demonstrate non-VOCA substantial financial support toward its project match requirement.

§94.113 Use of volunteers, community efforts, compensation assistance (page 44532)

- Sub-recipients must use volunteers but can apply for a waiver for this requirement.
- Referrals to other agencies count as fulfilling the VOCA requirement to help with applying for compensation. Victim assistance agencies can also assist with application forms, procedures, obtaining necessary documentation, monitoring claim status, and intervening on behalf of clients.

§94.114 Prohibited discrimination (page 44532)

The Final Rule did not include a specific reference to “gender identity and sexual orientation.” With respect to gender identity, DOJ has concluded that statutory prohibitions on discrimination on basis of sex encompass discrimination based on gender identity in other contexts.

The preamble references the *Memorandum from Eric H. Holder, Atty General, Re: Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civils Rights Act of 1964 (Dec. 15, 2014)*. According to the preamble, “OVC is aware of no reason why the statutory phrase “on the ground of . . . sex” in 42 U.S.C. 10604 (e) should receive a different construction.”

§94.115 Non-Disclosure of Confidential or Private information (page 44532)

The Proposed Rule did not include confidentiality provisions. NNEDV and other organizations encouraged the Final Rule to mirror VAWA confidentiality provisions (42 USC 13925(b)(2)) as many VOCA-funded agencies would be subject to VAWA grant conditions. We are very pleased that our recommendations were



followed, as OVC included similar confidentiality provisions in the Final Rule. NNEDV plans to circulate updated confidentiality materials to reflect the VOCA Final Rule.

Sub-recipient Project Requirements

§94.116 Purpose of VOCA-funded Projects (page 44532)

The Final Rule:

- Maintains requirement from Guidelines that sub-recipients must provide services to victims of federal crimes on the same basis as to victim of crime under State or local laws.
- Clarifies OVC policy that a victim's eligibility for direct services under the VOCA assistance program is not dependent on the victim's immigration status (as per PRWORA 1996)
 - OVC communicated this policy to VOCA State Assistance Administrators on June 28, 2010 in OVC Director Memorandum. The tri-agency joint letter from August 5, 2016 reiterates this provision.
- Clarifies that organizations may provide direct services regardless of a victim's participation in the criminal justice process.

§94.117 Cost of services; Sub-recipient Program income (page 44532)

The Final Rule states that victim service should be free but in some situations a service provider may be justified in charging for services or otherwise generating program income. Programs have to apply for a waiver. SAAs should consider whether charging victims for services is consistent with the project's victim assistance objectives and whether the sub-recipient is capable of effectively tracking program income. Program income must be used consistently with federal grant rules and the DOJ Grants Financial Guide.

§94.118 Project match requirements (page 44532-44533)

- The Final Rule maintains project match requirements at 25% (cash or in-kind) of the total cost of the VOCA-funded project.
- **State-level match:** SAA are authorized to contribute to match using non-federal funds for any (or all) sub-recipient projects, which essentially permits SAAs to provide a match at the state level.
- **Tribes and territories (except for Puerto Rico):** Are exempt from providing match due to capacity and lack of available funds.
- **Waivers:** OVC agrees other areas of the country may face similar circumstances and therefore, OVC will consider exceptions to the match upon request from the SAA.
 - *Waiver request must be supported by the SAA and justified in writing. Waivers are entirely at the Director's discretion, but the Director typically considers factors such as local resources, annual budget changes, past ability to provide match, and whether the funding is for new or additional activities requiring additional match versus continuing activities where match is already provided.*
- **Match sources:** Full list of match sources can be found on page 44533 of the Final Rule.

Sub-recipient allowable/unallowable costs

§94.119 Allowable Direct Services Costs (page 44533-44534)



The allowable direct services costs are essentially the same as those in existing Guidelines and Proposed Rule with some key differences. Please see below for further details on legal assistance, transitional housing and relocation, forensic exams and interviews and more. We recommend reading the full list and explanations on pages 44533-44534.

OVC is not encouraging States to significantly shift funding by allowing new activities. Rather the Final Rule allows more flexibility in funding. According to the preamble, these changes do not require a significant reallocation of resources.

- a. **Immediate emotional, psychological, and physical health and safety:** including but not limited to 10 subcategories.
 - *Emergency medical/health care:* The service provider should reasonably believe that any alternative source of payment would not be available in 48 hours.
- b. **Personal advocacy and emotional support:** including but not limited to 7 subcategories.
- c. **Mental health counseling and care**
- d. **Peer-support**
- e. **Facilitation of participation in criminal justice and other proceedings:** The rule clarifies that not this service is not limited to criminal justice proceedings but rather can cover any public proceeding.
- f. **Legal assistance:**
 - The rule clarifies that criminal defense and tort lawsuits are not allowable, however program can help the victim file a motion to vacate and/or expunge certain convictions based on status of being victim.
 - OVC has drafted the language of paragraph (f)(3) to be broad enough to include support legal assistance with victim-related family law matters and other non-tort legal services in a civil context that are necessary as a direct result of the victimization as allowable costs. Examples are included in the preamble but not the Rule. The illustrative (not comprehensive) list of non-tort, civil legal services in the preamble includes: proceedings for projective/restraining order or campus administrative protection/stay-away orders; family, child custody/support, divorce, contract, housing, and dependency matters, particularly for victims of intimate partner violence, child abuse, sexual assault, elder abuse, and human trafficking; immigration assistance for victims of human trafficking, sexual assault, and domestic violence; intervention with creditors, law enforcement (e.g., to obtain policy reports), and other entities on behalf of victims of identity theft and financial fraud; intervention with administrative agencies, schools/colleges, tribal entities, and other circumstances where legal advice or intervention would assist in addressing the consequences of a person's victimization.
 - OVC will issue supplementary guidance as may be needed to further clarify the applicability of the Rule in specific factual scenarios.
 - States retain broad discretion to set limits on the type and scope of legal services that it allows its sub-recipients to provide with VOCA funds.
- g. **Forensic medical evidence collection examinations:** The Final Rule does not require such examinations to meet the State standards but rather encourages sub-recipient to use special trained examiners such as SANEs to perform exams. The Rule encourages rather than

- h. mandates that crisis counselling or other services be offered in conjunction with the examination.
- i. **Forensic interviews:** The preamble explains why OVC maintains this as an allowable victim service costs, rather than considering it a supplantation of law-enforcement spending (see page 44524). The Final Rule defers to States to determine which organizations should be funded to provide this service.
- j. **Transportation**
- k. **Public awareness**
- l. **Transitional housing:**
 - The Final Rule provides examples of expenses typically associated with transitional housing to help illustrate allowable uses of funding. The preamble indicates that transitional housing is a necessary victim expense, particularly for victims of human trafficking, victims with disabilities abused by caretakers, domestic violence victims and their dependents, and sexual assault victims and that VOCA funds may be used for “housing and shelter purposes to the extent that such is necessary as a consequence of the victimization and for the well-being of the victim.”
 - Expenses include but are not limited to: travel, rental assistance, security deposits, utilities, and other costs incidental to the relocation to such housing, as well as voluntary support services such as childcare and counseling.
 - The Final Rule sets no limits set but the preamble encourages States to consider availability of affordable alternative and rental housing and other sources of support and housing for the victim, such as Section 8 Housing vouchers and waiting lists.
 - “OVC does not anticipate States using VOCA assistance funding to create new programs for transitional housing, though this would be permissible. Instead, OVC anticipates that States may allow VOCA-funded service providers to expand the range of services offered to victims, and supported by the VOCA subaward, to include transitional housing.”
 - The Rule allows States flexibility to use either Victim Assistance or Victim Compensation for transitional housing.
- m. **Relocation:**
 - The Final Rule does not limit the types of victims who are eligible to receive this assistance (as the Proposed Rule did). The Final Rule removes mortgage payments as allowable expenses (the expense was included in the Proposed Rule).
 - Expenses include but are not limited to, reasonable moving expense, security deposits on housing, rental expenses, and utility startup costs.

Services to incarcerated individuals: The Final Rule removes the prohibition against serving incarcerated victims from the Guidelines, “as the prohibition unnecessarily prevented States and communities from fully leveraging all available resources to provide services to these victims, who have been shown to have a great need for services.” No further limitations are set by OVC but should be set by the SAA. The preamble of the Final Rule asserts that this does not implicate the PREA penalty because this is a victim service, not a prison purpose. Further, VOCA funding is not subject to mandated reduction or reallocation for non-compliance under PREA.



Voluntary services: Unfortunately, the Final Rule did not include a voluntary services provision.

§94.120 Allowable Costs for Activities Supporting Direct Services (page 44534-44535)

The supporting activities can be standalone projects but should leverage/support direct victim services.

(a) *Coordination of activities:* The Final Rule includes this activity to give the SAAs the latitude to allow sub-recipients to use VOCA funds for activities coordinating victim services. Coalitions “to support and assist victims” are added. Other activities include but are not limited to, State-wide coordination of victim notification systems, crisis response teams, multidisciplinary teams, and other such programs.

(b) *Supervision of direct service providers:* When SAA determines that such staff are necessary and facilitate provision of direct services.

(c) *Multi-system, interagency, multi-disciplinary response to crime victims needs*

(d) *Contracts for professional services.* Included examples and required to pay a reasonable market rate.

(e) *Automated systems and technology:* This may be able to cover “comparable databases.” Subject to DOJ Financial Guide 2 CFR 200.

(f) *Volunteer training:* Can use direct services funds to train volunteers who provide direct services.

(g) *Restorative justice:* The Final Rule preserves this provision from the Guidelines. Specifically, such efforts must have “reasonably anticipated” beneficial or therapeutic value and victims must have the ability to withdraw. SAAs are required to consider the costs in relation to benefit to the victim.

§94.121 Allowable Sub-Recipient Administrative Costs (page 44535)

These allowable costs are substantially same as in those in the Guidelines.

Personnel costs; Skills training for staff; Training-related travel (newly covered); Organizational Expenses; Equipment and furniture (may only charge the prorated share of item that is not exclusively used for victim-related activities); Operating costs; VOCA administrative time; Leasing or purchasing vehicles; Maintenance, repair or replacement of essential items; Project evaluation (no cap on evaluation costs but SAA can cap).

§94.122 Expressly Unallowable Sub-Recipient Costs (page 44535)

- *Perpetrator rehabilitation and counseling:* Removes prohibition so that VOCA-funded service providers can provide services to victims who are incarcerated.
- *Victim attendance at conferences:* Removes prohibition but does not anticipate that organizations will use VOCA funds for this activity.
- *Purchasing vehicles:* The Final Rule gives States discretion to purchase or lease vehicles. This is a change from the Proposed Rule.
- *Indirect organizational costs:* Indirect – in line with 2 CFR 200 – can charge indirect costs to VOCA.

See Rule for full list of unallowable costs, *including: Lobbying; Research and studies* (evaluation is allowed); *Active investigation and prosecution of criminal activities; Fundraising; Capital expenses* (not allowed except as specifically allowed elsewhere); *Compensation for victims of crime* (not allowed except as otherwise allowed by other provisions in this part); *Medical care* (not allowed except as otherwise allowed); *Salaries and expenses of management.*