

FY2023 VOCA & SAFEPLAN CONTRACT CONDITIONS ANNOUNCEMENT
March, 2022

This announcement replaces the initial guidance MOVA issued in September of 2021 regarding these special conditions for Victims of Crime Act (VOCA) funds. The below special conditions will be in effect at the start of the FY2023 award cycle and all subrecipient agencies will be asked to certify compliance with these conditions as part of the contracting process for FY2023 VOCA and SAFEPLAN awards.

As the VOCA state administering agency (SAA) for Massachusetts, MOVA must comply with all applicable requirements of the Victims of Crime Act Assistance awards, which may be updated annually by the Office for Victims of Crime (OVC). Beginning in state fiscal year (SFY) 2023 (July 1, 2022), new federal special conditions connected to award number 2019-V2-GX-0025 will be in effect for MOVA and for all subrecipients of VOCA funds.

i. Determination of suitability to interact with participating minors

This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ) (or in the application for any subaward, at any tier), the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award (whether by the recipient, or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

The recipient, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at <https://ojp.gov/funding/Explore/Interact-Minors.htm> (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors) and are incorporated by reference here.

Best Practices for this Federal Requirement:

Please note that this condition applies to the agency's employees, volunteers, and others who are expected, or reasonably likely, to interact with any participating minor. More information and definitions of the terms included in this special condition can be found via the link shared above.

1. Establish written agency policies and procedures on the process by which the agency ensures that determination of suitability to interact with participating minors, as outlined in this special condition, is assessed with for any position funded in whole or in part with the award funds.
2. Create written determination of the individual's suitability to interact with minors.
3. Document that the following public sex offender and child abuse website/registries were checked:

- a. Dru Sjodin National Sex Offender Public Website: www.nsopw.gov
 - b. The website/public registry for each state (and/or tribe) in which the individual lives, works, goes to school, or has lived, worked, or gone to school at any time during the past five years
 - c. The website/public registry for each state (and/or tribe) in which the individual is expected to, or reasonably likely to, interact with a participating minor in the course of activities under the award
4. Document that the following background checks were completed:
 - a. The criminal history registry for each state in which the individual lives, works, or goes to school, or has lived, worked, or gone to school at any time during the past five years
 - b. The criminal history registry for each state in which the individual is expected to, or reasonably likely to, interact with a participating minor in the course of activities under the award
 - c. While a fingerprint search is included as part of this federal special condition, MOVA has determined that fingerprint searches are not available without a statutory mandate in Massachusetts and, therefore, will not be required of subrecipients by MOVA. The details of this requirement, as originally stated in the special conditions, can be found at <https://ojp.gov/funding/Explore/Interact-Minors.htm>. MOVA's interpretation of this component of the special condition is that a fingerprint search is not legally available and name-based searches are covered in sections (a) and (b) above.
5. Unless applicable law precludes it, with respect to either an initial determination of suitability or a subsequent reexamination, the subrecipient may not determine that a covered individual is suitable to interact with participating minors in the course of activities under the award if the covered individual meets the following criteria:
 - a. Withholds consent to a criminal history search required by this condition;
 - b. Knowingly makes (or made) a false statement that affects, or is intended to affect, any search required by this condition;
 - c. Is listed as a registered sex offender on the Dru Sjodin National Sex Offender Public Website;
 - d. To the knowledge of the subrecipient, has been convicted -- whether as a felony or misdemeanor -- under federal, state, tribal, or local law of any of the following crimes (or any substantially equivalent criminal offense, regardless of the specific words by which it may be identified in law):
 - (1) sexual or physical abuse, neglect, or endangerment of an individual under the age of 18 at the time of the offense;
 - (2) rape/sexual assault, including conspiracy to commit rape/sexual assault;
 - (3) sexual exploitation, such as through child pornography or sex trafficking;
 - (4) kidnapping;
 - (5) voyeurism; or
 - e. Is determined by a federal, state, tribal, or local government agency not to be suitable.
6. Document that the written determination, as outlined above, is reviewed and updated every five years.

Timeline: Effective July 1, 2022, subrecipient agencies should have written determinations and required background and registry checks on all applicable new hires/volunteers in place. Within this same timeframe, agencies should develop written determinations and complete required background and registry checks on all existing staff, volunteers, or others who are reasonably expected to interact with minors. These practices should remain in place for the duration of the award period.

ii. Employment eligibility verification for hiring under the award

The recipient (and any subrecipient at any tier) must:

- 1. Ensure that, as part of the hiring process for any position within the United States that is or will be funded (in whole or in part) with award funds, the recipient (or any subrecipient) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1) and (2).*
- 2. Notify all persons associated with the recipient (or any subrecipient) who are or will be involved in activities under this award of both— (1) this award requirement for verification of employment eligibility, and (2) the associated provisions in 8 U.S.C. 1324a(a)(1) and (2) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens.*
- 3. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and of the associated provisions of 8 U.S.C. 1324a(a)(1) and (2).*
- 4. As part of the recordkeeping for the award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.*

Allowable costs:

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

Rules of construction:

- 1. Staff involved in the hiring process*
For purposes of this condition, persons "who are or will be involved in activities under this award" specifically includes (without limitation) any and all recipient (or any subrecipient) officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.
- 2. Employment eligibility confirmation with E-Verify*
For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the recipient (or any subrecipient) may choose to participate in, and use, E-Verify (www.everify.gov), provided an appropriate person authorized to act on behalf of the recipient (or subrecipient) uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded (in whole or in part) with award funds.

3. *"United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.*
4. *Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.*
5. *Nothing in this condition shall be understood to relieve any recipient, any subrecipient at any tier, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1) and (2).*

Best Practices for this Federal Requirement:

1. Establish written agency policies and procedures that ensure the hiring process for any position funded in whole or in part with the awards funds properly verifies employment eligibility consistent with the provisions of 8 U.S.C. 1324a(a)(1) and (2).

2. Check employment eligibility as part of all hiring for all positions that are or will be supported by this award (either in whole or in part). This can be completed in two ways:

1. I-9 Form
 - Agencies that currently check employees' employment eligibility with the I-9 form can continue to do so, if they choose, and be compliant with the Employment Eligibility Verification requirement.
 - Guidance for how to complete the I-9 form can be found here: <https://www.uscis.gov/i-9-central/handbook-employers-m-274>
2. E-verify.gov
 - Agencies can choose to use E-verify.gov to check employees' employment eligibility. Use of E-verify is not required.
 - Guidance on how to use the website can be found here: <https://www.e-verify.gov/employers>

3. Maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

4. Notify all persons involved in activities under the award of this special condition and the employment eligibility provisions of 8 U.S.C. 1324(a)(1) and (2) and provide any training necessary.

Timeline: Effective July 1, 2022, agencies must have employment eligibility verification for hiring under the award in place for all employees that are or will be funded (in whole or in part) with award funds. Subrecipient agencies must develop policies and procedures for employment eligibility verification that are in compliance with the above requirements and state and federal employment laws, as required in MOVA's Policies and Procedures Manual, and these policies and procedures must be followed by the subrecipient agency for the duration of the award period.

MOVA Monitoring of Subrecipient Compliance with Special Conditions

Subrecipients are required to be in compliance with all VOCA policies and procedures and VOCA special conditions. In order to monitor compliance with the above special conditions MOVA may:

- Require all subrecipient agencies to certify compliance with the above special conditions
- Review subrecipient written policies and/or procedures used to determine suitability to interact with participating minors
- Request documentation, excluding any confidential or protected information, that ensures the required determination of suitability for individuals who may interact with participating minors is in place
- Require all subrecipient agencies to certify compliance with all applicable state and federal employment laws
- Review subrecipient hiring process documentation to ensure inclusion of employment eligibility verification for hiring
- Request documentation, excluding any confidential or protected information, that ensures the required employment eligibility verification for hiring under the award is in place

We advise all subrecipients to work with their HR and legal teams in the development and execution of policies and procedures related to compliance with these and all special conditions.