

Fund shares under a realization method and no changes in fair market value that would have been reported under the NAV method. Therefore, Shareholder may use the NAV method for the shares in Fund for Year 1. Shareholder uses the NAV method for the shares with its taxable year as the computation period. Shareholder's net investment in Fund for Year 1 equals \$128,664.66 (the \$1,253,256.37 in purchases, minus the \$1,124,591.71 in redemptions). Shareholder's Year 1 gain therefore is \$1,085.34, which is the ending value of Shareholder's shares (\$5,129,750.00), minus the starting basis of Shareholder's shares (\$5,000,000.00), minus Shareholder's net investment in the fund for the taxable year (\$128,664.66). The gain of \$1,085.34 is treated as short-term capital gain. Shareholder's starting basis for Year 2 is \$5,129,750.00. Shareholder also must include the \$32,158.23 in dividends in its income for Year 1 in the same manner as if Shareholder did not use the NAV method.

(iii) If Shareholder had instead adopted the calendar month as its computation period, it would have used the NAV method for every month of Year 1, even though prices of Fund shares may have been fixed for some months.

(e) *Effective/applicability date.* Except as provided in the following sentence, this section applies to taxable years ending on or after July 8, 2016. For taxable years ending on or after July 28, 2014, and beginning before July 8, 2016, however, shareholders of MMFs may rely either on this section or on § 1.446-7 of the 2014 proposed regulations REG-107012-14 (79 FR 43694).

■ **Par. 3.** Section 1.6045-1 is amended by revising paragraph (c)(3)(vi) to read as follows:

**§ 1.6045-1 Returns of information of brokers and barter exchanges.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(vi) *Money market funds*—(A) *In general.* No return of information is required with respect to a sale of shares in a regulated investment company that is permitted to hold itself out to investors as a money market fund under Rule 2a-7 under the Investment Company Act of 1940 (17 CFR 270.2a-7).

(B) *Effective/applicability date.* Paragraph (c)(3)(vi)(A) of this section applies to sales of shares in calendar years beginning on or after July 8, 2016. Taxpayers and brokers (as defined in § 1.6045-1(a)(1)), however, may rely on paragraph (c)(3)(vi)(A) of this section for

sales of shares in calendar years beginning before July 8, 2016.

\* \* \* \* \*

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: June 15, 2016.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF JUSTICE

### 28 CFR Part 94

[Docket No.: OJP (OVC) 1523]

RIN 1121-AA69

### Victims of Crime Act Victim Assistance Program

**AGENCY:** Office for Victims of Crime, Justice.

**ACTION:** Final rule.

**SUMMARY:** The Office for Victims of Crime (“OVC”) of the U.S. Department of Justice’s Office of Justice Programs (“OJP”), publishes this final rule to implement the victim assistance formula grant program (“Victim Assistance Program”) authorized by the Victims of Crime Act of 1984 (“VOCA”). VOCA authorizes OVC to provide an annual grant from the Crime Victims Fund to each State and eligible territory for the financial support of services to crime victims by eligible crime victim assistance programs. The rule codifies and updates the existing VOCA Victim Assistance Program Guidelines (“Guidelines”) to reflect changes in OVC policy, needs of the crime victim services field, and VOCA itself.

**DATES:** *Effective Date:* This rule is effective August 8, 2016.

*Compliance Date:* See 28 CFR 94.101(d), as added by this final rule.

**FOR FURTHER INFORMATION CONTACT:** Toni Thomas, Office for Victims of Crime, at (202) 307-5983.

#### SUPPLEMENTARY INFORMATION:

#### I. Executive Summary

##### A. Purpose of the Regulatory Action

The Victims of Crime Act of 1984 (VOCA) authorizes the Office for Victims of Crime (OVC) to provide an annual formula grant from the Crime Victims Fund to each State and eligible territory for the purpose of providing assistance to victims of crime.<sup>1</sup> These

<sup>1</sup> Pursuant to 42 U.S.C. 10603(d)(1), and as used in this preamble and rule unless context indicates

annual Victim Assistance Program formula grants are used by the States to provide financial support to eligible crime victim assistance programs. See 42 U.S.C. 10603. OVC promulgates this rule pursuant to the rulemaking authority granted to the OVC Director by 42 U.S.C. 10604(a). This rule codifies and updates the existing Program Guidelines to reflect changes in OVC policy, the needs of the crime victim services field, and VOCA itself.

#### B. Summary of the Major Provisions of the Final Rule

Most provisions in this final rule are substantively the same as the corresponding provisions of the Guidelines. The final rule reorganizes the program rules into six major divisions: (1) *General Provisions*; (2) *State Administering Agency (“SAA”) Program Requirements*; (3) *SAA Use of Funds for Administration and Training*; (4) *Sub-Recipient Program Requirements*; (5) *Sub-Recipient Project Requirements*; and (6) *Sub-Recipient Allowable/Unallowable Costs*.

The rules in the *General Provisions* heading do not depart substantively from the Guidelines. OVC defines frequently-used terms, most of which are consistent with those in the Guidelines. OVC adds a new definition of the statutory term “victim of child abuse” to make clear OVC’s existing flexible approach of allowing States to address a broad variety of harm to children. Additional technical changes were made in response to comments, and are described below.

The *SAA Program Requirements* heading sets forth general considerations for SAA use of VOCA funding under the VOCA Assistance Program at the State level, and sets forth the rules SAAs must follow in meeting the statutory eligibility and certification requirements. OVC clarifies that pass-through funding is permissible, and sets parameters for such funding arrangements. OVC explains how States must allocate VOCA funding among various types of victim service programs, but does not change the allocation percentages set out in the Guidelines. OVC adds a requirement that States maintain a documented methodology for selecting all sub-recipients. Finally, OVC maintains the default monitoring requirements of the Guidelines, but now permits States to seek a waiver from the OVC Director to use alternatives.

otherwise, “the term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and any other territory or possession of the United States.”

The revised *State Administering Agency Use of Funds for Administration and Training* heading updates the Guideline provisions regarding SAA use of funds for administration and training to make those consistent with statutory changes that occurred after the Guidelines were issued in 1997. The rule lists allowable administrative and training costs at the SAA level, all of which are consistent with those set out in the Guidelines.

The *Sub-Recipient Program Requirements* heading sets out the eligibility and organizational requirements for sub-recipients. These provisions mostly track the Guidelines, except that OVC adds a provision addressing non-disclosure of confidential or private information.

The *Sub-Recipient Project Requirements* heading sets out rules that VOCA-funded victim service projects must follow. These provisions generally are consistent with the Guidelines. OVC maintains the existing project match rules, requiring that sub-recipients provide a 20% project match, but excepting U.S. territories (not including Puerto Rico). OVC adds an exception to match for projects undertaken by American Indian and Alaskan Native tribes, and projects that operate on tribal lands, as these projects, like those operating in U.S. territories, often have difficulties accessing matching resources.

The *Sub-Recipient Allowable/Unallowable Costs* heading lists activities that sub-recipients may undertake using VOCA funding. The majority of the listed costs are the same as those listed in the existing Guidelines; but OVC makes some substantive changes. OVC now allows the States to provide a broader array of legal support services (outside of the emergency context permitted by the Guidelines) to victims, should States choose to do so. OVC removes the prohibition on providing services to incarcerated victims (*e.g.*, victims of sexual assault in prison). Although VOCA funding may not support prison costs, such as prison guard salaries or administrative expenses, States are no longer prohibited from allowing VOCA-funded organizations to assist incarcerated victims. OVC also adds greater flexibility for States to support transitional housing and relocation expenses using VOCA funds. OVC adds greater flexibility for States to allow sub-recipients to use VOCA funds for coordination activities, which help leverage community resources to provide better and more cost-effective direct services. Finally, to better align the program rules with the government-

wide grant rules at 2 CFR part 200, OVC makes allowable indirect organizational costs at the sub-recipient level, by removing the provision in the Guidelines that prohibited sub-recipients from charging these to VOCA funds.

### C. Cost and Benefits

As discussed in more detail under the Executive Orders 12866 and 13563 (in the Regulatory Review discussion below), the rule clarifies and updates existing Guidelines, but does not alter the existing program structure. Updating the existing Guidelines to clearly and accurately reflect the statutory parameters will facilitate State compliance with VOCA, and thus avoid potentially costly non-compliance findings. The rule makes only a few substantive changes to the existing Guidelines, and most of the changes expand State flexibility in the use of VOCA funding. Some changes, like allowing more flexibility to coordinate and leverage community resources, and adopt alternative monitoring strategies, impose no costs but allow States to use existing funding more efficiently. Other changes, which allow States to allocate funding to services not presently allowable under the Guidelines, could expand the types of victim service organizations funded with VOCA funds and the services provided by existing organizations. Such allocations of funding, however, are not mandated under the rule, and each State will continue to make the final decision about whether to change its funding allocations. This is not a change from the present discretion that States have to allocate funding according to their priorities. OVC anticipates that most States will continue to allocate the majority of VOCA funding to victim services for certain types of crimes (*i.e.*, intimate partner violence, sexual assault, child abuse) at consistent levels and that any potential reallocations would be relatively minor (even when taken in aggregate across States) in comparison to the overall range of allowable victim services, and thus unlikely to create new costs or significant fund transfers. In any event, the real benefits of additional allowable services for currently underserved and unserved victims are significant.

## III. Background

### A. Overview

This rule implements OVC's Victim Assistance Program, a formula grant program authorized by Section 1404 of the Victims of Crime Act of 1984, Public Law 98-473, codified at 42 U.S.C.

10603. This section of VOCA authorizes OVC to provide an annual grant from the Crime Victims Fund to each State for the financial support of services to victims of crime by eligible crime victim assistance programs. This rule supersedes the VOCA Guidelines (published at 62 FR 19607) that have been in effect since April 22, 1997, and reflects changes in OVC policy, the needs of the crime victim services' field, and VOCA itself, as well as the comments submitted in response to the Notice of Proposed Rulemaking.

OVC's Victim Assistance Program is funded from the Crime Victims Fund. The Fund receives Federal criminal fines, penalties, and assessments, as well as certain gifts and bequests, but does not receive any general tax revenue. The Crime Victims Fund is administered by OVC and amounts that may be obligated therefrom are allocated each year according to the VOCA formula at 42 U.S.C. 10601. The amount annually available for obligation through the VOCA formula allocations typically has been set by statute, through limits in the annual DOJ appropriation act, at less than the total amount available in the Fund. The VOCA formula specifies that (in most years) the first \$20M available in the Fund for that year will go toward child abuse prevention and treatment programs, with a certain amount to be set-aside for programs to address child abuse in Indian Country. After that, such sums as may be necessary are available to the Federal Bureau of Investigation and the U.S. Attorneys Offices to improve services to victims of Federal crime, and to operate a victim notification system. The remaining balance is allocated as follows: 47.5% for OVC's Victim Compensation Program, 47.5% for OVC's Victim Assistance Program, and 5% for the OVC Director to distribute in discretionary awards in certain statutorily defined categories. Generally, under the distribution rules for the Victim Compensation Program, if a portion of the 47.5% available for Compensation is not needed for that purpose, it is (per the statutory formula) made available to augment the Victim Assistance Program. The Victim Assistance Program distributes funds to States as mandated by VOCA, at 42 U.S.C. 10603. The VOCA statutory distribution formula provides each State with a base amount (presently \$500,000 for each State and the District of Columbia; \$200,000 for each eligible territory), and distributes the remainder proportionately, based on population.

*B. History of This Rulemaking*

OVC published the Final Program Guidelines, Victims of Crime Act, FY1997 Victim Assistance Program on April 22, 1997 (62 FR 19607). Those Guidelines were based on OVC experience with the Victim Assistance Program, legal opinions rendered since the inception of the program in 1986, and comments from the field on the Proposed Program Guidelines, which were published in the **Federal Register** on February 18, 1997 (62 FR 7256).

On September 3, 2002, OVC published a notice of Proposed Program Guide at 67 FR 56444, seeking comments to refine the administration of the Victim Assistance Program further; thereafter, however, OVC chose not to issue final guidance to supersede the 1997 Guidelines. After receiving comments on the 2002 Proposed Program Guide, OVC instead decided to pursue the publication of codified program regulations rather than merely revise the guideline document. Throughout 2010, OVC sought preliminary input from the victim services field regarding improving victim services and potential modifications to the Victim Assistance Program rules that would facilitate such improvement.

OVC incorporated this input into a Notice of Proposed Rulemaking, which it published at 78 FR 52877 (Aug. 27, 2013), and OVC received 108 public comments over a 60 day period. OVC considered all comments submitted during the comment period in drafting this final rule.

**IV. Discussion of Comments and Changes Made by This Rule**

The 1997 Guidelines have been outpaced by changes in VOCA, developments in the crime victim services field, technological advances, and new approaches to State administration of VOCA funding. This rule updates the program Guidelines to account for developments over the last decade and a half, and to reflect more accurately program parameters applicable to each participating entity. In so doing, OVC hopes to allow administering agencies and victim service providers fully to leverage the progress that the field has made over the last decade in knowledge of victim needs, victim service strategies, and efficient program administration, with the end goal of assisting crime victims more effectively. Many of the provisions in the existing Guidelines have been retained in substance, though the text has been reformatted in some cases. OVC describes below the main

substantive changes to the program Guidelines, and the comments received.

Structure and General Comments

The rule reorganizes the provisions of the Guidelines, primarily to accommodate the requirements for publication in the Code of Federal Regulations (CFR), but also to organize information more logically. The rule omits repetition of statutory language, except where needed for context and ease of use. OVC notes that the rule is drafted to be read *in conjunction* with VOCA (42 U.S.C. 10603). OVC also uses consistent terminology throughout the document.

Some commenters expressed concern that the proposed rule conflated provisions applicable to VOCA-funded projects in some cases with provisions relating to a VOCA-eligible program, and several endorsed the National Association of Victim Assistance Administrators' (NAVAA) suggestions for reorganizing it. In the final rule, OVC more clearly distinguishes between the two concepts, and adopts most of the NAVAA's helpful suggestions for reorganizing the rule.

In connection with reorganizing the provisions of the final rule for greater logical consistency and clarity, OVC has moved or renumbered many of the sections of the proposed rule. In order to assist readers, a derivation table is included listing the sections of the final rule and the corresponding section or sections of the proposed rule. The public comments on provisions of the proposed rule are discussed below according to where those provisions are codified in the final rule.

Final rule	NPRM
§ 94.101 .....	§ 94.101
§ 94.102 .....	§ 94.102
§ 94.103 .....	§ 94.103; § 94.112(i)-(j);
§ 94.103(f),(g) .....	NEW
§ 94.104 .....	§ 94.105; § 94.108(d)
§ 94.105(a),(b) .....	§ 94.106
§ 94.105(c) .....	New
§ 94.106 .....	§ 94.107
§ 94.107(a)-(d) .....	§ 94.110
§ 94.107(e) .....	§ 94.118(f)
§ 94.108(a),(b)(1) .....	§ 94.111(b),(c)
§ 94.108(b)(2) .....	§ 94.103(b)(3)
§ 94.109(a),(b)(1-11) .....	§ 94.111(a); § 94.112
§ 94.109(b)(12) .....	New
§ 94.110 .....	§ 94.113
§ 94.111 .....	§ 94.104(a); § 94.106(c)
§ 94.112(a) .....	§ 94.104(b);
	§ 94.108(b)-(e)
§ 94.112(b) .....	§ 94.104(c)-(e)
§ 94.112(c) .....	§ 94.115(d)
§ 94.113 .....	§ 94.104(g);
	§ 94.115(a)-(c)
§ 94.114 .....	§ 94.104(h)
§ 94.115 .....	NEW
§ 94.116 .....	§ 94.114

Final rule	NPRM
§ 94.117 .....	§ 94.115(e); § 94.109
§ 94.118 .....	§ 94.104(f); § 94.116
§ 94.119 .....	§ 94.117
§ 94.120(a)-(f) .....	§ 94.118
§ 94.120(g) .....	New
§ 94.121 .....	§ 94.108(a); § 94.119
§ 94.122 .....	§ 94.120

Many commenters expressed their desire that the Crime Victims Fund "cap" be raised substantially. As such a change requires legislative action, it is beyond the scope of OVC's authority to do so. However, we note that the Department of Justice Fiscal Years 2015 and 2016 Appropriation Acts did substantially increase—more than threefold—the cap for those years. *See* Department of Justice Appropriation Act, 2015, Public Law 113–235, Div. B, Title II, Sec. 510 (setting the obligation cap at \$2.361B compared to \$745M available to OVC in FY 2014); Department of Justice Appropriation Act, 2016, Public Law 114–113, Div. B, Title II, Sec. 510 (setting the cap at \$3.042B, of which approximately \$2.663B is available to OVC).

General Provisions

§ 94.101 Purpose and Scope; Future Guidance; Construction and Severability; Compliance Date

The general provisions of the final rule—including statement of purpose, future guidance, and construction and severability—are largely unchanged from the proposed rule. OVC added a paragraph describing the date on which SAAs must comply with the rule. 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. Pre-award obligations are a standard practice of SAAs under the VOCA Assistance Program, as the annual appropriation cycle typically does not permit for awards to be made until late in the fiscal year. 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, and thus it does not require that SAAs anticipate rules that are not in effect when making such obligations. 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. As most of the changes in this rule are of a permissive nature and expand SAA discretion, OVC does not anticipate that implementation of the rule will be burdensome, though some effort by SAAs to understand the changes and communicate these to applicants for sub-awards will be necessary.

#### § 94.102 Definitions

The final rule contains several terms and definitions that are used throughout. These are set out in section 94.102 for ease of reference.

The definition of *crime victim* and *victim of crime* remains unchanged from the Guidelines, and is meant to be a broad definition, taking into account many kinds of harm resulting from criminal acts. States are encouraged to include those domiciled in their states who are victimized while working in their official capacities overseas as VOCA eligible victims.

Some commenters liked the proposed definition, but others wanted OVC to include more examples in the definition to illustrate coverage of a broader range of harms. OVC kept the more conceptual definition from the proposed rule, as it is substantively the same as the long-standing Guideline definition and because—as one commenter pointed out—this definition has been sufficiently broad to encompass the harm from various crimes on a wide and diverse range of individuals.

OVC has added a definition of the term *spousal abuse* that clarifies that the term includes domestic and intimate partner violence. Spousal abuse was the terminology used in the victim services field in the 1980s, and consequently in VOCA, but the term has since fallen out of use, as it is under-inclusive of the range of relationships in which this type of victimization frequently occurs. OVC retains the term in the final rule because it is a statutory term, but clarifies that OVC understands it to encompass domestic and intimate partner violence. This is consistent with longstanding OVC practice and the Guidelines, which use the term “domestic abuse” when describing the priority category of “spousal abuse.” Several commenters supported the proposed definition, but asked that OVC include the more commonly-used term “domestic violence” in the definition. OVC agrees, and has done this. OVC has also removed “dating violence,” as this concept is encompassed already by the more general concept of “intimate

partner violence.” Some commenters asked that OVC clarify how this definition (which affects the priority category of “spousal abuse”) would affect LGBTQ survivors of domestic or intimate partner violence. OVC notes that States may serve (and count those services toward the priority category) all victims of domestic and intimate partner violence—encompassing violence or abuse by one person against another in a domestic context or intimate-partner context—as the OVC definition does not require legal recognition of any particular relationship, nor does it implicate State or territorial laws concerning marriage rights.

A commenter noted that OVC did not propose to define “sub-recipient” or “VOCA project,” and asked that OVC define these terms so as to differentiate between a VOCA-funded project, and the organization that is eligible to receive VOCA funds to undertake the project. OVC agrees and adds these definitions, and has made conforming changes throughout the rule.

The final rule adds a definition of the statutory term *victim of child abuse*, in order to clarify that the term covers a broad variety of harm to children. Child abuse victims are a statutorily-mandated priority category, and the clarification makes plain that VOCA-funded State victim assistance programs may support a broad variety of victim assistance projects that address the abuse of children.

OVC received many comments on the proposed definition of child abuse. Many commenters supported the proposed definition. Other commenters supported the proposed definition, but recommended changes or expressed concerns about certain parts of it. One commenter worried that the inclusion of the concept of children exposed to violence may lead states to view a non-offending parent who cannot leave an abusive household as a co-offender. OVC notes that the definition of child abuse in this rule does not control (or affect) how a state views or treats potential offenders. Nonetheless, 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 of other action constituting abuse or neglect, is itself abuse or neglect. A commenter asked that the definition encompass sex and labor trafficking, and several others asked OVC to include slurs and family rejection as examples of the emotional abuse of children encompassed by the definition. OVC notes that the definition of child abuse is sufficiently broad to encompass these harms without listing

specific abusive activities, if States consider them to be child abuse. Some commenters worried that the inclusion of exposure to violence would dilute available resources, and confuse States operating victim assistance programs.

OVC acknowledges resource limitations facing many States, but keeps the expanded definition in the final rule to allow States to prioritize within the category based on local capacity and needs. The Department’s own Defending Childhood initiative demonstrated the importance of services for children exposed to violence, and the new definition will permit services addressing this. OVC, in response to several comments, has clarified in the definition that it encompasses harm to children, and is not meant to include adults who were victimized as children. This does not, however, preclude States from funding services to adults victimized as children; it merely means that States cannot count such services under the child-abuse priority category.

#### SAA Program Requirements

##### § 94.103 Purpose of State-Level VOCA Funding; SAA Eligibility

Section 94.103(a) sets forth the purpose of OVC’s annual VOCA formula grants to the States. Several commenters asked that OVC re-draft the language to make it less confusing. OVC agrees and has done so. Commenters also asked that OVC add a statement about State discretion in determining sub-award recipients and amounts. OVC agrees and has added a sentence accordingly.

Section 94.103(b) sets forth the general rules for State eligibility certifications required by VOCA. OVC requires States to submit these certifications annually in their applications for funding. Reporting and technical requirements specific to a given fiscal year are set out in the annual program solicitation, or in supplemental OVC communications if time does not permit publication in the solicitation.

Section 94.103(c) clarifies that a SAA may award its VOCA funds to another organization to distribute—known as pass-through administration—and highlights SAA obligations with regard to use of administrative and training funds, monitoring, and reporting should this method be used. Several commenters supported pass-through administration, but advocated that pass-through entities should have specific expertise and experience related to the use of the funding (e.g., a pass through entity administering funds for sexual assault services would have experience/expertise related to sexual violence).

OVC does not disagree with the commenters' views, but believes that States are in the best position to choose which entity should administer pass-through funding, and thus maintains the rule as proposed. A commenter asked for clarification regarding the proposed requirement that SAAs not use a pass-through mechanism to bypass the statutory limitation on use of administrative funds. OVC has rewritten this statement to be clearer.

A commenter was concerned that the proposed rule eliminated language in the guidelines about things that States should consider in strategic planning and asked that OVC add it back to the final rule. OVC agrees that the language is desirable and has added a new paragraph (d) with this language. Finally, several commenters expressed concern that OVC did not highlight the need for States to consider sustainability of services in strategic planning. OVC agrees that sustainability is an important consideration, and has added this to paragraph (d).

Section 94.103(g) sets forth that SAAs shall, upon request, and consistent with 2 CFR 200.336, permit OVC access to all records related to the use of VOCA funding. Access to SAAs' records is subject to the provision of the government-wide grant rules at 2 CFR 200.336, which permits access to the true names of crime victims only in extraordinary and rare circumstances, not for routine monitoring, and requires protection of sensitive information by all agencies involved if access is granted.

#### § 94.104 Allocation of Subawards

OVC moved the provisions of proposed section 94.104, *Eligible crime victim assistance programs*, to a new heading titled "Sub-recipient Program Requirements," which includes sections 94.111 through 94.115 of the final rule. Comments on the proposed section 94.104 are addressed below in the discussion of sections 94.111 through 94.114.

In the final rule, section 94.104, *Allocation of subawards* (which was proposed as section 94.105), sets forth—pursuant to 42 U.S.C. 10603(a)(2)(A) (priority category), and (B) (underserved category)—how SAAs must allocate their subawards. The allocation amounts in the final rule are the same as those in the Guidelines and proposed rule. Some commenters noted that victims of a priority category might also be underserved victims in some circumstances (e.g., child victims of sex trafficking might be underserved in a particular jurisdiction, however, sex trafficking of a minor would also be

child sexual abuse), and that this causes confusion in reporting allocation amounts to OVC. Moreover, some victims with certain demographics (e.g., LGBTQ, American Indian/Alaskan Native) may be underserved even in the priority categories (e.g., victims of sexual assault). In response, the final rule clarifies that SAAs may count funds allocated to such projects in either the priority or underserved category, but not both.

Section 94.104(c) sets out the criteria by which SAAs must identify (for allocation of funds, reporting, and compliance purposes) services that assist previously underserved populations of victims of violent crime. SAAs must identify such a service for underserved victims of violent crime by the type of crime they experience (e.g., victims of elder abuse) or the characteristics of the victim (e.g., LGBTQ victims), or both (e.g., victims of violent crime in high crime urban areas). Underserved victims may differ between jurisdictions, but some examples of victim populations often underserved at the time of this rulemaking may include, but are not limited to, DUI/DWI victims; survivors of homicide victims; American Indian/Alaskan Native victims in certain jurisdictions with insufficient victim service resources; victims of physical assault; adults molested as children; victims of elder abuse; victims of hate and bias crimes; victims of kidnapping; child victims and adult survivors of child pornography; child victims of sex trafficking; victims of violent crime in high crime areas; LGBTQ victims; victims of federal crimes, victims of robbery; and victims of gang violence. OVC has removed from the final rule the examples of possibly underserved victim populations, as such a list may change over time and is more appropriately set out in the preamble and supplementary OVC guidance, as necessary.

A commenter asked that OVC add economic crimes, such as identity theft, to the list of examples of underserved victims. OVC notes that, for the underserved victim category, VOCA requires funding be allocated to projects serving "previously underserved populations of victims of *violent crime*", and identity theft is not a violent crime. OVC, therefore, declines to make the change, but does note that States may still fund services for victims of such crimes, but cannot count those services toward meeting the required allocation for the underserved victim category.

A commenter asked that OVC increase the percentage of funding required to be allocated to underserved populations.

OVC has kept the mandated percentage at its present level, which balances the need for stability in state victim assistance funding with the need to ensure State victim assistance programs are responsive to emerging needs. The commenter also asked that OVC clarify that the exception allowing States to deviate from the underserved and priority percentages should be used sparingly. OVC notes that such requests are extremely rare (OVC has record of only one); thus, as a practical matter, an additional limitation of the exception is unnecessary. Other commenters asked OVC to require States to consult with sub-recipients prior to requesting approval to change allocations. As explained above, OVC anticipates such requests will be extremely rare, and declines to add such a requirement. The same commenter asked that OVC not tie exceptions for allocations for the sexual-assault priority category to overall crime rates, explaining that crime rates in a given time period are not necessarily reflective of victim service needs during the corresponding time period, as victims may not seek services immediately. OVC agrees, and the final rule allows other types of data to be used in supporting an exemption request.

A commenter asked that OVC require States to consult with rape crisis centers and sexual assault coalitions about the needs of sexual violence victims. OVC agrees that such consultation may be useful, but declines to include such a requirement in the rule, as OVC prefers to allow States to consult with a wide variety of stakeholders as appropriate.

Section 94.104(e) sets for the minimum requirements for SAAs sub-award process. It requires that SAAs have a documented methodology for selecting sub-recipients, follow DOJ grant rules regarding conflicts of interest, and encourages SAAs to fund eligible sub-recipients through a competitive process, which is described.

The proposed rule would have required competition of all sub-awards. Some commenters liked the proposed competition requirement, but others were opposed to it. Several commenters noted that requiring competition could increase administrative costs for SAAs, and could destabilize small victim assistance programs that would no longer be able to rely on consistent funding. Commenters noted that this may decrease the availability of services in rural areas where there are not many providers. A commenter from a SAA explained that it uses a conduit funding process in which it distributes funds to local victim witness units based on a formula, and these units then sub-award

the funding to local non-profit victim service organizations in accordance with State and county procurement rules. The commenter expressed concern that a competition requirement may undermine this process. Other commenters expressed concern that the requirement might cause problems with State contract cycles, and could undermine some prosecutor-based victim-witness assistance programs. Commenters also questioned whether there is evidence that competition creates innovation.

OVC appreciates the thoughtful comments submitted in response to this proposal, and recognizes the importance of allowing States discretion in determining which organizations receive funds and in what amounts. Due to the potential administrative burden of requiring competition (particularly in jurisdictions with a limited number of SAA staff), OVC has not included such a requirement, though OVC does encourage SAAs to use a competitive process where feasible.

Many commenters expressed their opinion that VOCA funding should not be used as seed money for new organizations. OVC notes that any organization funded with VOCA Assistance funding—even through a competitive process—must meet the statutory program eligibility criteria, which requires either a record of effective victim services and financial support from non-VOCA funding, or substantial support from non-VOCA funding. One commenter asked that OVC require States to have a strategic state plan for allocating funding. The final rule encourages States to develop a funding strategy, and requires States to have a documented method of making funding decisions.

#### § 94.105 Reporting Requirements

OVC renumbered this section from 94.106 in the proposed rule to 94.105 in the final rule. This section sets out SAA reporting requirements. The two key reports—subgrant award reports and performance reports—are the same reports required by the Guidelines, and the proposed rule. The rule does not specify time or manner in which these reports are to be submitted. The Government Performance and Results Modernization Act of 2010, Public Law 111–352 (Jan. 4, 2011), shifted many federal performance reporting requirements to a quarterly default, and OVC has changed the default performance reporting period in the rule accordingly. OVC will communicate the technical details of each year's reporting requirements to grantees via annual

program solicitations and supplemental guidance.

A commenter noted that multiple budget revisions may occur during the grant period, and that the proposed requirement that SAAs update the subgrant award report within 30 days of such revisions would be burdensome. The commenter requested that OVC retain its current practice of allowing SAAs to submit a revised subgrant award report before project closeout. In response, OVC notes that the subgrant award report contains only minimal budget information, and the importance of having accurate and timely information on subawards outweighs the minimal additional burden of updating this report within the specified timeframe. Recent upgrades to OVC's performance reporting systems should reduce the burden on SAAs as subrecipients now have the ability to enter SAR data directly. The final rule keeps the thirty-day reporting requirement.

Another commenter suggested that OVC should require additional reporting, specifically on unmet needs of victims and the estimated costs of providing such services. OVC declines to add such a requirement to the rule. One commenter suggested that the final rule should allow flexibility for OVC to change the reporting period for the performance report; OVC agrees and has added this but keeps the Federal fiscal year as the default reporting period.

#### § 94.106 Monitoring Requirements

OVC renumbered this section from 94.107 in the proposed rule to 94.106 in the final. This section sets out the SAA's obligation to monitor its sub-awards. Many commenters complained that the proposed two-year on-site monitoring timeframe would be too burdensome and would be difficult for large jurisdictions to implement, and may lead to unintended consequences, such as SAAs' making fewer awards but of larger dollar amounts. Commenters pointed out that many states use risk assessment tools to determine priority for on-site monitoring, and some requested that OVC make the default rule three years instead of two years. Another commenter asked that OVC clarify that SAAs may request alternative monitoring plans as well as alternative monitoring frequency.

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 VOCA Funds for Administration and Training

##### § 94.107 Administration and Training

OVC renumbered this section from 94.110 in the proposed rule to 94.107 in the final rule. This section is substantively unchanged from the proposed rule, except that OVC clarifies that SAAs must certify, pursuant to VOCA, at 42 U.S.C. 10604(h), in the notification of use of training/administrative funds, that they will not use VOCA funds to supplant State or local government funding. (The substantive rules regarding supplantation are set out in the next section, section 94.108.)

Overall, this section makes the program rules match the statutory provisions, which had changed after issuance of the Guidelines. VOCA limits administrative and training costs to five percent total for the combined costs of administration and training at the SAA level.

##### § 94.108 Prohibited Supplantation of Funding for Administrative Costs

OVC renumbered this section from 94.111 in the proposed rule, to 94.108 in the final rule, and re-titled it to more accurately reflect what the section addresses. (Proposed section 94.108(a) is moved to section 94.121 in the final rule. Proposed section 94.108(b) through (e) is moved to section 94.112 in the final rule.) Section 94.108 sets out the rules for SAA use of VOCA funds for administrative costs and prohibits supplantation of State and local government funding with VOCA funding.

One commenter asked whether the baseline is to be established and documented on a one-time basis or each year of the grant. OVC currently requires SAAs to document a baseline each fiscal

year, based on its expenditures for administrative costs during that fiscal year and the previous fiscal year. A commenter pointed out that OJP has a definition of supplanting in its Financial Guide that differs from that in the proposed rule, and suggested that OVC simply adopt the DOJ Grants Financial Guide definition of the term instead of setting forth a separate definition. OVC agrees and has revised this paragraph to reference the Financial Guide definition. OVC requires SAAs to certify that they are not supplanting State administrative support for the State crime victim assistance program with VOCA funding.

#### § 94.109 Allowable Administrative Costs

OVC renumbered this section from 94.112 in the proposed rule, to 94.109 in the final rule. (Proposed section 94.109 is moved to section 94.117 in the final rule.) Section 94.109 sets out allowable administrative costs.

Several commenters asked OVC to add a category for “activities that impact the delivery and quality of services to crime victims throughout the state,” including training managers of victim service agencies, State-wide victim notification systems, and support for victims’ rights compliance programs. OVC has added these activities. (OVC notes that direct service funding also may be used to support victim notification systems as well.) Direct service provider manager training is allowed, but categorized as a training expense under section 94.110. Several commenters expressed concern that allowing program evaluation would divert funding from direct services. OVC notes that the provision does not require evaluation, but merely allows it; furthermore, the total amount of funding for administrative costs is already capped by VOCA.

#### § 94.110 Allowable Training Costs

OVC renumbered this section from 94.113 in the proposed rule, to 94.110 in the final rule. (Proposed section 94.110 is moved to section 94.107 in the final rule.) This section sets out allowable uses of training funds.

A commenter asked OVC to clarify that the allowable training costs are not limited by the two listed examples. In response, OVC edited the text to clearly state that such costs “generally include, but are not limited to” the two listed examples; these are merely examples and not limitations. Commenters also asked OVC to clarify that SAAs may use training funds to train managers and board members of victim service agencies, as is permitted under the

current Guidelines. OVC has added this to the final rule. Several commenters asked OVC to raise the percentage limits on administrative and training costs; as these are statutory requirements, however, OVC has no authority to do so.

#### Sub-Recipient Program Requirements

Sections 94.111 through 94.115 of the final rule set out the requirements that an entity must meet to be an “eligible crime victim assistance program.” (Sections 94.111 through 94.114 of the proposed rule are moved to section 94.108, 94.109, 94.110, and 94.116, respectively, of the final rule. Section 94.115(a) through (d) of the proposed rule is moved to section 94.112 of the final rule; and 94.115(e) of the proposed rule is moved to section 94.117 of the final rule. The responses to comments addressing those provisions of the proposed rule are found in the discussions of the corresponding sections as set forth in the final rule.)

Several commenters suggested that OVC reorganize the rule such that the requirements for eligibility as a sub-recipient entity versus the requirements for operating a sub-recipient project, are clearly delineated. OVC agrees, and has created a new heading “Sub-Recipient Program Requirements” and moved the requirements in the proposed rule section 94.104 *Eligible crime victim assistance programs*, to sections 94.111 through 94.115 of the final rule, under this heading. OVC also moved proposed 94.108(b) through (e) to section 94.112 of the final rule. Thus, sections 94.111 through 94.115 of this rule consolidate the eligibility requirements for the sub-recipient *organization* (i.e., program).

#### § 94.111 Eligible Crime Victim Assistance Programs

VOCA establishes the criteria for an “eligible crime victim assistance program,” and the final rule merely provides clarifying interpretation needed for practical implementation. Section 94.111 of the final rule sets out the basic principle that the SAA may fund only eligible programs, and contains a provision requiring compliance with additional SAA criteria and reporting requirements. Several commenters asked that OVC strengthen language (in proposed section 94.115(d)) requiring sub-recipients to follow reporting requirements of the SAA. OVC has done so in section 94.111.

#### § 94.112 Types of Eligible Organizations and Organizational Capacity

This section sets out the general types of eligible entities, and special

considerations for specific types of entities (moved from proposed section 94.108), as well as criteria for determining the organizational capacity of the entity’s program.

In section 94.112(a)(3) of the final rule, OVC modifies the proposed provision (proposed section 94.108(e)) on victim assistance organizations located in an adjacent state to eliminate unnecessarily bureaucratic requirements in the Guidelines, while keeping the requirement to provide notice to the SAA where the organization is located, and encouraging co-ordination on various award oversight matters. Several commenters asked for clarification of the rules for SAA programs operating direct services projects with VOCA funds (proposed section 94.108(d)). In response, OVC has modified section 94.112(a)(4) of the final rule to clarify these points by eliminating confusing and redundant text that reiterated the statutory requirement that SAAs use no more than five percent of VOCA funds for administrative and training costs.

With regard to determining the organizational capacity of a sub-recipient, under section 94.112(b) of the final rule, the SAA determines what constitutes “a record of effective services to victims of crime,” and this may vary depending on the State, and community served, and the entity providing services. Though this provision is reworded slightly for clarity, OVC leaves unchanged in the final rule the non-exclusive list of considerations that SAAs may take into account when making this determination. The SAA should be able to articulate the basis for its determination, should OVC request it. SAAs may also consider additional factors, such as the type of victim the entity’s services address, the type of services provided, best practices within that service field, and the characteristics of the entity (e.g. small, specialized service provider; larger, comprehensive service provider).

#### § 94.113 Use of Volunteers, Community Efforts, Compensation Assistance

Commenters urged OVC to make it clear that the mandated use-of-volunteers provision, at section 94.115(a) of the proposed rule, applies as an eligibility requirement for sub-recipient organizations (programs), not as a requirement for individual projects. OVC agrees with the commenters that the use-of-volunteers provision applies to programs, not individual projects, and has thus placed the final rule provision addressing waiver of this

statutory requirement in section 94.113(a) of the final rule.

Commenters asked that OVC clarify proposed section 94.115(c), to state that a sub-recipient may comply with the VOCA requirement to assist victims in applying for compensation by providing referrals. OVC agrees and has made this clarification in section 94.113(d) of the final rule.

A commenter asked that OVC add additional requirements to the VOCA mandate that sub-recipients assist victims in applying for victim compensation by requiring that sub-recipients also assist victims in understanding their State and federal rights, how to assert those rights, and what to do if their rights are not considered or denied. OVC has not added such a mandate, as these are not eligibility criteria mandated by VOCA, but OVC does encourage all victim assistance organizations to assist victims in understanding their rights, or providing referrals to organizations that can do so, where appropriate. A commenter asked that OVC clarify that victim assistance programs should also assist victims of federal crime in applying for compensation. OVC agrees, and has added language accordingly.

#### § 94.114 Prohibited Discrimination

OVC received several comments on proposed section 94.104(h) (now section 94.114 of the final rule), which stated “The VOCA non-discrimination provisions specified at 42 U.S.C. 10604(e) shall be implemented in accordance with 28 CFR part 42, and guidance from the Office for Civil Rights within the Office of Justice Programs.” Several commenters advocated that OVC add explicit regulatory language prohibiting discrimination based on sexual orientation and gender identity to the final rule and offered several reasons why such a provision would benefit victims. OVC acknowledges that people who identify as lesbian, gay, bisexual, transgender, or questioning/queer (“LGBTQ”) suffer disproportionately from violence and its effects, and often do not have access to informed services to help them recover in the aftermath of a crime. However, because OVC did not include in the proposed rule a definition that discrimination based on sex includes discrimination based on sexual orientation, and because OVC anticipates that the law will continue to evolve on this issue, OVC declines to include such language at this time. OVC will continue to monitor legal developments in this area. With respect to gender identity, the Department of Justice has concluded that statutory

prohibitions on discrimination on the basis of sex encompass discrimination based on gender identity in other contexts. See, e.g., Memorandum from Eric H. Holder, Attorney General, Re: Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964 (Dec. 15, 2014). 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

Several commenters noted that OVC had not included a provision regarding confidentiality in the proposed rule, and suggested that OVC add such a provision. The commenters noted that the 2013 reauthorization of the Violence Against Women Act contained a provision, 42 U.S.C. 13935(b)(2), that many VOCA-funded organizations would have to comply with as a condition of their VAWA funding, and suggested that OVC model its provision on that. OVC agrees and has done this in section 94.115 of the final rule.

#### Sub-Recipient Project Requirements

#### § 94.116 Purpose of VOCA-Funded Projects.

OVC renumbered section 94.114 of the proposed rule as section 94.116 of the final rule, under the heading “Sub-Recipient Project Requirements” instead of “Sub-Recipient Program Requirements.” (Section 94.116 of the proposed rule is moved to section 94.118 of the final rule.) This section sets forth a brief statement of the purpose of VOCA sub-awards. The proposed provision was confusing, and OVC has attempted to draft the statement more clearly in the final rule.

Additionally, the requirement in the Guidelines (sec. IV.B.11) that sub-recipients must provide services to victims of federal crimes on the same basis as to victims of crimes under State or local law is added to the final rule, as it was inadvertently omitted from the proposed rule but is a long-standing principle applicable to federal victim assistance funding. The final rule also sets forth OVC’s policy clarification that victim eligibility for direct services under the VOCA Assistance Program is not dependent on the victim’s immigration status. This principle derives from the nature of services provided by most VOCA-funded victim service providers in light of the Personal Responsibility Work Opportunity Reconciliation Act of 1996, and was communicated to all VOCA Assistance

(and Compensation) SAAs in a June 28, 2010, OVC Director Memorandum.

#### § 94.117 Cost of Services; Sub-Recipient Program Income

This section sets forth the rules for VOCA-funded projects that will charge for victim services. (Section 94.117 of the proposed rule is moved to section 94.119 of the final rule.) OVC has long held that VOCA-funded victim services should be free of charge for victims where possible, although it recognizes that in some situations a service provider may be justified in charging for services or otherwise generating program income.

The provisions in section 94.117 of the final rule are adapted from sections 94.115(e) and 94.109 of the proposed rule. A commenter suggested that this section be moved to a new division setting out VOCA project requirements; OVC has done this. Commenters also suggested that OVC re-word the provision to be more direct. OVC has done this, as well. OVC also simplified the provision to state that program income must be used consistently with Federal grant rules and the DOJ Grants Financial Guide (available on the Office of Justice Programs’ Web site, at [www.ojp.gov](http://www.ojp.gov)), instead of reiterating those requirements here. This aligns the program income rules for this program with the recently issued government-wide grant rules, and this simplification will reduce the burden of compliance on SAAs and sub-recipients.

A commenter requested that OVC add a requirement that sub-recipients provide proof or certification of compliance with the program income requirements when seeking reimbursement from State compensation programs. OVC declines to add such a requirement to this rule, as this type of requirement is more appropriately created in the application requirements and collateral source verification procedures for victim compensation programs, or as an arrangement among State agencies.

#### § 94.118 Project Match Requirements

This section is renumbered from 94.116 in the proposed rule to 94.118 in the final rule, and moved under the “Sub-recipient Project Requirements” heading, as commenters correctly pointed out that match is applicable to the VOCA project, not the program. (Section 94.118 of the proposed rule is moved to section 94.120 of the final rule.)

Some commenters suggested eliminating match all together, while others suggested various different levels for match. OVC has kept a match

requirement, as it serves several purposes, including leveraging federal funding, indicating organizational capacity, and encouraging local investment and engagement in VOCA-funded projects.

Some commenters recommended that OVC consider allowing match at the State level, rather than on a sub-recipient by sub-recipient basis, as this would bring VOCA grant rules into harmony with match requirements under other programs (e.g., those in Family Violence Prevention and Services Act and Violence Against Women Act). OVC has declined to make this change, as it would be a major departure from the Guidelines, and as match required on the project level ensures that sub-recipients have a stake in, and are invested and engaged in, the VOCA-funded project. OVC does note, however, that an SAA is authorized to contribute to match using non-federal funds for any (or all) sub-recipient projects, which authorization, as a practical matter, permits SAAs to provide match at the State level.

A commenter asked that OVC modify the proposed requirement that match be used for the same uses and timing as the project's VOCA funding. OVC declines to do so, as this rule is long-standing and consistent with similar rules that apply to other OVC and federal awards. OVC does note, however, that non-cash contributions—for example, professional services—may be counted as match.

Commenters also questioned why Native American and Alaskan Native sub-recipients and projects on tribal lands, as well as projects in U.S. territories and possessions (excluding Puerto Rico), are not required to provide match. Some commenters asked OVC to keep the 5% match for tribes, while other commenters asked that OVC keep the rule as proposed. OVC has found that these communities often lack victim services, have great victim service needs, and are more often likely to have difficulty meeting match requirements. Match serves the purpose of encouraging collaboration among service providers, and creating a local stake in project outcomes, but it also can present a barrier to applying for VOCA assistance funding in tribal and territorial communities that have relatively few victim service organizations, and have not traditionally been supported by resources available to organizations operating in states. Not requiring match as a default for such communities is designed to streamline application requirements in these areas where, in OVC's experience, the benefits of a match requirement are outweighed

by its burdens. OVC agrees that other areas of the country may face similar circumstances, and, therefore, the final rule provides that OVC will consider exceptions to match upon SAA request, and sets forth generally how OVC will evaluate such requests.

#### Sub-Recipient Allowable/Unallowable Costs

##### § 94.119 Allowable Direct Service Costs

This section is renumbered from 94.117 in the proposed rule to 94.119 in the final rule. (Section 94.119 of the proposed rule is moved to section 94.121 of the final rule.) This section sets forth allowable direct service costs for VOCA projects. Most of these allowable costs (and the parameters under which the direct services may be provided) are essentially the same as those in the existing Guidelines and in the proposed rule, but there are some differences, which are discussed below.

*General comments.* Some general comments asked OVC to clarify that it is not encouraging States to significantly shift funding by allowing new activities. Nowhere in the proposed or this final rule does OVC state that it is encouraging States to significantly shift funding by allowing new activities. Rather, the changes to costs allowed under this program, described below, are important, but marginal, changes that should give States more flexibility when compared to the Guidelines to best serve victims in their communities, but does not require a significant reallocation of resources. Thus, no change is being made in section 94.119 of the final rule to address this comment.

The commenter also asked that OVC clarify that all services provided by VOCA-funded projects are voluntary and should not be contingent upon the client participating in certain support services. OVC is unclear what support services the commenter refers to and so declines to make a change to the rule based on this comment but notes that there are existing rules in place (see 28 CFR part 42) prohibiting services being contingent upon participation in religious activity.

*Emergency medical/health care.* A commenter expressed concern that proposed section 94.117(a)(1)(ix), which allowed for certain emergency costs for medical and health care, would have limited the amount of time that such services could be provided to 48 hours. OVC believes that the commenter misunderstood the proposed provision, which does not limit such costs, but merely requires that the service provider

reasonably believe that an alternative source of payment will not be available within 48 hours. OVC has clarified, in final section 94.119(a)(9), that service providers may pay these costs when other resources are not expected to be available in time to meet emergency victim needs.

#### *Facilitation of participation in criminal justice and other proceedings.*

A commenter suggested that OVC expand the proposed section 94.117(a)(5) to allow service providers to facilitate victim participation in any public proceeding (e.g., juvenile justice hearings; probation, parole, pardon proceedings; grievance procedures, and sexual predator civil commitment proceedings), not merely criminal justice proceedings. OVC agrees that victims often have an interest in participating as a victim in various fora, and has modified the provisions of section 94.119(e) of the final rule accordingly, to allow the facilitation of such participation.

*Legal assistance.* The final rule, section 94.119(a)(10), is substantively equivalent to the corresponding section of the proposed rule (which was substantively the same as the Guidelines) regarding use of VOCA funds for emergency legal assistance. In the proposed rule, section 94.117(a)(6) would have expanded allowable legal assistance for victims beyond the emergency context. OVC received many comments on this proposed paragraph, which is renumbered as section 94.119(f) in the final rule.

Many of the comments opined that the proposed provision on allowable legal assistance was either too broad or too narrow in what it allowed. One commenter asked that OVC state expressly that legal services for divorce, child support, criminal defense, and tort lawsuits are not appropriate uses of VOCA funding. Other commenters asked that OVC clarify that criminal defense services may be appropriate where it is directly related to intimate partner violence.

OVC has clarified the rule to state expressly which costs are unallowable—those for criminal defense and tort lawsuits. This clarification makes the program consistent with the OVW Legal Assistance for Victims program (many organizations receive both OVC and OVW funding), which also does not fund criminal defense or tort lawsuits, and also creates a bright-line rule that is more easily administered. OVC notes that some jurisdictions allow victims to file a motion to vacate and/or expunge certain convictions based on their status of being victims. OVC has clarified that such services are allowable with VOCA

funds. The OVW program does support legal assistance with victim-related family law matters, and OVC has drafted the language of paragraph (f)(3) to be broad enough to include these and other non-tort legal services in a civil context that are reasonably necessary as a direct result of the victimization as allowable costs. Such non-tort, civil legal services include, but are not limited to, assistance in divorce, and child custody and support proceedings.

Many commenters wanted OVC to expand its examples of allowable legal assistance costs in the proposed rule to include specific examples relevant to the organization commenting. On the other hand, some commenters expressed concern that some organizations may misinterpret the examples in the proposed rule as limits. OVC has carefully considered these comments and, in the final rule, has opted to move most of the examples into the preamble of the rule. OVC will issue supplementary guidance as may be needed to further clarify the applicability of the rule in specific factual scenarios.

The following are examples (which are merely illustrative, and not meant to be a comprehensive listing) of some circumstances where civil legal services may be appropriate: Proceedings for protective/restraining orders or campus administrative protection/stay-away orders; family, custody, 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 police 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 recognizes that the available resources in each State differ, and, therefore, 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 funding.

*Forensic medical evidence collection examinations.* OVC received several generally supportive comments regarding proposed section 94.117(a)(7), which allowed forensic medical evidence collection examinations to the extent that other funding sources are insufficient, the examination meets State standards, and appropriate crisis

counseling and/or other victim services are offered in conjunction with the examination. The final rule, renumbered as section 94.119(g), is unchanged from the proposed rule, except that the final rule does not require examinations to meet State standards, but rather encourages sub-recipients to use specially trained examiners such as Sexual Assault Nurse Examiners to perform these exams. The final rule, similarly, encourages, rather than mandates, that crisis counseling or other services be offered in conjunction with the examination, in order to allow sub-recipients to provide such services as may be appropriate in any given situation.

*Forensic interviews.* OVC received several comments on proposed section 94.117(a)(8), which allowed forensic interviews, and which is renumbered as section 94.119(h) in the final rule. Some commenters supported allowing VOCA funding for forensic interviews, while others expressed the opinion that VOCA funds should not fund investigative costs. Allowing States to support the costs of victim-centered forensic interviews, particularly those conducted in a multi-disciplinary setting, will help victims by reducing traumatization.

The final rule does not include the provision in proposed section 94.117(a)(8)(iv), which would have disallowed VOCA funding used to supplant other funding available for forensic interviews, including criminal justice funding. OVC believes that providing States additional flexibility to meet this important victim need (which, if unsupported, may lead to re-traumatization of the victim) outweighs potential concerns that victim service funding will supplant law enforcement funding for this activity.

A commenter cautioned that forensic interviews should be conducted by child advocacy center forensic interviewers who have training and adhere to the National Child Advocacy Center guidelines. OVC believes this comment is well intentioned, but notes that not all victims needing specialized forensic interviews are children—for example, some victims are adults with disabilities. Moreover, the Federal Bureau of Investigation and some States use alternative standards. Therefore, OVC defers to SAAs to determine what organizations appropriately may provide this service.

*Services to incarcerated individuals.* The existing Guidelines do not allow OVC Victim Assistance Program funds to be used for rehabilitative services or support services to incarcerated individuals (see Guidelines, section IV.E.3.b). OVC, in proposed section

94.120(b) would have modified the prohibition on perpetrator rehabilitation and counseling, to allow services to incarcerated victims in certain circumstances, and, in proposed section 94.117(a)(11), set out proposed rules describing such circumstances.

In this final rule, OVC simply removes the prohibition on perpetrator rehabilitation and counseling, as the prohibition unnecessarily prevents 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 such services. States and VOCA-funded sub-recipients may set eligibility criteria for their victim service projects, and thereby determine, in accordance with VOCA and this rule, whether and how such victims might be served by VOCA-funded projects. Correspondingly, OVC does not include any provision under allowable costs addressing services to incarcerated victims, as the costs permitted for direct services to incarcerated victims are the same as those permitted for such services to any crime victim.

OVC received a wide range of comments on this provision. Many were supportive of the removal of the prohibition on providing services to incarcerated victims. Some commenters wanted OVC to affirmatively encourage States to permit sub-grantees to use VOCA funding for such services. Some commenters expressed the sentiment that the prison system should be responsible for addressing victim services for incarcerated persons, in the same way that it provides medical care and other services. OVC agrees that the government agencies that oversee detention/correctional facilities have responsibilities for the care of victims within their custody, but believes that prohibiting VOCA-funded organizations from providing services to incarcerated victims deprives such victims of, and communities of, experienced victim service resources. Indeed, such organizations are often the only organizations able to provide such services in some communities.

A commenter noted that the restriction causes agencies routinely to deny services to incarcerated victims but provides the exact same services for the exact same crime to those assaulted just outside the facility. OVC recognizes that victim service resources are finite, but believes that States are best positioned to make resource allocation decisions. Removing the prohibition on serving incarcerated victims will allow States to serve all victims better and more efficiently leverage the expertise of victim service organizations.

Several commenters expressed concern that the proposed rule may trigger the Prison Rape Elimination Act (PREA) provision requiring a reduction or reallocation of federal funding available to a State for “prison purposes” if the State fails to certify compliance with the Department’s National Standards to Prevent, Detect, and Respond to Prison Rape. See 42 U.S.C. 15607(e); 28 CFR part 115. The commenters suggested various ways to re-draft the proposed rule to make it clear that VOCA funds are not available for “prison purposes” and mandated reduction or reallocation under PREA. Some commenters expressed support for the proposed rule, but only if the Department clarified that the change would not bring VOCA funding under the PREA penalty. In response, OVC notes that VOCA funds are not available for “prison purposes,” but rather, are—by statute—specifically allocated for victim services.

The final rule, in response to these concerns, does not require that services to incarcerated victims must be provided, or how such services should be provided, but merely removes the express prohibition on such services that existed in the Guidelines. As noted in section 94.103 of the final rule, SAAs have sole discretion to determine what organizations will receive funds, and in what amounts, subject to the minimum requirements of this final rule and VOCA. Nothing in VOCA, or this final rule, allows VOCA funding to be diverted to “prison purposes;” rather, VOCA funding is expressly limited by statute to victim services and associated activities. A letter issued to State governors by OVC and OVW on February 11, 2014, did not list any VOCA programs as being available for prison purposes. See [http://www.prearesourcecenter.org/sites/default/files/content/feb\\_11\\_2014\\_prea\\_letter\\_with\\_certification\\_and\\_assurance\\_forms.pdf](http://www.prearesourcecenter.org/sites/default/files/content/feb_11_2014_prea_letter_with_certification_and_assurance_forms.pdf). VOCA funding, therefore, is not subject to mandated reduction or reallocation for non-compliance under PREA.

**Transitional housing.** The final rule, at section 94.119(k), includes one noteworthy change from section 94.117(a)(12) of the proposed rule, in which OVC proposed to allow States more flexibility to allow VOCA-funded projects to support transitional housing. Specifically, the final rule provides examples of expenses typically associated with transitional housing to help illustrate allowable uses of this funding. OVC views transitional housing as a necessary victim expense for some victims. This is particularly true for victims of human trafficking,

victims with disabilities abused by caretakers, domestic violence victims and their dependents, and sexual assault victims. Under the proposed rule, States may use VOCA funds 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.

For example, shelters for victims of domestic violence or human trafficking would be allowable uses of VOCA funds. Similarly, it would be allowable in the case of sexual assault, where a victim needs to move. To the extent SAAs choose to permit VOCA funds to be used for transitional housing purposes, OVC anticipates that these agencies would focus on those victims with the most need.

Some commenters liked the proposed rules on transitional housing and relocation, while others opposed them. A commenter noted that VOCA-funded programs may not have the experience or resources to monitor housing programs. OVC recognizes that some SAAs will not have such experience, but the rule merely *allows* States to fund this activity; it does not require it. OVC expects that States will exercise their discretion to fund only projects that they believe will be able to undertake the allowed activities successfully.

One commenter wanted OVC to clarify that state limits on types of victims eligible for transitional housing assistance must not violate VOCA non-discrimination provisions. OVC agrees that States may not violate the non-discrimination provision when prescribing limits on allowable costs for transitional housing. The commenter also requested that OVC define “dependent child” to include dependents of all LGBTQ survivors. OVC strongly agrees that dependents of LGBTQ victims should be eligible for such assistance to the same extent as dependents of non-LGBTQ victims, if such assistance is provided. The VOCA rule establishes the basic rules for State administration of VOCA funds, however, and prescribing detailed rules for eligibility for particular types of assistance projects, as the commenter suggests, is beyond the scope of the rule.

A commenter suggested that OVC add language setting out factors that States should consider when setting limits on transitional housing expenses. OVC declines to include these in the rule, but notes that States may choose to consider the factors mentioned, which include the availability of affordable alternative and rental housing; other sources of support and housing for the victim, such as Section 8 housing vouchers in the immediate locale of the victim; and

waiting lists for Section 8 housing in the area.

A commenter suggested that OVC use OVW’s transitional housing program as a model. OVC is not setting detailed parameters for transitional housing costs in this rule. To the extent they find the OVW model is useful, the final rule allows States to follow that model.

A commenter requested that OVC advise States to use their VOCA Compensation funds to meet transitional housing needs, before accessing VOCA Assistance funding for this purpose. OVC notes that it 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. OVC further notes that each State Compensation program determines coverage of crimes and expenses for its jurisdiction. Therefore, some State Compensation programs may not cover transitional housing needs. OVC wishes to allow States the flexibility to access either VOCA Assistance or Compensation funding for transitional housing related needs, as would best serve victims and is permissible in their jurisdictions, and therefore declines to recommend that States access VOCA Compensation funds prior to accessing VOCA Assistance funds.

**Relocation expenses.** The final rule, at 94.119(l), generally remains substantially unchanged from the proposed rule, 94.117(a)(13), although the language in this paragraph is reorganized from the proposed rule. The final rule removes the emphasis on particular victims (*i.e.*, domestic violence victims, victims of sexual assault, and victims of human trafficking) who may be in need of relocation assistance. This language is removed so as not to limit inadvertently those victims who are eligible for relocation expenses.

Additionally, the final rule omits the reference in the proposed rule to providing “mortgage assistance”, due to the complicated nature of administering such assistance. Thus, under the final rule, while relocation expenses are allowable, mortgage expenses are not allowable.

#### § 94.120 Allowable Costs for Activities Supporting Direct Services

OVC renumbered this section from 94.118 in the proposed rule to 94.120 in the final rule, setting forth allowable activities that support direct services.

(Section 94.120 of the proposed rule is moved to section 94.122 of the final rule.)

One commenter asked (with regard to co-ordination activities, automated systems and technology, and volunteer trainings) whether these are allowable as stand-alone projects that may be funded by a State, or whether they must be part of a direct service project. OVC intends that these may be funded by a State in either manner. If they are funded as stand-alone activities, however, they should be activities that leverage resources for direct victim services (e.g., a stand-alone project to train volunteers may make more volunteers available to provide direct services).

*Coordination of activities.* The final rule gives SAAs the latitude to allow sub-recipients to use VOCA funds for activities coordinating victim services. Many commenters supported this provision in the proposed rule. A few opposed, as they were concerned this would divert VOCA resources away from other activities. OVC notes that the final rule provides States with additional flexibility, but does not mandate that States reallocate any funding. Moreover, in the last decade it has become apparent that co-ordination and oversight activities are desirable and may in many cases improve the provision of direct victim services.

A commenter requested that OVC add coalitions to support and assist victims to the list of allowable activities, and OVC has done this.

*Contracts for professional services.* OVC proposed to allow sub-recipients to contract for professional services not available within the sub-recipient organization (in contrast to the Guidelines, which does not allow this). OVC has maintained this section as proposed, in section 94.120(d) of the final rule, but made the examples more concise and conceptual to improve readability. Some commenters suggested that the rule needed to reflect better how contract service providers charge overhead costs, suggesting that the rule be made consistent with that for volunteered services; i.e., the contract rate must be a reasonable market rate for the services provided. OVC agrees and has done this.

*Automated systems and technology.* The proposed rule at section 94.118(e) would have allowed the use of funds for automated systems and technology that support delivery of direct services to victims, and provided examples of such systems and technology, and provided that procurement of personnel, hardware, and other items, were allowable if permitted by the SAA. The

final rule, at section 94.120(e), reorganizes the proposed paragraph to fit with the revised structure of the overall section. It also adds a provision indicating that the allowability of such systems and technology is subject to the DOJ Financial Guide and government-wide grant rules, which provide detailed rules relating to the acquisition, use, and disposition of technology equipment and supplies. See 2 CFR part 200. Certain criteria for SAAs to consider when permitting sub-recipients to use funding for automated systems and technology were set out in the Guidelines, but were omitted from the proposed rule. These are added back into the final rule as factors that may be useful for SAAs to consider when determining whether to permit funding to be used for this purpose.

*Volunteer trainings.* The proposed rule, at section 94.118(f) allowed the use of direct service funding in certain circumstances to train volunteer direct service providers, and OVC has kept this provision largely unchanged, at 94.120(6). The proposed rule focused on Court Appointed Special Advocate (CASA) volunteers, but commenters suggested that the final rule should be more general, so as not to limit such funding to the CASA context. OVC agrees and has made this edit. The use of direct service funds to support training and co-ordination of volunteer services in such circumstances is appropriate, as it typically allows funded organizations to cost-effectively leverage the available funds and volunteer efforts to provide more direct services for victims.

*Restorative justice.* The proposed rule inadvertently omitted reference to restorative justice efforts, which are permitted in the current Guidelines. OVC has added this back into this final rule at section 94.120(g). The final rule is substantially similar to the Guidelines, except that the paragraph is reorganized to fit stylistically within the final rule, and to provide examples of restorative justice efforts (e.g., tribal community-led meetings and peace-keeping activities). Also, where the Guidelines required such efforts to have “possible” beneficial or therapeutic value, the final rule requires that such efforts must have “reasonably anticipated” beneficial or therapeutic value. OVC believes that such a standard is better suited to meet victim needs.

The final rule provides that a victim’s opportunity to withdraw must be inherent in any restorative justice effort supported by program funds, whereas the Guidelines had merely included this as one of several criteria that SAAs

should consider when deciding whether to fund such efforts. Lastly, the Guidelines included as another criteria the benefit or therapeutic value to the victim, while the final rule requires that SAAs also consider the costs in relation to the benefit or therapeutic value to the victim, as restorative justice efforts can be expensive and those costs may not be justified under certain circumstances.

#### § 94.121 Allowable Sub-Recipient Administrative Costs

Section 94.121 of the final rule sets out allowable sub-recipient administrative costs. These are substantively the same as those in the existing Guidelines, and as in proposed section 94.119.

A commenter noted that there was a discrepancy in the proposed rule, in that training costs were allowed for non-VOCA-funded service providers, but travel costs to attend trainings were *not* allowed for such providers. OVC agrees that training and training-related travel for non-VOCA-funded service provider staff should be allowable, and has changed the final rule accordingly, at section 94.121(c). The commenter also asked that OVC include certain additional items (e.g., costs of Web sites, social media, mobile devices) in the examples of allowable administrative costs, and OVC has done this in section 94.121(f).

Several commenters suggested that evaluation costs in section 94.121(j) should be capped at a percentage of the grant. OVC believes that evaluation is an important part of improving victim services by developing data-driven improvements to programs and does not cap evaluation costs in the rule. OVC does note that the rule does not prevent SAAs from capping such costs (on a State-wide or project-by-project basis, as appropriate), or limiting such costs to amounts that are reasonable given State goals and funding constraints.

#### § 94.122 Expressly Unallowable Sub-Recipient Costs

OVC has renumbered proposed 94.120 as section 94.122 of the final rule, setting forth expressly unallowable project costs. Most of these provisions are the same as those in the existing Guidelines, and the proposed rule, with the following exceptions:

*Perpetrator rehabilitation and counseling.* The rule prohibiting use of VOCA funds for perpetrator rehabilitation and counseling has been removed to allow VOCA-funded service providers to provide victim assistance services to victims who are incarcerated. This is more fully discussed above in

the discussion of comments under section 94.115 of the final rule.

*Victim attendance at conferences.* OVC has removed this odd provision from the list of unallowable costs, but expects that sub-recipients will not use funds for this purpose.

*Purchasing vehicles.* Some commenters favored allowing the purchase of vehicles with VOCA funds, but others opposed it. OVC agrees with comments that pointed out that in some jurisdictions purchasing a vehicle may be more cost effective than leasing a vehicle for victim service work and has removed purchasing vehicles from the list of unallowable costs. States now have the discretion to allow sub-recipients to lease or purchase vehicles.

*Indirect organizational costs.* The government-wide grant requirements in 2 CFR part 200, as implemented in December 2014 by the Department of Justice at 2 CFR part 2800 (79 FR 76081, Dec. 19, 2014), state a policy that federal awards should bear their fair share of costs, including reasonable, allocable, and allowable direct and indirect costs. This contrasts with the VOCA Guidelines, which prohibit indirect organizational costs. Given the policy in the recently issued government-wide requirements, OVC has removed the provision that prohibited sub-recipients from using VOCA funds for certain organizational costs. Removing the prohibition should simplify administration of VOCA sub-awards, by aligning the requirements for VOCA-funded projects, with the government-wide grant requirements and cost principles, which allow federal funding to support sub-recipient indirect costs (*see* 2 CFR 200.331 and 200.414).

In the Guidelines, and the proposed rule at 94.120(f), liability insurance on buildings, and body guards (which OVC understands to mean security guards, as it is listed as a capital expense), were not allowable. OVC removes these from the list of unallowable costs in the final rule, as these costs may be allowable under the revised government-wide grant rules in 2 CFR part 200, if appropriately allocated to an award either directly or indirectly.

#### IV. Regulatory Certifications

##### *Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Office for Victims of Crime has reviewed this regulation and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. The OVC Victim Assistance Program distributes funding to States pursuant to

the VOCA formula, a statutory provision, which is not affected by this regulation. The VOCA formula sets out the allocation of grant funds among States, and designates the States that will receive grant funds—the regulation alters neither the allocation of Federal funding, nor the designation of which States will receive annual funding pursuant to that allocation. Moreover, VOCA affords substantial latitude to the States in determining where to allocate the formula funding within each jurisdiction. This rule, to the extent that it creates certain set asides and permissible areas of emphasis for State victim assistance programs, only applies to federally provided funding. As a rule governing a Federal grant program to States and major U.S. territories, the only economic impact on small entities is that of potential financial assistance, as the rule would not apply to any entity that was not a recipient of VOCA funding under this program. This regulation, therefore, will not have a significant economic impact on a substantial number of small entities.

##### *Executive Orders 12866 and 13563—Regulatory Review*

This rule has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review” section 1(b), Principles of Regulation, and in accordance with Executive Order 13563 “Improving Regulation and Regulatory Review” section 1(b), General Principles of Regulation.

The Office of Justice Programs has determined that this rule is a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and, in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitative values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

The rule merely clarifies and updates the existing Guidelines, but does not

alter the existing program structure at all. Updating the existing Guidelines to clearly and accurately reflect the statutory parameters will facilitate State compliance with VOCA requirements, and thus avoid potentially costly non-compliance findings. The rule makes some substantive changes to the existing Guidelines, but most of these would be of a permissive, not restrictive or mandatory, nature. Some changes, like allowing more flexibility to co-ordinate and leverage community resources, and adopt alternative monitoring strategies, would impose no costs but will potentially allow States to use existing funding more efficiently. Other changes that allow States to allocate funding to services not presently allowable could change the allocation of VOCA funding among victim services provided by sub-recipient organizations, and among victim service organizations. Such reallocations of funding, however, are not mandated and each State would make the ultimate decision with regard to whether to change its current funding allocations, if it chooses to do so at all. This is not a change from the present discretion that States have to allocate funding according to State priorities. Any potential reallocations would be relatively minor (even when taken in aggregate across States) in comparison to the overall mix of allowable victim services, and thus they are unlikely to create new costs or significant fund transfers. In any event, the benefits of additional services for underserved and un-served victims are significant.

The provision allowing alternative risk-based monitoring procedures imposes no new costs on States that choose to retain their existing procedures, but will allow States that wish to implement more cost effective alternatives to do so.

The elimination of match for American Indian and Alaskan Native tribes and projects on tribal lands will permit victim service organizations in these communities, many of which do not have the resources to provide matching funds, the ability to more easily seek VOCA funding for victim services. This will benefit victims in these communities, many of whom are underserved. This change is unlikely to impose new costs on States, as there is no requirement that the administering agencies fund American Indian or Alaskan Native tribes or organizations at a particular level, and the amount of funding allocated to these organizations historically is a very small percentage of overall VOCA funding.

All of the changes to the provisions governing allowable and unallowable costs are in the nature of granting States

additional flexibility to fund certain activities. None of the changes would require States to expend additional funding in any area, or change funding allocations. Moreover, the changes, while important, are relatively minor when compared to the entire scope of costs allowable with VOCA funding. Consequently, to the extent that States choose to fund the newly allowable victim services (e.g., increased time allowed in transitional housing), the reallocation of funding will not result in a significant reallocation of overall funding, given the small number of newly allowable services when compared to the overall mix of allowable victim services. In addition, it is not certain which States will permit what additional services if given the flexibility to do so, and to what extent, as these decisions typically are often made through State legislative or administrative processes and address considerations unique to each State. The important benefit of such potential minor reallocations of resources, whether within organizations that presently receive VOCA funding and will provide augmented services, or (in the less common case) to new organizations, would be that previously underserved or un-served victims would receive needed assistance.

#### *Executive Order 13132—Federalism*

This rule will not have substantial direct effects 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, as the rule only affects the eligibility for, and use of, federal funding under this program. The rule will not impose substantial direct compliance costs on State and local governments, or preempt any State laws. Therefore, in accordance with Executive Order No. 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### *Executive Order 12988—Civil Justice Reform*

This rule meets the applicable standards set forth in sections 3(a) & (b)(2) of Executive Order No. 12988. Pursuant to section 3(b)(1)(I) of the Executive Order, nothing in this or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to the Program that is the subject of this rule is intended to create any legal or procedural rights enforceable against the United States, except as the same may be contained

within subpart B of part 94 of title 28 of the Code of Federal Regulations.

#### *Unfunded Mandates Reform Act of 1995*

This rule 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. The VOCA Victim Assistance Program is a formula grant program that provides funds to States to provide financial support to eligible crime victim assistance programs. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### *Paperwork Reduction Act*

This rule does not propose any new, or changes to existing, “collection[s] of information” as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and its implementing regulations at 5 CFR part 1320.

OVC sets forth a requirement, in section 94.105 of the final rule that SAAs update their subgrant award report information within 30 days of a change in such information. This requirement does not change the overall burden of the subgrant award report, which is estimated to take approximately three minutes to complete. It merely provides a reasonable timeframe for updating information that changes during a grant period. As the report contains only high level summary data, not detailed budget data, OVC estimates that the burden of requiring updates of this report throughout the grant period will be minimal.

#### **List of Subjects in 28 CFR Part 94**

Administrative practice and procedure, Formula grant program, Victim assistance.

Accordingly, for the reasons set forth in the preamble, Title 28, part 94, of the

Code of Federal Regulations is amended as follows:

#### **PART 94—CRIME VICTIM SERVICES**

■ 1. The authority citation for part 94 is revised to read as follows:

**Authority:** 42 U.S.C. 10603, 10603c, 10604(a), 10605.

■ 2. Add subpart B to read as follows:

#### **Subpart B—VOCA Victim Assistance Program**

##### **General Provisions**

Sec.

94.101 Purpose and scope; future guidance; construction and severability; compliance date.

94.102 Definitions.

##### **SAA Program Requirements**

94.103 General.

94.104 Allocation of sub-awards.

94.105 Reporting requirements.

94.106 Monitoring requirements.

##### **SAA Use of Funds for Administration and Training**

94.107 Administration and training.

94.108 Prohibited supplantation of funding for administrative costs.

94.109 Allowable administrative costs.

94.110 Allowable training costs.

##### **Sub-Recipient Program Requirements**

94.111 Eligible crime victim assistance programs.

94.112 Types of eligible organizations and organizational capacity.

94.113 Use of volunteers, community efforts, compensation assistance.

94.114 Prohibited discrimination.

94.115 Non-disclosure of confidential or private information.

##### **Sub-Recipient Project Requirements**

94.116 Purpose of VOCA projects.

94.117 Costs of services; sub-recipient program income.

94.118 Project match requirements.

##### **Sub-Recipient Allowable/Unallowable Costs**

94.119 Allowable direct service costs.

94.120 Allowable costs for activities supporting direct services.

94.121 Allowable sub-recipient administrative costs.

94.122 Expressly unallowable sub-recipient costs.

#### **Subpart B—VOCA Victim Assistance Program**

##### **General Provisions**

**§ 94.101 Purpose and scope; future guidance; construction and severability; compliance date.**

(a) *Purpose and scope.* This subpart implements the provisions of VOCA, at 42 U.S.C. 10603, which, as of July 8, 2016, authorize the Director to make an annual grant to the chief executive of each State for the financial support of

eligible crime victim assistance programs. VOCA sets out the statutory requirements governing these grants, and this subpart should be read in conjunction with it. Grants under this program also are subject to the government-wide grant rules in 2 CFR part 200, as implemented by the Department of Justice at 2 CFR part 2800, and the DOJ Grants Financial Guide.

(b) *Future guidance.* The Director may, pursuant to 42 U.S.C. 10604(a), prescribe guidance for grant recipients and sub-recipients under this program on the application of this subpart.

(c) *Construction and severability.* Any provision of this subpart 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.

(d) *Compliance date.* This subpart applies to all grants under this program made by OVC after August 8, 2016, except for funds that the SAA obligated before August 8, 2016 (*i.e.* pre-award funds under grants made in 2016). SAAs may permit the use of funds that are unobligated as of August 8, 2016 for activities permitted by this subpart, but not by the Guidelines.

#### **§ 94.102 Definitions.**

As used in this subpart:

*Crime victim or victim of crime* means a person who has suffered physical, sexual, financial, or emotional harm as a result of the commission of a crime.

*Director* means the Director of OVC.

*Direct services or services to victims of crime* means those services described in 42 U.S.C. 10603(d)(2), and efforts that—

- (1) Respond to the emotional, psychological, or physical needs of crime victims;
- (2) Assist victims to stabilize their lives after victimization;
- (3) Assist victims to understand and participate in the criminal justice system; or
- (4) Restore a measure of security and safety for the victim.

*OVC* means the Office for Victims of Crime, within the United States Department of Justice's Office of Justice Programs.

*Project* means the direct services project funded by a grant under this program, unless context indicates otherwise.

*Spousal abuse* includes domestic and intimate partner violence.

*State Administering Agency or SAA* is the governmental unit designated by the chief executive of a State to administer grant funds under this program.

*Sub-recipient* means an entity that is eligible to receive grant funds under this program from a State under this subpart.

*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 victims of: Physical, sexual, or emotional abuse; child pornography-related offenses; neglect; commercial sexual exploitation; bullying; and/or exposure to violence.

*Victim of federal crime* means a victim of an offense in violation of a federal criminal statute or regulation, including, but not limited to, offenses that occur in an area where the federal government has jurisdiction, whether in the United States or abroad, such as Indian reservations, national parks, federal buildings, and military installations.

*VOCA* means the Victims of Crime Act of 1984, Public Law 98–473 (Oct. 12, 1984), as amended.

*VOCA funds or VOCA funding* means grant funds (or grant funding) under this program.

*VOCA grant* means the annual grant from OVC to a State under this program.

#### **SAA Program Requirements**

##### **§ 94.103 General.**

(a) *Direct services.* SAAs may use VOCA funds to provide direct services through sub-recipients or in their own projects, and to cover administrative and training costs of the SAA. SAAs have sole discretion to determine which organizations will receive funds, and in what amounts, subject to the minimum requirements set forth in VOCA and this subpart. SAAs must ensure that projects provide services to victims of federal crimes on the same basis as to victims of crimes under State or local law. SAAs may fund direct services regardless of a victim's participation in the criminal justice process. Victim eligibility under this program for direct services is not dependent on the victim's immigration status.

(b) *SAA eligibility certification.* Each SAA must certify that it will meet the criteria set forth in VOCA, at 42 U.S.C. 10603(a)(2), and in this subpart. This certification shall be submitted by the chief executive of the State (or a designee) annually in such form and

manner as OVC specifies from time to time. As of July 8, 2016, VOCA requires the chief executive to certify that—

(1) Priority will be given to programs providing assistance to victims of sexual assault, spousal abuse, or child abuse;

(2) Funds will be made available to programs serving underserved victims;

(3) VOCA funds awarded to the State, and by the State to eligible crime victim assistance programs, will not be used to supplant State and local government funds otherwise available for crime victim assistance.

(c) *Pass-through administration.* SAAs have broad latitude in structuring their administration of VOCA funding. VOCA funding may be administered by the SAA itself, or by other means, including the use of pass-through entities (such as coalitions of victim service providers) to make determinations regarding award distribution and to administer funding. SAAs that opt to use a pass-through entity shall ensure that the total sum of VOCA funding for administrative and training costs for the SAA and pass-through entity is within the VOCA limit, the reporting of activities at the direct-service level is equivalent to what would be provided if the SAA were directly overseeing sub-awards, and an effective system of monitoring sub-awards is used. SAAs shall report on the pass-through entity in such form and manner as OVC may specify from time to time.

(d) *Strategic planning.* SAAs are encouraged to develop a funding strategy, which should consider the following: The range of direct services throughout the State and within communities; the sustainability of such services; the unmet needs of crime victims; the demographic profile of crime victims; the coordinated, cooperative response of community organizations in organizing direct services; the availability of direct services throughout the criminal justice process, as well as to victims who are not participating in criminal justice proceedings; and the extent to which other sources of funding are available for direct services.

(e) *Coordination.* SAAs are encouraged to coordinate their activities with their jurisdiction's VOCA compensation programs, STOP Violence Against Women Formula Grant Program administrator, victim assistance coalitions, federal agencies, and other relevant organizations.

(f) *Compliance with other rules and requirements.* SAAs shall comply (and ensure sub-recipient compliance) with all applicable provisions of VOCA, this subpart, and any guidance issued by

OVC, as well as all applicable provisions of the DOJ Grants Financial Guide 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 related to the use of VOCA funding.

#### **§ 94.104 Allocation of sub-awards.**

(a) *Directed allocation of forty percent overall.* Except as provided in paragraph (d) of this section, each SAA shall allocate each year's VOCA grant as specified below in paragraphs (b) and (c) of this section. Where victims of priority category crimes are determined to be underserved as well, an SAA may count funds allocated to projects serving such victims in either the priority category or the underserved category, but not both.

(b) *Priority categories of crime victims (thirty percent total).* SAAs shall allocate a minimum of ten percent of each year's VOCA grant to each of the three priority categories of victims specified in the certification requirement in VOCA, at 42 U.S.C. 10603(a)(2)(A), which, as of July 8, 2016, includes victims of—

- (1) Sexual assault,
- (2) Spousal abuse and
- (3) Child abuse.

(c) *Previously underserved category (ten percent total).* SAAs shall allocate a minimum of ten percent of each year's VOCA grant to underserved victims of violent crime, as specified in VOCA, at 42 U.S.C. 10603(a)(2)(B). To meet this requirement, SAAs shall identify which type of crime victim a service project assists by the type of crime they have experienced or the demographic characteristics of the crime victim, or both.

(d) *Exceptions to required allocations.* The Director may approve an allocation different from that specified in paragraphs (b) and (c) of this section, pursuant to a written request from the SAA that demonstrates (to the satisfaction of the Director) that there is good cause therefor.

(e) *Sub-award process: Documentation, conflicts of interest, and competition of funding to sub-recipients.* (1) SAAs have sole discretion to determine which organizations will receive funds, and in what amounts, subject to the requirements of VOCA, this subpart, and the provisions in the DOJ Grants Financial Guide relating to conflicts of interest. SAAs must maintain a documented methodology for selecting all competitive and non-competitive sub-recipients.

(2) SAAs are encouraged to award funds through a competitive process,

when feasible. Typically, such a process entails an open solicitation of applications and a documented determination, based on objective criteria set in advance by the SAA (or pass-through entity, as applicable).

(f) *Direct-service projects run by SAAs.* An SAA may use no more than ten percent of its annual VOCA grant to fund its own direct service projects, unless the Director grants a waiver.

#### **§ 94.105 Reporting requirements.**

(a) *Subgrant award reports.* SAAs shall submit, at such times and in such form and manner as OVC may specify from time to time, subgrant award reports to OVC for each project that receives VOCA funds. If an SAA awards funds to a pass-through entity, the SAA also shall submit a report on the pass-through entity, at such times and in such form and manner as OVC may specify from time to time.

(b) *Performance report.* SAAs shall submit, in such form and manner as OVC may specify from time to time, performance reports to OVC on a quarterly basis.

(c) *Obligation to report fraud, waste, abuse, and similar misconduct.* SAAs shall—

(1) Promptly notify OVC of any formal allegation or finding of fraud, waste, abuse, or similar misconduct involving VOCA funds;

(2) Promptly refer any credible evidence of such misconduct to the Department of Justice Office of the Inspector General; and

(3) Apprise OVC, in timely fashion, of the status of any on-going investigations

#### **§ 94.106 Monitoring requirements.**

(a) *Monitoring plan.* Unless the Director grants a waiver, SAAs shall develop and implement a monitoring plan in accordance with the requirements of this section and 2 CFR 200.331. The monitoring plan must include a risk assessment plan.

(b) *Monitoring frequency.* SAAs shall conduct regular desk monitoring of all sub-recipients. In addition, SAAs shall conduct on-site monitoring of all sub-recipients at least once every two years during the award period, unless a different frequency based on risk assessment is set out in the monitoring plan.

(c) *Recordkeeping.* SAAs shall maintain a copy of site visit results and other documents related to compliance.

#### **SAA Use of Funds for Administration and Training**

#### **§ 94.107 Administration and training.**

(a) *Amount.* No SAA may use more than the amount prescribed by VOCA, at

42 U.S.C. 10603(b)(3), for training and administration. As of July 8, 2016, the amount is five percent of a State's annual VOCA grant.

(b) *Notification.* An SAA shall notify OVC of its decision to use VOCA funds for training or administration, either at the time of application for the VOCA grant or within thirty days of such decision. Such notification shall indicate what portion of the amount will be allocated for training and what portion for administration. If VOCA funding will be used for administration, the SAA shall follow the rules and submit the certification required in § 94.108 regarding supplantation.

(c) *Availability.* SAAs shall ensure that each training and administrative activity funded by the VOCA grant occurs within the award period.

(d) *Documentation.* SAAs shall maintain sufficient records to substantiate the expenditure of VOCA funds for training or administration.

(e) *Volunteer training.* SAAs may allow sub-recipients to use VOCA funds to train volunteers in how to provide direct services when such services will be provided primarily by volunteers. Such use of VOCA funds will not count against the limit described in paragraph (a) of this section.

#### **§ 94.108 Prohibited supplantation of funding for administrative costs.**

(a) *Non-supplantation requirement.* SAAs may not use VOCA funding to supplant State administrative support for the State crime victim assistance program. Consistent with the DOJ Grants Financial Guide, such supplantation is the deliberate reduction of State funds because of the availability of VOCA funds. Where a State decreases its administrative support for the State crime victim assistance program, the SAA must submit, upon request from OVC, an explanation for the decrease.

(b) *Baseline for administrative costs.* In each year in which an SAA uses VOCA funds for administration, it shall—

(1) Establish and document a baseline level of non-VOCA funding required to administer the State victim assistance program, based on SAA expenditures for administrative costs during that fiscal year and the previous fiscal year, prior to expending VOCA funds for administration; and

(2) Submit the certification required by 42 U.S.C. 10604(h), which, as of July 8, 2016, requires an SAA to certify here that VOCA funds will not be used to supplant State funds, but will be used to increase the amount of such funds that would, in the absence of VOCA

funds, be made available for administrative purposes.

**§ 94.109 Allowable administrative costs.**

(a) Funds for administration may be used only for costs directly associated with administering a State's victim assistance program. Where allowable administrative costs are allocable to both the crime victim assistance program and another State program, the VOCA grant may be charged no more than its proportionate share of such costs. SAAs may charge a federally-approved indirect cost rate to the VOCA grant, provided that the total amount charged does not exceed the amount prescribed by VOCA for training and administration.

(b) Costs directly associated with administering a State victim assistance program generally include the following:

(1) *Salaries and benefits* of SAA staff and consultants to administer and manage the program;

(2) *Training* of SAA staff, including, but not limited to, travel, registration fees, and other expenses associated with SAA staff attendance at technical assistance meetings and conferences relevant to the program;

(3) *Monitoring compliance* of VOCA sub-recipients with federal and State requirements, support for victims' rights compliance programs, provision of technical assistance, and evaluation and assessment of program activities, including, but not limited to, travel, mileage, and other associated expenses;

(4) *Reporting* and related activities necessary to meet federal and State requirements;

(5) *Program evaluation*, including, but not limited to, surveys or studies that measure the effect or outcome of victim services;

(6) *Program audit costs* and related activities necessary to meet federal audit requirements for the VOCA grant;

(7) *Technology-related costs*, generally including for grant management systems, electronic communications systems and platforms (e.g., Web pages and social media), geographic information systems, victim notification systems, and other automated systems, related equipment (e.g., computers, software, fax and copying machines, and TTY/TDDs) and related technology support services necessary for administration of the program;

(8) *Memberships* in crime victims' organizations and organizations that support the management and administration of victim assistance programs, and publications and materials such as curricula, literature,

and protocols relevant to the management and administration of the program;

(9) *Strategic planning*, including, but not limited to, the development of strategic plans, both service and financial, including conducting surveys and needs assessments;

(10) *Coordination and collaboration efforts* among relevant federal, State, and local agencies and organizations to improve victim services;

(11) *Publications*, including, but not limited to, developing, purchasing, printing, distributing training materials, victim services directories, brochures, and other relevant publications; and

(12) *General program improvements*—Enhancing overall SAA operations relating to the program and improving the delivery and quality of program services to crime victims throughout the State.

**§ 94.110 Allowable training costs.**

VOCA funds may be used only for training activities that occur within the award period, and all funds for training must be obligated prior to the end of such period. Allowable training costs generally include, but are not limited to, the following:

(a) Statewide/regional training of personnel providing direct assistance and allied professionals, including VOCA funded and non-VOCA funded personnel, as well as managers and Board members of victim service agencies; and

(b) Training academies for victim assistance.

**Sub-Recipient Program Requirements**

**§ 94.111 Eligible crime victim assistance programs.**

SAAs may award VOCA funds only to crime victim assistance programs that meet the requirements of VOCA, at 42 U.S.C. 10603(b)(1), and this subpart. Each such program shall abide by any additional criteria or reporting requirements established by the SAA.

**§ 94.112 Types of eligible organizations and organizational capacity.**

(a) *Eligible programs.* Eligible programs are not limited to entities whose sole purpose is to provide direct services. There are special considerations for certain types of entities, as described below:

(1) *Faith-based and neighborhood programs.* SAAs may award VOCA funds to otherwise eligible faith-based and neighborhood programs, but in making such awards, SAAs shall ensure that such programs comply with all applicable federal law, including, but not limited to, part 38 of this chapter.

(2) *Crime victim compensation programs.* SAAs may provide VOCA victim assistance funding to compensation programs only for the purpose of providing direct services that extend beyond the essential duties of the staff administering the compensation program, which services may include, but are not limited to, crisis intervention; counseling; and providing information, referrals, and follow-up for crime victims.

(3) *Victim service organizations located in an adjacent State.* SAAs may award VOCA funds to otherwise eligible programs that are physically located in an adjacent State, but in making such awards, the SAA shall provide notice of such award to the SAA of the adjacent State, and coordinate, as appropriate, to ensure effective provision of services, monitoring, auditing of federal funds, compliance, and reporting.

(4) *Direct service programs run by the SAA.* SAAs may fund their own direct services programs, but, under § 94.104(f), may allocate no more than ten percent of the VOCA grant to such programs, and each such program shall adhere to the allowable/unallowable cost rules for sub-recipient projects set out in this subpart at §§ 94.119 through 94.122.

(b) *Organizational capacity of the program.* For purposes of VOCA, at 42 U.S.C. 10603(b)(1)(B), the following shall apply:

(1) *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.

(2) *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 program's 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.**

(a) *Mandated use of volunteers; waiver.* Programs shall use volunteers, to the extent required by the SAA, in order to be eligible for VOCA funds. The chief executive of the State, who may act through the SAA, may waive this requirement, provided that the program submits written documentation of its efforts to recruit and maintain volunteers, or otherwise demonstrate why circumstances prohibit the use of volunteers, to the satisfaction of the chief executive.

(b) *Waiver of use of volunteers.* SAAs shall maintain documentation supporting any waiver granted under VOCA, at 42 U.S.C. 10603(b)(1)(C), relating to the use of volunteers by programs.

(c) *Promotion of community efforts to aid crime victims.* Community served coordinated public and private efforts to aid crime victims may include, but are not limited to, serving on federal, State, local, or tribal work groups to oversee and recommend improvements to community responses to crime victims, and developing written agreements and protocols for such responses.

(d) *Assistance to victims in applying for compensation.* Assistance to potential recipients of crime victim compensation benefits (including potential recipients who are victims of federal crime) in applying for such benefits may include, but are not limited to, referring such potential recipients to an organization that can so assist, identifying crime victims and advising them of the availability of such benefits, assisting such potential recipients with application forms and procedures, obtaining necessary documentation, monitoring claim status, and intervening on behalf of such potential recipients with the crime victims' compensation program.

**§ 94.114 Prohibited discrimination.**

(a) The VOCA non-discrimination provisions specified at 42 U.S.C. 10604(e) shall be implemented in accordance with 28 CFR part 42.

(b) In complying with VOCA, at 42 U.S.C. 10604(e), as implemented by 28 CFR part 42, SAAs and sub-recipients shall comply with such guidance as may be issued from time to time by the Office for Civil Rights within the Office of Justice Programs.

**§ 94.115 Non-disclosure of confidential or private information.**

(a) *Confidentiality.* SAAs and sub-recipients of VOCA funds shall, to the extent permitted by law, reasonably protect the confidentiality and privacy

of persons receiving services under this program and shall not disclose, reveal, or release, except pursuant to paragraphs (b) and (c) of this section—

(1) Any personally identifying information or individual information collected in connection with VOCA-funded services requested, utilized, or denied, regardless of whether such information has been encoded, encrypted, hashed, or otherwise protected; or

(2) Individual client information, without the informed, written, reasonably time-limited consent of the person about whom information is sought, except that consent for release may not be given by the abuser of a minor, incapacitated person, or the abuser of the other parent of the minor. If a minor or a person with a legally appointed guardian is permitted by law to receive services without a parent's (or the guardian's) consent, the minor or person with a guardian may consent to release of information without additional consent from the parent or guardian.

(b) *Release.* If release of information described in paragraph (a)(2) of this section is compelled by statutory or court mandate, SAAs or sub-recipients of VOCA funds shall make reasonable attempts to provide notice to victims affected by the disclosure of the information, and take reasonable steps necessary to protect the privacy and safety of the persons affected by the release of the information.

(c) *Information sharing.* SAAs and sub-recipients may share—

(1) Non-personally identifying data in the aggregate regarding services to their clients and non-personally identifying demographic information in order to comply with reporting, evaluation, or data collection requirements;

(2) Court-generated information and law-enforcement-generated information contained in secure governmental registries for protection order enforcement purposes; and

(3) Law enforcement- and prosecution-generated information necessary for law enforcement and prosecution purposes.

(d) *Personally identifying information.* In no circumstances may—

(1) A crime victim be required to provide a consent to release personally identifying information as a condition of eligibility for VOCA-funded services;

(2) Any personally identifying information be shared in order to comply with reporting, evaluation, or data-collection requirements of any program;

(e) *Mandatory reporting.* Nothing in this section prohibits compliance with

legally mandated reporting of abuse or neglect.

**Sub-Recipient Project Requirements****§ 94.116 Purpose of VOCA-funded projects.**

VOCA funds shall be available to sub-recipients only to provide direct services and supporting and administrative activities as set out in this subpart. SAAs shall ensure that VOCA sub-recipients obligate and expend funds in accordance with VOCA and this subpart. Sub-recipients must provide services to victims of federal crimes on the same basis as to victims of crimes under State or local law. Sub-recipients may provide direct services regardless of a victim's participation in the criminal justice process. Victim eligibility under this program for direct services is not dependent on the victim's immigration status.

**§ 94.117 Cost of services; sub-recipient program income.**

(a) *Cost of services.* Sub-recipients shall provide VOCA-funded direct services at no charge, unless the SAA grants a waiver allowing the sub-recipient to generate program income by charging for services. Program income, where allowed, shall be subject to federal grant rules and the requirements of the DOJ Grants Financial Guide, which, as of July 8, 2016, require in most cases that any program income be restricted to the same uses as the sub-award funds and expended during the grant period in which it is generated.

(b) *Considerations for waiver.* In determining whether to grant a waiver under this section, the SAA 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 in accordance with financial accounting requirements.

**§ 94.118 Project match requirements.**

(a) *Project match amount.* Sub-recipients shall contribute (*i.e.*, match) not less than twenty percent (cash or in-kind) of the total cost of each project, except as provided in paragraph (b) of this section.

(b) *Exceptions to project match requirement.* The following are not subject to the requirement set forth in paragraph (a) of this section:

(1) Sub-recipients that are federally-recognized American Indian or Alaska Native tribes, or projects that operate on tribal lands;

(2) Sub-recipients that are territories or possessions of the United States (except for the Commonwealth of Puerto

Rico), or projects that operate therein; and

(3) Sub-recipients other than those described in paragraphs (b)(1) and (2) of this section, that have applied (through their SAAs) for, and been granted, a full or partial waiver from the Director. Waiver requests 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.

(c) *Sources of project match.*

Contributions under paragraph (a) of this section shall be derived from non-federal sources, except as may be provided in the DOJ Grants Financial Guide, and may include, but are not limited to, the following:

(1) *Cash*; *i.e.*, the value of direct funding for the project;

(2) *Volunteered professional or personal services*, the value placed on which shall be consistent with the rate of compensation (which may include fringe benefits) paid for similar work in the program, but if the similar work is not performed in the program, the rate of compensation shall be consistent with the rate found in the labor market in which the program competes;

(3) *Materials/Equipment*, but the value placed on lent or donated equipment shall not exceed its fair market value;

(4) *Space and facilities*, the value placed on which shall not exceed the fair rental value of comparable space and facilities as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality; and

(5) *Non-VOCA funded victim assistance activities*, including but not limited to, performing direct service, coordinating, or supervising those services, training victim assistance providers, or advocating for victims.

(d) *Discounts.* Any reduction or discount provided to the sub-recipient shall be valued as the difference between what the sub-recipient paid and what the provider's nominal or fair market value is for the good or service.

(e) *Use of project match.*

Contributions under paragraph (a) of this section are restricted to the same uses, and timing deadlines for obligation and expenditure, as the project's VOCA funding.

(f) *Recordkeeping for project match.*

Each sub-recipient shall maintain records that clearly show the source and

amount of the contributions under paragraph (a) of this section, and period of time for which such contributions were allocated. The basis for determining the value of personal services, materials, equipment, and space and facilities shall be documented. Volunteer services shall be substantiated by the same methods used by the sub-recipient for its paid employees (generally, this should include timesheets substantiating time worked on the project).

**Sub-Recipient Allowable/Unallowable Costs**

**§ 94.119 Allowable direct service costs.**

Direct services for which VOCA funds may be used include, but are not limited to, the following:

(a) *Immediate emotional, psychological, and physical health and safety*—Services that respond to immediate needs (other than medical care, except as allowed under paragraph (a)(9) of this section) of crime victims, including, but not limited to:

- (1) Crisis intervention services;
- (2) Accompanying victims to hospitals for medical examinations;
- (3) Hotline counseling;
- (4) Safety planning;
- (5) Emergency food, shelter, clothing, and transportation;
- (6) Short-term (up to 45 days) in-home care and supervision services for children and adults who remain in their own homes when the offender/caregiver is removed;
- (7) Short-term (up to 45 days) nursing-home, adult foster care, or group-home placement for adults for whom no other safe, short-term residence is available;
- (8) Window, door, or lock replacement or repair, and other repairs necessary to ensure a victim's safety;
- (9) Costs of the following, on an emergency basis (*i.e.*, when the State's compensation program, the victim's (or in the case of a minor child, the victim's parent's or guardian's) health insurance plan, Medicaid, or other health care funding source, is not reasonably expected to be available quickly enough to meet the emergency needs of a victim (typically within 48 hours of the crime): Non-prescription and prescription medicine, prophylactic or other treatment to prevent HIV/AIDS infection or other infectious disease, durable medical equipment (such as wheelchairs, crutches, hearing aids, eyeglasses), and other healthcare items are allowed; and

(10) Emergency legal assistance, such as for filing for restraining or protective orders, and obtaining emergency custody orders and visitation rights;

(b) *Personal advocacy and emotional support*—Personal advocacy and emotional support, including, but not limited to:

- (1) Working with a victim to assess the impact of the crime;
- (2) Identification of victim's needs;
- (3) Case management;
- (4) Management of practical problems created by the victimization;
- (5) Identification of resources available to the victim;
- (6) Provision of information, referrals, advocacy, and follow-up contact for continued services, as needed; and
- (7) Traditional, cultural, and/or alternative therapy/healing (*e.g.*, art therapy, yoga);

(c) *Mental health counseling and care*—Mental health counseling and care, including, but not limited to, outpatient therapy/counseling (including, but not limited to, substance-abuse treatment so long as the treatment is directly related to the victimization) provided by a person who meets professional standards to provide these services in the jurisdiction in which the care is administered;

(d) *Peer-support*—Peer-support, including, but not limited to, activities that provide opportunities for victims to meet other victims, share experiences, and provide self-help, information, and emotional support;

(e) *Facilitation of participation in criminal justice and other public proceedings arising from the crime*—The provision of services and payment of costs that help victims participate in the criminal justice system and in other public proceedings arising from the crime (*e.g.*, juvenile justice hearings, civil commitment proceedings), including, but not limited to:—

- (1) Advocacy on behalf of a victim;
- (2) Accompanying a victim to offices and court;
- (3) Transportation, meals, and lodging to allow a victim who is not a witness to participate in a proceeding;
- (4) Interpreting for a non-witness victim who is deaf or hard of hearing, or with limited English proficiency;
- (5) Providing child care and respite care to enable a victim who is a caregiver to attend activities related to the proceeding;
- (6) Notification to victims regarding key proceeding dates (*e.g.*, trial dates, case disposition, incarceration, and parole hearings);
- (7) Assistance with Victim Impact Statements;
- (8) Assistance in recovering property that was retained as evidence; and
- (9) Assistance with restitution advocacy on behalf of crime victims.

(f) *Legal assistance*—Legal assistance services (including, but not limited to,

those provided on an emergency basis), where reasonable and where the need for such services arises as a direct result of the victimization. Such services include, but are not limited to:

(1) Those (other than criminal defense) that help victims assert their rights as victims in a criminal proceeding directly related to the victimization, or otherwise protect their safety, privacy, or other interests as victims in such a proceeding;

(2) Motions to vacate or expunge a conviction, or similar actions, where the jurisdiction permits such a legal action based on a person's being a crime victim; and

(3) Those actions (other than tort actions) that, in the civil context, are reasonably necessary as a direct result of the victimization;

(g) *Forensic medical evidence collection examinations*—Forensic medical evidence collection examinations for victims to the extent that other funding sources such as State appropriations are insufficient. Forensic medical evidence collection examiners are encouraged to follow relevant guidelines or protocols issued by the State or local jurisdiction. Sub-recipients are encouraged to provide appropriate crisis counseling and/or other types of victim services that are offered to the victim in conjunction with the examination. Sub-recipients are also encouraged to use specially trained examiners such as Sexual Assault Nurse Examiners;

(h) *Forensic interviews*—Forensic interviews, with the following parameters:

(1) Results of the interview will be used not only for law enforcement and prosecution purposes, but also for identification of needs such as social services, personal advocacy, case management, substance abuse treatment, and mental health services;

(2) Interviews are conducted in the context of a multi-disciplinary investigation and diagnostic team, or in a specialized setting such as a child advocacy center; and

(3) The interviewer is trained to conduct forensic interviews appropriate to the developmental age and abilities of children, or the developmental, cognitive, and physical or communication disabilities presented by adults.

(i) *Transportation*—Transportation of victims to receive services and to participate in criminal justice proceedings;

(j) *Public awareness*—Public awareness and education presentations (including, but not limited to, the development of presentation materials,

brochures, newspaper notices, and public service announcements) in schools, community centers, and other public forums that are designed to inform crime victims of specific rights and services and provide them with (or refer them to) services and assistance.

(k) *Transitional housing*—Subject to any restrictions on amount, length of time, and eligible crimes, set by the SAA, transitional housing for victims (generally, those who have a particular need for such housing, and who cannot safely return to their previous housing, due to the circumstances of their victimization), including, but 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; and

(l) *Relocation*—Subject to any restrictions on amount, length of time, and eligible crimes, set by the SAA, relocation of victims (generally, where necessary for the safety and well-being of a victim), including, but not limited to, reasonable moving expenses, security deposits on housing, rental expenses, and utility startup costs.

#### **§ 94.120 Allowable costs for activities supporting direct services.**

Supporting activities for which VOCA funds may be used include, but are not limited to, the following:

(a) *Coordination of activities*—Coordination activities that facilitate the provision of direct services, include, but are not limited to, State-wide coordination of victim notification systems, crisis response teams, multi-disciplinary teams, coalitions to support and assist victims, and other such programs, and salaries and expenses of such coordinators;

(b) *Supervision of direct service providers*—Payment of salaries and expenses of supervisory staff in a project, when the SAA determines that such staff are necessary and effectively facilitate the provision of direct services;

(c) *Multi-system, interagency, multi-disciplinary response to crime victim needs*—Activities that support a coordinated and comprehensive response to crime victims needs by direct service providers, including, but not limited to, payment of salaries and expenses of direct service staff serving on child and adult abuse multi-disciplinary investigation and treatment teams, coordination with federal agencies to provide services to victims of federal crimes and/or participation on Statewide or other task forces, work groups, and committees to develop

protocols, interagency, and other working agreements;

(d) *Contracts for professional services*—Contracting for specialized professional services (e.g., psychological/psychiatric consultation, legal services, interpreters), at a rate not to exceed a reasonable market rate, that are not available within the organization;

(e) *Automated systems and technology*—Subject to the provisions of the DOJ Grants Financial Guide and government-wide grant rules relating to acquisition, use and disposition of property purchased with federal funds, procuring automated systems and technology that support delivery of direct services to victims (e.g., automated information and referral systems, email systems that allow communications among victim service providers, automated case-tracking and management systems, smartphones, computer equipment, and victim notification systems), including, but not limited to, procurement of personnel, hardware, and other items, as determined by the SAA after considering—

(1) Whether such procurement will enhance direct services;

(2) How any acquisition will be integrated into and/or enhance the program's current system;

(3) The cost of installation;

(4) The cost of training staff to use the automated systems and technology;

(5) The ongoing operational costs, such as maintenance agreements, supplies; and

(6) How additional costs relating to any acquisition will be supported;

(f) *Volunteer trainings*—Activities in support of training volunteers on how to provide direct services when such services will be provided primarily by volunteers; and

(g) *Restorative justice*—Activities in support of opportunities for crime victims to meet with perpetrators, including, but not limited to, tribal community-led meetings and peace-keeping activities, if such meetings are requested or voluntarily agreed to by the victim (who may, at any point, withdraw) and have reasonably anticipated beneficial or therapeutic value to crime victims. SAAs that plan to fund this type of service should closely review the criteria for conducting these meetings, and are encouraged to discuss proposals with OVC prior to awarding VOCA funds for this type of activity. At a minimum, the following should be considered:—

(1) The safety and security of the victim;

(2) The cost versus the benefit or therapeutic value to the victim;

(3) The procedures for ensuring that participation of the victim and offenders are voluntary and that the nature of the meeting is clear;

(4) The provision of appropriate support and accompaniment for the victim;

(5) Appropriate debriefing opportunities for the victim after the meeting; and

(6) The credentials of the facilitators.

**§ 94.121 Allowable sub-recipient administrative costs.**

Administrative costs for which VOCA funds may be used by sub-recipients include, but are not limited to, the following:

(a) *Personnel costs*—Personnel costs that are directly related to providing direct services and supporting activities, such as staff and coordinator salaries expenses (including fringe benefits), and a prorated share of liability insurance;

(b) *Skills training for staff*—Training exclusively for developing the skills of direct service providers, including paid staff and volunteers (both VOCA-funded and not), so that they are better able to offer quality direct services, including, but not limited to, manuals, books, videoconferencing, electronic training resources, and other materials and resources relating to such training.

(c) *Training-related travel*—Training-related costs such as travel (in-State, regional, and national), meals, lodging, and registration fees for paid direct-service staff (both VOCA-funded and not);

(d) *Organizational Expenses*—Organizational expenses that are necessary and essential to providing direct services and other allowable victim services, including, but not limited to, the prorated costs of rent; utilities; local travel expenses for service providers; and required minor building adaptations necessary to meet the Department of Justice standards implementing the Americans with Disabilities Act and/or modifications that would improve the program's ability to provide services to victims;

(e) *Equipment and furniture*—Expenses of procuring furniture and equipment that facilitate the delivery of direct services (e.g., mobile communication devices, telephones, braille and TTY/TDD equipment, computers and printers, beepers, video cameras and recorders for documenting and reviewing interviews with children, two-way mirrors, colposcopes, digital cameras, and equipment and furniture for shelters, work spaces, victim waiting rooms, and children's play areas),

except that the VOCA grant may be charged only the prorated share of an item that is not used exclusively for victim-related activities;

(f) *Operating costs*—Operating costs include but are not limited to—

(1) Supplies;

(2) Equipment use fees;

(3) Property insurance;

(4) Printing, photocopying, and postage;

(5) Courier service;

(6) Brochures that describe available services;

(7) Books and other victim-related materials;

(8) Computer backup files/tapes and storage;

(9) Security systems;

(10) Design and maintenance of Web sites and social media; and

(11) Essential communication services, such as web hosts and mobile device services.

(g) *VOCA administrative time*—Costs of administrative time spent performing the following:

(1) Completing VOCA-required time and attendance sheets and programmatic documentation, reports, and statistics;

(2) Collecting and maintaining crime victims' records;

(3) Conducting victim satisfaction surveys and needs assessments to improve victim services delivery in the project; and

(4) Funding the prorated share of audit costs.

(h) *Leasing or purchasing vehicles*—Costs of leasing or purchasing vehicles, as determined by the SAA after considering, at a minimum, if the vehicle is essential to the provision of direct services;

(i) *Maintenance, repair, or replacement of essential items*—Costs of maintenance, repair, and replacement of items that contribute to maintenance of a healthy or safe environment for crime victims (such as a furnace in a shelter; and routine maintenance, repair costs, and automobile insurance for leased vehicles), as determined by the SAA after considering, at a minimum, if other sources of funding are available; and

(j) *Project evaluation*—Costs of evaluations of specific projects (in order to determine their effectiveness), within the limits set by SAAs.

**§ 94.122 Expressly unallowable sub-recipient costs.**

Notwithstanding any other provision of this subpart, no VOCA funds may be used to fund or support the following:

(a) *Lobbying*—Lobbying or advocacy activities with respect to legislation or to administrative changes to regulations

or administrative policy (cf. 18 U.S.C. 1913), whether conducted directly or indirectly;

(b) *Research and studies*—Research and studies, except for project evaluation under § 94.121(j);

(c) *Active investigation and prosecution of criminal activities*—The active investigation and prosecution of criminal activity, except for the provision of victim assistance services (e.g., emotional support, advocacy, and legal services) to crime victims, under § 94.119, during such investigation and prosecution;

(d) *Fundraising*—Any activities related to fundraising, except for fee-based, or similar, program income authorized by the SAA under this subpart.

(e) *Capital expenses*—Capital improvements; property losses and expenses; real estate purchases; mortgage payments; and construction (except as specifically allowed elsewhere in this subpart).

(f) *Compensation for victims of crime*—Reimbursement of crime victims for expenses incurred as a result of a crime, except as otherwise allowed by other provisions of this subpart;

(g) *Medical care*—Medical care, except as otherwise allowed by other provisions of this subpart; and

(h) *Salaries and expenses of management*—Salaries, benefits, fees, furniture, equipment, and other expenses of executive directors, board members, and other administrators (except as specifically allowed elsewhere in this subpart).

Dated: June 30, 2016.

**Karol V. Mason,**

*Assistant Attorney General, Office of Justice Programs.*

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 723, 724, 845, and 846**

**RIN 1029–AC72**

[Docket ID: OSM–2016–0008; S1D1S SS08011000 SX066A0067F 167S180110; S2D2D SS08011000 SX066A00 33F 16XS501520]

**Civil Penalties Inflation Adjustments**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Interim final rule.

**SUMMARY:** Pursuant to the Federal Civil Penalties Inflation Adjustment Act