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DEPARTMENT OF JUSTICE

28 CFR Part 90

[OVW Docket No. 120]

RIN 1105-AB46

Conforming STOP Violence Against Women Formula Grant Program Regulations to Statutory Change; Definitions and Confidentiality Requirements Applicable to All OVW Grant Programs

AGENCY: Office on Violence Against Women, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations for the STOP

(Services•Training•Officers•Prosecutors) Violence Against Women Formula Grant Program (STOP Program) and the general provisions governing Office on Violence Against Women (OVW) programs to comply with statutory changes and reduce repetition of statutory language. Also, this rule implements statutory requirements for nondisclosure of confidential or private information relating to all OVW grant programs.

DATES: This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**.

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SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Violence Against Women Act (VAWA) was enacted on September 13, 1994, by title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796. The STOP Program is codified at 42 U.S.C. 3796gg through 3796gg-5 and 3796gg-8. The final rule for this program, found at 28 CFR part 90, subpart B, was promulgated on April 18, 1995. General provisions affecting all OVW grant programs are found at 28 CFR part 90, subpart A.

This rule amends the general provisions applicable to all OVW grant programs and the regulations governing the STOP Program to comply with the amendments to these programs enacted by the Violence Against Women Act of 2000 (VAWA 2000), Division B of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (Oct. 28, 2000), the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. No. 109-162, 119 Stat. 2960 (Jan. 5, 2006), and the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. No. 113-4, 127 Stat. 54 (Mar. 7, 2013). These changes to the regulations incorporate the statutory changes, make minor technical corrections, implement enhanced administrative and planning practices for formula grantees, and streamline existing regulations to reduce repetition of statutory language.

In addition, this rule amends an existing regulatory provision, § 90.2, that sets forth certain definitions that apply to all OVW grant programs. Furthermore, the rule adds a new regulatory provision, § 90.4, that is applicable to all OVW grant programs to implement statutory amendments requiring nondisclosure of confidential or private information pertaining to victims of domestic violence, dating violence, sexual assault and stalking.

II. Background

A. Overview of the Violence Against Women Act and Subsequent Reauthorizations

In 1994, Congress passed the Violence Against Women Act (VAWA), a comprehensive legislative package aimed at ending violence against women. VAWA was enacted on September 13, 1994, as title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796. VAWA was designed to improve criminal justice system responses to domestic violence, sexual assault, and stalking, and to increase the availability of services for victims of these crimes. VAWA was reauthorized and amended in 2000, 2005, and 2013, with each new reauthorization making improvements to the law and adding new programs and provisions.

VAWA recognized the need for specialized responses to violence against women given the unique barriers that impede victims from accessing assistance from the justice system. To help communities develop these specialized responses, VAWA authorized the STOP Program, among others. *See* 42 U.S.C. 3796gg through 3796gg-5 and 3796gg-8; 28 CFR part 90, subpart B.

VAWA requires a coordinated community response to domestic violence, dating violence, sexual assault and stalking crimes and encourages jurisdictions to bring together stakeholders from multiple disciplines to share information and to improve community responses. These often include victim advocates, police officers, prosecutors, judges, probation and corrections officials, health care professionals, and survivors. In some communities, these multidisciplinary teams also include teachers, leaders within faith communities, public officials, civil legal attorneys, health care providers, advocates from population-specific community-based organizations representing underserved populations, and others.

VAWA's legislative history indicates that Congress passed VAWA to improve justice system responses to violence against women. For example, Congress wanted to encourage jurisdictions to treat domestic violence as a serious crime, by instituting comprehensive reforms in

their arrest, prosecution, and judicial policies. Congress was further interested in giving law enforcement and prosecutors the tools to pursue domestic violence and sexual assault cases without blaming victims for behavior that is irrelevant in determining whether a crime occurred, while discouraging judges from issuing lower sentences for sexual assault crimes than for other violent crimes. VAWA was intended to bring an end to archaic prejudices throughout the justice system, provide support for victims and assurance that their attackers will be prosecuted, and focus criminal proceedings on the conduct of attackers rather than the conduct of victims.¹

VAWA added a part T to the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, codified at 42 U.S.C. 3711 *et seq.*, titled Grants to Combat Violent Crimes Against Women, which authorizes four OVW-administered grant programs, including the STOP Program. STOP Program grants are awarded by population-based formula to states to develop and strengthen the justice system's response to violence against women and to support and enhance services for victims.

On October 28, 2000, Congress enacted the Violence Against Women Act of 2000 (VAWA 2000), Division B of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464. VAWA 2000 continued and strengthened the federal government's commitment to helping communities change the way they respond to violence against women. VAWA 2000 reauthorized critical grant programs, established new programs, and strengthened federal law. It had an emphasis on increasing responses to victims of dating violence and expanding options and services for immigrant and other vulnerable victims.

VAWA 2000 made several changes relevant to the STOP Program. First, it amended the statutory purposes for which grant funds may be used. Second, it clarified the eligibility of courts as subgrantees. Third, it modified the requirement under the STOP Program that, to be eligible

¹ See S. Rep. No. 103-138, at 37-48 (Sept. 10, 1993).

for funding, states must certify that victims not bear the costs for certain filing fees related to domestic violence cases. Finally, it added a new provision applicable to all OVW grant programs requiring grantees to report on the effectiveness of activities carried out with program funds.

On January 5, 2006, Congress enacted the Violence Against Women and Department of Justice Reauthorization Act (VAWA 2005), Pub. L. No. 109-162, 119 Stat. 2960. VAWA 2005 strengthened provisions of the previous Acts, including revising the STOP Program, and created a number of new grant programs. It also created a set of universal definitions and grant conditions, including a confidentiality provision, that apply to all programs authorized by VAWA and subsequent legislation. VAWA 2005 had an emphasis on enhancing responses to sexual assault, youth victims, and victims in Indian country. Its provisions included new sexual-assault-focused programs, the addition of sexual assault to a number of OVW grant programs, new youth-focused programs, and the creation of a comprehensive violence against women program for tribal governments.

The revisions to the STOP Program made by VAWA 2005 included adding new purpose areas to the program and modifying the requirements for the development of state implementation plans, the allocation of funds to subgrantees, and documentation of consultation with victim service programs. VAWA 2005 also required that the regulations governing the program ensure that states would recognize and meaningfully respond to the needs of underserved populations and distribute funds intended for culturally specific services – for which the Act created a new set-aside – equitably among culturally specific populations. It further amended the certification requirement under the program related to payment for forensic medical exams for victims of sexual assault and added new certifications related to prohibiting the use of polygraph

examinations in sexual assault cases and to judicial notification to domestic violence offenders of laws prohibiting their possession of a firearm.

On March 7, 2013, Congress enacted the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. No. 113-4, 127 Stat. 54. VAWA 2013 made further improvements to the OVW grant programs, including several new requirements for the STOP Program. It also included two new historic provisions, one extending civil rights protections based on gender identity and sexual orientation and another recognizing the inherent jurisdiction of Indian tribes to prosecute non-Indians who commit certain domestic violence offenses in Indian country.²

VAWA 2013 amended the universal definitions and grant conditions established by VAWA 2005 for all OVW grant programs and amended and added to the STOP Program purpose areas. It also amended the requirements under the STOP Program that states develop and submit with their applications and implementation plan – including documentation of planning committee members’ participation in the development of the plan – and consult and coordinate with a variety of entities and stakeholders. VAWA 2013 modified the allocation requirements governing STOP subgrants, creating a set-aside for projects addressing sexual assault, and made changes to the statute’s requirement that states provide matching funds for their grant awards. It also made several changes to provisions governing payment for forensic medical exams for sexual assault victims and certain filing costs related to cases of domestic violence, dating violence, sexual assault, and stalking.

² These two provisions are not addressed in this rule but were addressed in a set of frequently asked questions on the new civil rights provision and in two *Federal Register* notices related to the implementation of the new provision on tribal jurisdiction. See U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights, “Frequently Asked Questions: Nondiscrimination Grant Condition in the Violence Against Women Reauthorization Act of 2013” (April 9, 2014), available at: <http://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf>; Pilot Project for Tribal Jurisdiction Over Crimes of Domestic Violence, 78 FR 35961 (June 14, 2013); Pilot Project for Tribal Jurisdiction Over Crimes of Domestic Violence, 78 FR 71645 (Nov. 29, 2013).

B. History Regarding the STOP Program and General Provisions Applicable to OVW Grant Programs

The STOP Program regulations and general provisions were originally promulgated in April, 1995. On December 30, 2003, OVW published a proposed rule to clarify the match requirement for the STOP Program, which was never finalized and subsequently was superseded by changes to the statute made by VAWA 2005. On January 21, 2004, section 90.3, regarding participation by faith based organizations was added to the general provisions. OVW published the Notice of Proposed Rulemaking for the current update on May 11, 2016 at 81 Federal Register 29215. In developing the proposed rule, OVW held a series of listening sessions with relevant constituencies to solicit input on updating the STOP Program regulations and general provisions. The specific sessions were focused on state STOP Program administrators, state coalitions, culturally specific and underserved populations, tribes and tribal coalitions, nonprofit organizations, and the justice system. Comments on the proposed rule were due by July 11, 2016.

C. Costs and Benefits

As discussed in more detail under Executive Orders 12866 and 13563 (in the Regulatory Review discussion below), the rule clarifies the statutory requirements, but does not alter the existing program structure. Updating the existing regulations to clearly and accurately reflect the statutory parameters will facilitate state compliance with VAWA, and thus avoid potentially costly non-compliance findings.

III. Discussion of Comments and Changes Made by This Rule

As discussed above, this rule updates the regulations for the STOP Program and the general provisions governing OVW grant programs, including definitions and requirements for nondisclosure of confidential victim information, to comply with statutory changes and reduce repetition of statutory language. The structure and section

numbering of the proposed rule has not been changed in the final rule, but some of the specific provisions have, as described below.

A. Summary of Comments and Changes from the Proposed Rule

OVW received 12 comments from state STOP grant administrators, national organizations focusing on violence against women, one state domestic violence coalition, individuals, and one creator of a cloud-based database for domestic violence and sexual assault service providers. Comments generally fell into six categories: (1) reducing administrative burdens on state administering agencies, (2) encouraging victim-centered best practices, (3) clarifying requirements about the states' STOP implementation planning processes, (4) clarifying other STOP Program requirements, particularly those related to underserved and culturally specific populations, (5) clarifying the statutory confidentiality provision that restricts the release of victim identifying information, and (6) enhancing language access. The most significant changes in response to the comments are as follows:

1. Changed the definition of “prevention” to clarify the difference between primary and secondary prevention (90.2(d)).
2. Provided additional detail and clarification regarding the confidentiality provision (90.4(b)).
3. Provided additional guidance to states on assessing qualifications of applicants for the culturally specific set aside of funds and clarified that they are encouraged to exceed the minimum statutory set aside of three percent (90.11(c)(3)).

4. Increased the time period covered by state implementation plans from three years to four (90.12(a)).
5. Clarified the requirement to consult with various entities in the process of developing and updating implementation plans and the documentation required regarding such consultation (90.12(b) and (c)).
6. Clarified that, if the Prison Rape Elimination Act (PREA) requirements no longer apply to the STOP Program, then states will not need to address PREA compliance in their implementation plans and that only states that submitted assurances under PREA need to submit information on how they will spend the funds toward coming into compliance with PREA (90.12(g)(7)).
7. Clarified when states may reallocate returned STOP funds and funds from allocations for which the state did not receive sufficient applications (90.25).

B. Overarching Comments

OVW received one comment expressing overall support for the proposed rule.

OVW also received an overarching comment stating that the commenter would like to see more flexibility in categories within the STOP Program to better meet victim needs, such as more flexibility in emergency victim assistance. As long as a particular cost is related to victim safety and allowable under the cost principles in 2 CFR part 200, states have flexibility regarding how to use victim service funds. For example, states may use STOP funds to support emergency transportation, medical expenses, and other necessities where needed for victim safety. Because states already have considerable discretion to direct

funding to emergency victim assistance, no change was made in the final rule. The other comments all pertained to specific sections of the proposed rule.

C. Definitions and Confidentiality Requirements Applicable to All OVW

Grant Programs

VAWA 2005 established universal definitions and grant conditions for OVW grant programs, and VAWA 2013 amended these provisions. One of these grant conditions protects the confidentiality and privacy of persons receiving victim services for the purpose of ensuring victim safety. This section discusses the comments received on Subpart A, the definitions and grant conditions sections of the proposed rule, including provisions dealing with confidentiality, and any changes made to this subpart in the final rule.

§90.1. General

Section 90.1 provides general information, including specification of which statutes are implemented by the rule and an explanation of the different subparts of the rule. In the final rule OVW also has added language to clarify to which grants and subgrants this updated rule will apply. Specifically, it will take effect with grants issued by OVW after the effective date of the rule (30 days from publication in the Federal Register). For subgrants, it will take effect with subgrants issued by states under the STOP and Sexual Assault Services Formula Grant Programs after that date, even if such subgrants are made with grant funds awarded by OVW prior to that date.

§90.2. Definitions

The universal definitions added by VAWA 2005, codified at 42 U.S.C. 13925(a), superseded previous program-specific definitions originally enacted in 1994. The rule

revises the definitions section of part 90, 28 CFR 90.2, by removing definitions from the existing regulations that are codified in statute, adding definitions for terms that are used in statute but not defined, and clarifying statutory definitions that, based on OVW's experience managing its grant programs, require further explanation.

Section 90.2 currently contains definitions for the following terms: domestic violence, forensic medical examination, Indian tribe, law enforcement, prosecution, sexual assault, state, unit of local government, and victim services. This rule removes the definitions for domestic violence, Indian tribe, law enforcement, sexual assault, state, and victim services, as they all appear in the statute and do not need further clarification.

The rule revises the definition of "forensic medical examination," a term that is used but not defined in a statutory provision directing that states, Indian tribal governments, and units of local government may not receive STOP Program funds unless they incur the full out-of-pocket cost of forensic medical exams for victims of sexual assault. *See* 42 U.S.C. 3796gg-4(a)(1). The rule changes the list of minimum elements that the exam should include to bring the definition in line with best practices for these exams as they have developed since part 90 was implemented in 1995, and, in particular, with the Department of Justice's national protocol for sexual assault medical forensic examinations (SAFE Protocol), which was updated in April 2013.³ OVW received several comments on this definition. Three commenters recommended adding "obtaining informed consent" to the definition and two of them also suggested adding an assessment of the patient's state of mind. Although these are best practices as discussed in the SAFE Protocol, they are not appropriate for inclusion here, because this definition applies to the

³ U.S. Department of Justice, Office on Violence Against Women, "A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents" (2d ed. 2013), available at <https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>.

specific context of meeting the certification requirement for the STOP Program that states must ensure victims do not incur “out of pocket” costs for forensic medical examinations. The definition is not intended to be a comprehensive description of best practices for conducting the examination but rather a list of elements for which victims should not incur “out of pocket” costs.

One commenter also suggested adding “medical care and treatment” to the definition of “forensic medical examination.” Again, although this does represent best practice as exemplified in the SAFE Protocol, it is not appropriate for inclusion in this context because it would impose an increased cost to states not mandated by the STOP Program statute. The current rule allows states flexibility in determining whether to cover medical costs that are not within the definition of forensic medical examination, such as testing and treatment for sexually transmitted diseases. Many states do cover such expenses, but not all do. Payment for such expenses is often available through programs funded through the Victims of Crime Act (VOCA). OVW also notes that the definition does include “head-to-toe examination of the patient,” which is for both medical and forensic purposes. This examination is used to identify injuries for treatment purposes and provide documentation that could potentially be used by the criminal justice system. This commenter also suggested changing “sexual assault victim” to “victim of sexual assault” to clarify that the provision also applies to domestic violence survivors who are sexually assaulted. OVW agrees and has made this change to paragraph 90.2(c).

The rule’s definition of “prosecution” contains minor technical changes from the definition in the existing regulation. These changes implement the VAWA 2005 provision making the definitions applicable to all OVW grant programs and conform the

definition to the statute. The definition retains the existing regulation's clarification of the statutory definition, which explains that prosecution support services fall within the meaning of the term for funding purposes. This clarification continues to be important because allocating prosecution grant funds to activities such as training and community coordination helps to achieve the statutory goal of improving prosecution response to domestic violence, dating violence, sexual assault, and stalking. OVW received one comment on this definition, noting that it included participation in domestic violence task forces and enforcing domestic violence restraining orders, but did not include task forces and restraining orders focused on sexual assault, dating violence, or stalking. OVW has added dating violence, sexual assault, and stalking to paragraph 90.2(e) to correct this oversight.

In addition, the statutory definition for "prosecution" uses, but does not define, the term "public agency," which the rule defines using the definition for this term in the Omnibus Crime Control and Safe Streets Act. *See* 42 U.S.C. 3791.

The rule revises the definition of "unit of local government," which did not have a statutory definition specific to all OVW grant programs until the enactment of VAWA 2013, to make it consistent with the statutory language. In addition, it includes in the definition a list of entities and organizations that do not qualify as units of local government for funding purposes and would need a unit of local government to apply on their behalf for those programs where "unit of local government" is an eligible entity but other types of public or private entities are not eligible. The list reflects OVW's long-standing interpretation of the term "unit of local government" and is consistent with OVW's practice of excluding these entities and organizations from eligibility to apply for

OVW funding as units of local government. The one comment on this definition was a recommendation for OVW to consult with tribes on the impact of the change. OVW declines to take this suggestion for two reasons. First, the change eliminating tribes from the definition of “unit of local government” is dictated by the definition in VAWA 2013 and cannot be changed by regulation. By excluding tribes from the definition of “unit of local government,” VAWA 2013 excluded tribes from a provision in the authorizing statute for the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program that reduces the award amount to states and units of local government by five percent if the jurisdiction does not have certain laws, regulations, or policies regarding HIV testing of sex offenders. Second, even if the regulation could alter the statutory definition, OVW notes that this statutory change has no impact on tribal eligibility for OVW grants. “Tribal government” is an eligible entity for every OVW grant program that includes “unit of local government” as an eligible entity.

The rule also adds definitions to the regulation for terms that are used in OVW grant program statutes but are undefined and that OVW believes would be helpful to applicants and grantees. The term “community-based organization” is defined in 42 U.S.C. 13925(a), but the term “community-based program,” which also appears in OVW grant program statutes, is not. To preserve consistency across OVW programs and minimize confusion, OVW is proposing to use the statutory definition for both terms.

The rule provides a definition of “prevention” that distinguishes the term from “outreach” both because OVW has observed that some grant applicants propose outreach activities to implement prevention programming under OVW programs and because funding for “prevention” is more limited than funding for “outreach.” The proposed rule

defined “prevention program” as “a program that has a goal of stopping domestic violence, dating violence, sexual assault, or stalking from happening in the first place. Prevention is distinguished from ‘outreach,’ which has the goal of informing victims and potential victims about available services.” OVW received three different comments on this definition. The first recommends that the definition describe the distinction between “primary” and “secondary” prevention so that programs that interrupt and prevent future domestic violence, dating violence, sexual assault, and stalking after it has taken place can be distinguished from programs that focus on these crimes in a context where they have not yet taken place. This commenter specifically recommended using language from the Family Violence Prevention and Services Office within the Department of Health and Human Services. The second commenter recommended changing “programs” in the definition to “activities and strategies.” The third commenter recommended deleting “in the first place” from the definition. OVW agrees with all the comments and the definition in paragraph 90.2(d) has been revised to make clear that “prevention” includes both primary and secondary prevention efforts and to define the terms primary and secondary prevention. The final sentence from the proposed rule, which distinguishes “prevention” from “outreach” is retained in the final rule.

Finally, the rule adds a definition for “victim services division or component of an organization, agency, or government” because the rule uses this term in implementing the confidentiality provision enacted by VAWA 2005 and amended by VAWA 2013, which is discussed in more detail in the next section.

§90.4. Grant Conditions

VAWA 2005 added grant conditions for all OVW grant programs, including a provision on confidentiality and privacy of victim information and these provisions were amended by VAWA 2013. *See* 42 U.S.C. 13925(b). Section 90.4(a) provides that the grant conditions in 42 U.S.C. 13925(b) apply to all grants awarded by OVW and all subgrants under such awards. One commenter requested that OVW also specify that grantees and subgrantees are required to comply with Title VI of the Civil Rights Act of 1964 and section 504 of the Rehabilitation Act. The commenter correctly notes that all grantees and subgrantees must comply with these laws. The grantmaking process, however, already requires grantees and subgrantees to comply with these and other civil rights statutes through standard assurances that the grantee signs. These are available on the OVW website at www.usdoj.gov/OVW. Because compliance with all applicable civil rights laws is already addressed through these assurances, it is not necessary to include compliance with two of these laws in this regulation.

The statutory confidentiality provision recognizes the critical importance to victim safety of protecting victims' personally identifying information. It generally requires grantees and subgrantees to protect victim confidentiality and privacy to ensure the safety of victims and their families and prohibits the disclosure of victims' information without their informed, written, and reasonably time-limited consent. These requirements, implemented in section 90.4(b), apply to all OVW grant programs, not just STOP grants. In administering this confidentiality provision, OVW has received numerous inquiries regarding what kinds of disclosures require written consent, and OVW is attempting to answer these questions in this rule.

In the Notice of Proposed Rulemaking, OVW requested comments about the propriety of placing victim information on third-party (or “cloud”) servers. Seven commenters responded to this request. Commenters were generally concerned about the privacy of information on such third-party servers, but also noted the need for flexibility in access to client information as service provision models expand from just office-based services. Commenters raised specific questions related to the use of third-party servers, such as who owns the data, who has access to the data, what security measures are in place to prevent unauthorized release of information, and what happens if the provider receives a subpoena for release of client information. Some commenters recommended specifying the answers to the above questions in the agreement between the victim service provider and the cloud storage provider. Some commenters also recommended the use of encryption to protect the client information. Two commenters specifically recommended the use of “zero knowledge” encryption, where the encryption key is stored on the victim service provider’s server so the storage provider only has access to encrypted (and therefore unreadable) information. Two commenters recommended the use of background checks of the employees of the storage providers. One commenter noted that, while they felt that cloud storage should be acceptable, it should not include sharing of client information in regional or statewide databases such as Homeless Management Information Systems. Based on these comments, OVW added a new paragraph (b)(5) to § 90.4: “Inadvertent release. Grantees and subgrantees are responsible for taking reasonable efforts to prevent inadvertent releases of personally identifying information or individual information that is collected as described in paragraph (b)(2).” The reasonable efforts mentioned here apply not just to third-party electronic storage, but also protections

for paper copies of information or information stored on internet-connected computers at the victim service provider. As suggested by one commenter, the use of third-party storage is not, by itself, a release, but can lead to release without sufficient precautions. “Reasonable efforts” in the case of third-party storage include, but are not limited to, ensuring that the contract with the storage provider specifies that the service provider owns the information and ensuring that there are sufficient security protocols to protect the information.

Section 90.4(b)(2)(iii) provides that the confidentiality provision applies to disclosures from victim service divisions or components of an organization, agency, or government to other non-victim services divisions or components and to the leadership of such organization, agency, or government. It also provides that the leadership shall have access without releases only in “extraordinary and rare” circumstances. OVW requested comments on this provision and received three comments. Two commenters were concerned that the phrase “extraordinary and rare circumstances” is too vague and asked OVW to provide additional guidance. In response, OVW has added a statement clarifying that “Such [extraordinary and rare] circumstances do not include routine monitoring and supervision[.]” to the end of paragraph (b)(2)(iii). OVW decided against including a list of circumstances that justify disclosure because such determinations will be fact-based. OVW notes, however, that one example of such an extraordinary and rare circumstance justifying release to an organization’s leadership would be where there are allegations of fraud against the victim service division or one of its staff members. One commenter was concerned that this provision could be read to include victim-witness programs at prosecution or law enforcement offices. By statute (42 U.S.C. 13925(b)(2)(D)(i)(III)), the

confidentiality provision does not apply to “law enforcement-generated and prosecution-generated information necessary for law enforcement and prosecution purposes.” In addition, § 90.2(h) of this rule defines “victim services division or component of an organization, agency, or government” as a “division within a larger organization, agency, or government, where the agency has as its primary purpose to assist or advocate for victims of domestic violence, dating violence, sexual assault, or stalking and has a documented history of work concerning such victims.” Victim-witness programs in prosecution or law enforcement offices would generally be for law enforcement or prosecution purposes, even if they are also assisting victims.

Section 90.4(b)(3) governs releases of personally identifying information or individual information collected in connection with services. One commenter requested that OVW add language providing that releases must be accessible to all victims, including those with limited literacy and/or English language proficiency. OVW declines to make this change because it is not necessary. Both the statute and the regulation require informed releases; if the victim does not understand the release, it cannot be truly “informed.” Section 90.4(b)(3)(ii), as revised, requires that the grantee or subgrantee engage in a conversation with the victim regarding the purpose for and limits on the release, and the grantee or subgrantee should record the agreement as to the scope of the release. This conversation should ensure that the victim understands the release. In addition, with regard to language access, there are already civil rights laws and regulations requiring that grantees and subgrantees take reasonable steps to provide meaningful access to their programs and activities for persons with limited English proficiency. Grantees and subgrantees explicitly agree to comply with these laws by signing relevant assurances

and certifications when applying for OVW grants and upon the receipt of OVW financial assistance. For more information on language access requirements, the Office of Justice Programs, Office for Civil Rights (OCR) has information on its webpage at <http://ojp.gov/about/ocr/lep.htm>.

Section 90.4(b)(3)(i) addresses the circumstances under which identifying information about victims served by OVW grantees and subgrantees may be released, one of which is when the release is compelled by a court mandate (§90.4(b)(3)(i)(C)). One commenter requested that OVW clarify that “court mandates” include case law mandates, such as those imposing a “duty to warn” when there is a specified threat of harm. OVW accepts this comment. It is consistent with guidance that OVW has provided to grantees. Section 90.4(b)(3)(i)(C) has been revised to read “release is compelled by court mandate, which includes a legal mandate created by case law, such as a common-law duty to warn.”

Section 90.4(b)(3)(ii) addresses criteria for victim releases. One commenter recommended that, within the context of signing a release of information, grantees and subgrantees must reach agreement with the victim about what information the victim wants shared and record that agreement as part of the release. Another commenter recommended that the victim specify to whom and what specific information is to be shared. OVW agrees and has rewritten the third sentence of this paragraph to specify that grantees and subgrantees must discuss with the victim why the information might be shared, who would have access to the information, and what information could be shared under the release. They must also reach agreement with the victim about what information would be shared and with whom and record the agreement about the scope of the release.

Section 90.4(b)(3)(ii)(C) and (D) address releases for minors and legally incapacitated persons with court-appointed guardians. With regard to minor children, the rule provides that both the minor and the parent or guardian sign the release. One commenter noted that the rule should account for situations where the child is too young to sign the release. OVW agrees and has added language to clarify that, if a minor is incapable of knowingly consenting, the parent or guardian of that minor may provide consent. The rule also provides that, if a parent or guardian consents for a minor, the service provider should attempt to notify the minor as appropriate. Another commenter requested that OVW include language that consent for release may not be given by the abuser of the minor or the abuser of the other parent of the minor. Such language already was included in section 90.4(b)(3)(ii)(C) of the proposed rule.

Section 90.4(b)(4) addresses release of information about deceased victims for fatality reviews. OVW solicited comments on this provision and received four responses. The proposed rule provided that the prohibition on sharing information did not apply to information about deceased victims being sought for fatality reviews if the review met certain criteria. All commenters were concerned about the impact on victims if, prior to their deaths, they were aware of the possibility of release and recommended not allowing release without consent. Four commenters noted that such consent could be provided by a personal representative of the victim, if available. OVW is seeking to balance these concerns with the important work that is done by fatality reviews. In a fatality review, community responders examine homicides and suicides resulting from domestic violence to identify gaps in services, responses, and prevention efforts. These reviews can lead to systemic improvements that can prevent future deaths. The final rule requires grantees to

make a reasonable effort to gain consent from a personal representative, but, if they are not able to do so after such efforts, it does not preclude their full participation in the fatality review. Also, the final rule permits sharing identifying victim information only when the fatality review has an underlying objective to prevent future deaths, enhance victim safety, and increase offender accountability, and includes both policies and protocols to protect against the release of information outside the fatality review team and limits release to information that is necessary for the purposes of the fatality review. OVW notes that many states or tribes have specific confidentiality and privilege laws that apply to victim service providers and other OVW grantees and subgrantees. This provision would allow release for VAWA purposes but would not override state or tribal laws that do not allow for release. Some laws, however, specifically authorize victim service providers to release information for fatality reviews. The language of the final rule is an attempt to ensure that the VAWA confidentiality provision is implemented in a manner that is compatible with such state or tribal laws, including both where those laws are more protective of victim confidentiality and where they authorize release.

Section 90.4(b)(6) (renumbered from (5) in the proposed rule) requires grantees and subgrantees to document their compliance with the confidentiality requirement by submitting an acknowledgement form indicating that they have notice of the requirement and that they will create and maintain documentation of compliance. OVW received one comment on this provision. The commenter recommended that OVW also require grantees and subgrantees to document their compliance with Title VI of the Civil Rights Act of 1964 and section 504 of the Rehabilitation Act. The standard assurances (available at <https://www.justice.gov/ovw/how-apply>) contain a provision that requires STOP

Program grantees and subgrantees to comply with applicable civil rights laws, including the Civil Rights Act, the Rehabilitation Act, and VAWA. Title VI requires grantees and subgrantees to provide appropriate language-access services to limited English proficient (LEP) beneficiaries. See 28 CFR 42.405(d). The U.S. Department of Justice has issued guidance for recipients on their responsibility under Title VI to provide language-access services. See Department of Justice, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 FR 41,455 (June 18, 2002). OVW, through the Office of Justice Programs, Office on Civil Rights (OCR), conducts compliance reviews to ensure that recipients are serving LEP beneficiaries and LEP service populations. State administering agencies that subgrant STOP Program funds to other organizations must have “Methods of Administration” (28 CFR 42.105(d)(2)) that monitor whether their subrecipients have a language assistance plan. OCR provides technical assistance to recipients about their obligation to provide language-access services through an online training program (<http://ojp.gov/about/ocr/ocr-training-videos/video-ocr-training.htm> (last visited July 21, 2016)), in-person presentations, and telephone consultations. In addition, aggrieved parties (and third parties) may file an administrative complaint with the OCR alleging a recipient’s failure to provide appropriate language-access services in violation of Title VI (28 CFR. 42.107(b)) and VAWA (28 CFR 42.205). OCR will investigate the complaint, and, if the complaint has merit, OCR will seek appropriate remedies. The enforcement scheme that is already in place holds recipients accountable for providing appropriate language-access services to LEP beneficiaries in accordance with Title VI and VAWA. Therefore there is no need for additional documentation under this rule.

An additional comment on this paragraph recommended the language, which was already included in the proposed rule, that requires grantees and subgrantees to document compliance with the confidentiality requirement.

OVW also has added a new section 90.4(c) to specify that victim eligibility for direct services is not dependent on the victim's immigration status, for consistency with the Office for Victims of Crime Victims of Crime Act (VOCA) Assistance Program Final Rule, which was issued after the OVW proposed rule. This is also consistent with the Attorney General Order on Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation (Attorney General Order No. 2353-2001, 66 F. R. 3616 (Jan. 16, 2001)). In addition, on August 5, 2016, Attorney General Loretta E. Lynch, Secretary Sylvia Mathews Burwell of the U.S. Department of Health and Human Services (HHS) and Secretary Julián Castro of the U.S. Department of Housing and Urban Development (HUD) released a letter⁴ to recipients of federal funding to provide more information on access to services for immigrant victims. The letter explains that immigrants cannot be denied access to certain services necessary to protect life or safety on the basis of their immigration status.

D. STOP Formula Grant Program

1. Organization

OVW proposed significant changes in the proposed rule to the organization of Subpart B, the STOP Program regulations, and is retaining these changes, without further alteration, in the final rule. The following chart shows the changes from the current rule to both the proposed and final rules.

⁴ <https://www.justice.gov/ovw/file/883641/download>

Section number	Current rule	Disposition of current section	Proposed rule/final rule
90.10	Description of STOP (<i>Services-Training-Officers-Prosecutors</i>) Violence Against Women Formula Grant Program	Same	STOP (<i>Services-Training-Officers-Prosecutors</i>) Violence Against Women Formula Grant Program-General
90.11	Program Criteria	Merged with 90.10 and 90.12	State office
90.12	Eligible Purposes	Merged with 90.10	Implementation plans
90.13	Eligibility	Now in 90.10	Forensic medical examination payment requirement
90.14	Forensic Medical Examination Payment Requirement	Now 90.13	Judicial notification requirement
90.15	Filing Costs for Criminal Charges	Same	Costs for criminal charges and protection orders
90.16	Availability and Allocation of Funds	(a) Is now in 90.17, (b) and (c) are merged with 90.12	Polygraph testing prohibition
90.17	Matching Requirements	Now 90.18	Subgranting of funds
90.18	Non-supplantation	Removed	Matching funds
90.19	State Office	Now 90.11	Application content
90.20	Application Content	Now 90.19	
90.21	Evaluation	Same	Evaluation
90.22	Review of State Applications	Same	Review of State applications
90.23	State Implementation Plan	Now 90.12	Annual grantee and subgrantee reporting
90.24	Grantee Reporting	Now 90.23	Activities that may compromise victim safety and recovery
90.25			Reallocation of funds

2. Removing duplicative regulatory language.

OVW is removing much of the existing regulation to avoid duplication with the statute. Specifically, OVW is removing the following sections and paragraphs of the current regulation for this reason: §§ 90.10; 90.11(a); 90.12; 90.16(a); and 90.18. Other

sections have been streamlined by referencing the statutory provision rather than repeating the statutory language.

3. Statutory changes.

As discussed above, VAWA of 2000, VAWA 2005, and VAWA 2013 have amended and enhanced the STOP Program. Specific changes are as follows:

- Expanded purpose areas (incorporated by reference in § 90.10)
- Changes in allocations: (1) the victim services allocation increased from 25 percent to 30 percent; (2) a set aside was added of ten percent of the victim services funds (or three percent of the total award) for culturally specific community-based organizations; (3) a set aside was added of five percent to courts; and (4) a 20-percent set aside was added for programs that meaningfully address sexual assault in two or more of the specified allocations (§ 90.11(c))
- Changes in the implementation planning process, including an expanded list of entities with which the state is required to consult and additional information that needs to be included in a state's implementation plan (§ 90.12)
- Changes to the existing certification requirements and additions of new certification requirements (§ 90.13, forensic medical examination payment; § 90.14, judicial notification; § 90.15, costs for criminal charges and protection orders; and § 90.16, polygraph testing prohibition)

The rule also removes references to the Assistant Attorney General for the Office of Justice Programs to reflect statutory changes made by the Violence Against Women Office Act, Title IV of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273 (Nov. 2, 2002).

4. Section-by-section summary of the regulatory text.

This section describes each provision of the regulatory text, any comments received, and any changes made to the final rule.

§ 90.10 STOP (*Services-Training-Officers-Prosecutors*) Violence Against Women Formula Grant Program-General

Section 90.10 lists the eligible applicants for the program and specifies that the purposes, criteria, and requirements for the program are established by 42 U.S.C. 3796gg *et seq.* The only comments on this section expressed support.

§ 90.11 State office

Section 90.11 describes the role of the state office, which is to be designated by the chief executive of the state. As detailed in § 90.11(a) and (b), the state office is responsible for submitting the application, including certifications, developing the implementation plan, and administering the funds. Three commenters felt that paragraph (b) was too burdensome in that it required the state administering agencies for various programs to coordinate on disbursement of funds (rather than implementation planning). The requirement to coordinate on disbursement is in the current rule, but, since the issuance of that rule, VAWA 2013 added the requirement to coordinate on implementation planning. OVW agrees that the existing requirement to coordinate with other state administering agencies on disbursement of funds is no longer necessary in light of the VAWA 2013 amendment and is removing it from the final rule. The requirement to coordinate on implementation planning is at § 90.12(b)(6).

Section 90.11(c) is intended to ensure that statutorily allocated funds are meaningfully targeted to the appropriate entities and activities. Paragraph (c)(3) discusses

the allocation for culturally specific services. One commenter recommended changing the second sentence to clarify that recipients should have expertise specifically on services to address the demonstrated needs of the targeted racial and ethnic minority group. OVW agrees and has changed the second sentence accordingly. This commenter also requested that the rule make clear that the set aside of ten percent (out of the thirty percent for victim services) is a minimum and not a cap. OVW agrees and has added language to §90.11(c)(3) to encourage states to provide funding above the three percent minimum to address the needs of racial and ethnic minority groups.

Another commenter expressed support for the paragraph's language clarifying eligibility for the culturally specific set aside and recommended that OVW go further in delineating an assessment approach for subgrant applications under this category. OVW accepts this recommendation and is adding a new sentence to paragraph (c)(3) that provides that states should tailor their subgrant application process to meaningfully assess the qualifications of applicants for the culturally specific set aside.

One additional commenter noted that the definition of "culturally specific" is not the same as the definition of "underserved" and that therefore some populations of victims (such as Deaf and lesbian, gay, bisexual, and transgender (LGBT)) are excluded. OVW cannot alter the definition to include additional underserved populations because of a statutory change in VAWA 2013. Prior to VAWA 2013, states could use the culturally specific set aside to provide culturally specific services to any underserved population. VAWA 2013 changed the definition of culturally specific so that it now means "primarily directed toward racial and ethnic minority groups." 42 U.S.C. 13925(b)(6). As a result, the STOP Program's set aside for culturally specific community-based organizations may

only fund subgrantees that target racial and ethnic minority groups. 42 U.S.C. 3796gg-1(c)(4)(C). States are still required to consider the full range of underserved populations in the state and ensure that funds are equitably distributed toward the needs of such populations, 42 U.S.C. 3796gg-1(e)(2)(D).

Section 90.11(c)(4) provides guidance with regard to the twenty-percent sexual assault set aside. One commenter supported language directing how states evaluate whether projects qualify for the sexual assault set aside generally, but objected to allowing states to assess the percentage of a project that addresses sexual assault and count that percentage toward the set aside. The commenter noted that projects that primarily address other crimes should not count toward the sexual assault set aside. OVW agrees that only projects that truly address sexual assault should be counted and has removed the sentence that would permit states to aggregate percentages from projects that do not primarily address sexual assault. Projects that qualify for the set aside may include, but are not limited to, sexual assault victim advocacy services, sexual assault forensic examiner programs, Sexual Assault Response Teams, law enforcement or prosecution training on or specialized units for sexual assault, projects addressing rape kit backlogs, and projects that involve implementation of the Prison Rape Elimination Act of 2012 (PREA) standards in working with incarcerated victims.

OVW also has added a new paragraph (d) on pass-through administration, based on the Office for Victims of Crime's VOCA Victim Assistance Program Final Rule, which was issued after the OVW proposed rule. Under both the STOP and Victim Assistance Programs, some states administer the program by awarding the funds to an organization such as a state domestic violence or sexual assault coalition and permitting that

organization to identify and monitor subgrantees. OVW wishes to be consistent with OVC's regulations regarding this practice.

§ 90.12 Implementation plans

Section 90.12 implements new requirements for the state planning process added by VAWA 2013. One commenter had an overarching recommendation that this section refer to the statute without any additional detail. The commenter opined that such detail is more appropriate for guidance and “frequently asked questions” issued by OVW, rather than regulations. Finally, the commenter maintained that the requirements spelled out in this section are too burdensome for states and not consistent with existing state processes. OVW disagrees. The procedures in this rule are consistent with guidance that OVW previously provided to states and therefore state processes should already align with the rule's requirements. Although the rule does require certain documentation, OVW has determined that this documentation is necessary for OVW to ensure compliance with the detailed statutory requirements that Congress put in place in VAWA 2013. The provisions of this section balance the needs of the state with the complexity of the statute. As discussed below, however, state plans will be due on a four-year cycle instead of a three-year one.

The proposed rule included language in section 90.12(a) incorporating a long-standing OVW practice of allowing states to submit a full implementation plan every three years and then submit updates to the plan in the other two years. Several commenters requested that the plan extend for five years, to cover the period between VAWA reauthorizations, rather than three, to reduce the burden on states. OVW is partially accepting this recommendation by making the plan due every four years, starting

with the FY 2017 application. Accordingly, the plan submitted in FY 2017 must cover the years 2017-2020. This will give the states more time to develop their plans each cycle and reduce the burden on states, while ensuring that the plans are updated with reasonable frequency. OVW declines to align the plan cycle with VAWA reauthorizations because OVW cannot know if or when Congress will reauthorize VAWA. Depending on the changes made to the STOP Program statute in a reauthorization, however, a new state plan may not be required due to a reauthorization. For example, if purpose areas are added or changed, the state could develop an update noting whether or not it plans to use the new purpose areas. Because of the longer plan period, the final rule provides in paragraph (b) that consultation is required for updating a plan as well as for developing the full plan. If there are no updates, or only minor changes, then the consultation may be brief.

Paragraphs (b) and (c) of section 90.12 are new to the regulation, but incorporate provisions from 42 U.S.C. 3796gg-1(c)(2) and (i) regarding consultation and coordination. The statute, as amended by VAWA 2013, provides a list of entities that states must consult with during the implementation planning process and requires documentation from members of the planning committee as to their participation in the planning process. OVW must ensure that states consult with all the required entities and fully document such consultation. The final rule strikes a balance between requiring sufficient documentation within the implementation plan and minimizing the burdens on state administrators inherent in providing such documentation.

Section 90.12(b) addresses consultation and coordination with the entities specified in 42 U.S.C. 3796gg-1(c)(2). Paragraph (b)(2) addresses population-specific organizations, representatives from underserved populations, and culturally specific

organizations. Two commenters noted that the proposed rule required the inclusion of “significant underserved or culturally specific populations in the state” but did not define “significant.” OVW declines to define “significant” because what significant means will be different for every state. Instead, OVW has inserted language in paragraph (c) that requires states to explain in their implementation plans how they determined which underserved and culturally specific populations to include. OVW also has amended paragraph (b)(2) to provide that states consider, in addition to demographics, barriers to service, including historical lack of access to services, for each population. These commenters noted a similar concern with paragraph (b)(7), which is addressed in the final rule through these change to paragraphs (b)(2) and (c).

Two commenters requested that OVW add language to paragraph (b)(2) with specific recommendations on how states should engage in meaningful outreach, such as having a mailing list with organizations in specific areas, including nonprofit and faith-based organizations, and conducting information sessions beyond regular business hours and in local communities. Although OVW agrees in principle with these suggestions, OVW believes they are too detailed and specific for inclusion in the regulations and more appropriate for technical assistance.

Section 90.12 (b)(3) requires consultation with all state and federally recognized tribes in the planning process. One commenter agreed but also noted that there is a need for states to have mechanisms for tribes to participate meaningfully and recommended that OVW require states to document their attempts to reduce barriers to participation by tribes. OVW agrees and has added this to paragraph (c)(2)(iii). Examples of ways that states

have successfully reached tribes include tours of the reservations in the state and regional meetings with tribal leaders.

Section 90.12(b)(4) provides that, if possible, states should include survivors of domestic violence, dating violence, sexual assault, and stalking in the planning process. One commenter noted the value and importance of including survivors in the planning process. Another recommended changing the provision to reflect that states are “encouraged” to include survivors, but also noted concerns that states could recruit and solicit input from survivors in ways that violate survivor confidentiality and autonomy. As a result, OVW has changed the provision to remind states that include survivors in their consultation process that they should address safety and confidentiality concerns. OVW recommends that state STOP administrators work with organizations within their states, such as state coalitions, victim service providers, and culturally and population specific organizations, that may have survivor advisory panels or may be able to assist with recruiting survivors who are interested in providing input regarding the state plan. Survivors do not need to participate in person and their input may be obtained through means such as online or paper surveys, conference calls, or web meetings.

Section 90.12(b)(6) implements the statutory requirement at 42 U.S.C. 3796gg-1(c)(3) that the state coordinate the plan with the plans for the Family Violence Prevention and Services Act (42 U.S.C. 10407), the State Victim Assistance Formula Grants under the Victims of Crime Act (42 U.S.C. 10603), and the Rape Prevention and Education Program (42 U.S.C. 280b-1b). Two commenters noted that this coordination can be difficult if the STOP Program administrator does not control the other funding streams. They also noted that the VOCA Assistance state administrator may be better

positioned to lead this coordination, as that program disburses substantially more funding. Because each state is structured differently, OVW will give states discretion how to handle this statutory requirement. Some examples include a single meeting with the various state administrators to discuss plan priorities, having a shared planning process, having the different administrators serve on the STOP planning committee, and sharing a draft plan with the other administrators for feedback. If a state chooses to have another administrator, such as the VOCA administrator, lead the processes, it may do that at its discretion.

Section 90.12(c) provides information on how states must document their consultation with the various required entities. The rule requires states to submit to OVW documentation of the extent of each partner's participation, a summary of any significant concerns that were raised during the planning process, and a description of how those concerns were resolved. Paragraph (c) is intended to ensure meaningful collaboration with partners, while minimizing the administrative burden on states. One commenter noted that the term "checklist" can be confusing because OVW also uses a checklist of the required plan elements. The commenter recommended changing "checklist" to "documentation of collaboration." OVW agrees and has made this change.

OVW received several comments on this section, both expressing support and expressing concerns about the burden on STOP administrators. Some commenters recommended using a certification of compliance with collaboration instead of requiring the documentation. One commenter recommended removing some of the specific details regarding what to retain and instead provide a general requirement for states to document and keep on file a description of the planning process. One commenter noted that the

requirement to provide a summary of major concerns is duplicative. However, another commenter specifically supported the level of documentation and the focus on documenting major issues and how they are resolved. After consideration of these diverging views, OVW has determined that the level of documentation required by the rule is necessary for management of the program and is consistent with current practices and OVW guidance. OVW, however, has rewritten this section to clarify what documentation must be retained and what must be submitted as part of the implementation plan. OVW may review the retained documentation as part of monitoring, such as a site visit or where there is a suspicion of noncompliance with the collaboration requirements. Furthermore, by amending section 90.12(a) to require a new plan every four years instead of every three years, OVW has reduced the burden of retaining or submitting this documentation. Also, one commenter noted that requiring participants to fax or email proof of their attendance on calls and webinars is not necessary. OVW agrees and has modified that paragraph accordingly.

Section 90.12(d) implements 42 U.S.C. 3796gg-1(e)(2), which requires states to describe in the implementation plan how they will provide for equitable distribution of funds with certain considerations, such as geographic diversity and meeting the needs of underserved populations. One commenter noted that states must ensure that eligible underserved and culturally specific entities are aware of the funding opportunity. OVW agrees but recognizes that this kind of outreach is needed not just for underserved populations, but for other categories in this paragraph such as different types of geographic areas. Therefore, OVW has added a new paragraph (d)(5) to require that states take steps to ensure that eligible applicants are aware of the STOP Program funding opportunity,

including applicants serving different geographic areas and culturally specific and other underserved populations. Another commenter expressed a concern with paragraph (d)(4), which specifies that states must recognize and meaningfully respond to the needs of underserved populations and ensure that monies set aside to fund linguistically and culturally specific services and activities for underserved populations are distributed equitably among “those populations.” This commenter was concerned that the term “those populations” will be seen as limiting the equitable distribution to culturally specific populations under the ten-percent set aside. OVW agrees and has amended paragraph (d)(4) to clarify that it applies to both culturally specific populations and the broader range of underserved populations.

Section 90.12(e) implements 42 U.S.C. 3796gg-1(i)(2)(E). The paragraph allows states the flexibility to identify underserved populations, while requiring a description of why the specific populations were selected. One commenter noted in response to both this paragraph and paragraph (d) that the states must address statewide needs and that the ten-percent set aside is a minimum and not a cap. As discussed above, OVW has made changes to section 90.12(c)(3) that address these concerns. This commenter also requested that OVW include a reminder that states must develop language access plans to ensure that, in distribution of funding, they provide “meaningful access” for persons with limited English proficiency. This specific reminder is not needed because it is already required and addressed through other mechanisms, as discussed above in response to a similar comment regarding § 90.4(b)(6). OVW does include language in all its solicitations about language access and use of funds for this purpose. OVW encourages

states to use the same or similar language in their solicitations. The 2016 STOP Program solicitation includes the following:

Accommodations and Language Access

Recipients of OVW funds must comply with applicable federal civil rights laws, which, among other things, prohibit discrimination on the basis of disability and national origin. This includes taking reasonable steps to ensure that persons with limited English proficiency (LEP) have meaningful access to recipients' programs or activities. More information on these obligations is available in the OVW FY 2014 Solicitation Companion Guide and at www.lep.gov. Applicants are encouraged to allocate grant funds to support activities that help to ensure individuals with disabilities, Deaf individuals, and persons with limited English proficiency have meaningful and full access to their programs. For example, grant funds can be used to support American Sign Language (ASL) interpreter services, language interpretation and translation services, or the purchase of adaptive equipment.

Applicants proposing to use grant funds to create websites, videos, and other materials must ensure that the materials are accessible to persons with disabilities. Grant funds may be allocated for these purposes.

Section 90.12(f) implements 42 U.S.C. 3796gg-1(i)(2)(G), which requires state implementation plans to include goals and objectives for reducing domestic violence-related homicide. This paragraph requires states to include statistics on domestic violence homicide within the state, consult with relevant entities such as law enforcement and victim service providers, and establish specific goals and objectives to reduce homicide, including addressing challenges specific to the state and how the plan can overcome them.

Section 90.12(g) outlines additional content that implementation plans must include. These required elements are designed to help OVW ensure that states meet statutory requirements for the program and to provide a better understanding of how the state plans to allocate its STOP Program funds. One commenter requested that OVW remind states to provide outreach to targeted community groups, which should be

translated or interpreted to other languages and broadcast in ethnic media. The need for outreach has been addressed in paragraph (d)(5) as discussed above. Also, as discussed above, the specific reminder about interpretation is unnecessary because it is covered by other laws, regulations, guidance, and resources for grantees.

Paragraph (g)(7), regarding the Prison Rape Elimination Act (PREA), is designed to ensure that states that submit assurances under PREA that they will spend five percent of “covered funds” towards compliance with PREA are including such funds in their planning. One commenter noted that there is pending legislation that could separate PREA from STOP. To address this possibility, OVW has added the phrase, “if applicable” to paragraph (g)(7). If the legislation passes, it will no longer be applicable, and states will not need to address it. Another commenter opined that, because the decision whether to submit a certification, assurance, or neither under PREA is the responsibility of the governor, it should only be included in the implementation plan if the grantee is using PREA set-aside funds for victim services and has control through direct contracting. OVW agrees in part and disagrees in part. Although it is true that the state STOP administrator does not have control over PREA certification and assurance decisions, the administrator should be aware of the governor’s decisions and should be able to report on the use of STOP funds if the state submitted an assurance that it would use five percent of covered funds under STOP towards coming into compliance with PREA. Therefore, OVW has changed the paragraph to note that the state needs to specify whether it submitted a certification, assurance, or neither under PREA, and, if an assurance, how it plans to spend the STOP funds set aside for PREA compliance.

Section 90.12(h) implements a change in VAWA 2013 that makes the implementation plans due at the time of application rather than 180 days after award. One commenter complained that this does not give states enough time to complete the plan and requested 90 days after the award to complete the plan. OVW disagrees because states do not need to wait for the solicitation to write the plan. Since the previous plan was due in 2014, OVW has been encouraging states to work on their 2017 plans. States may use the 2014 solicitation, guidance on the OVW web page, and this rule to help develop their plans. In addition, if a state is not able to complete their plan by the application deadline, they may submit information on what is needed to complete the plan. If they have not completed the plan by the time the award is issued, the state will still receive the award, but with a condition withholding all the funds until the plan is submitted and approved.

§ 90.13 Forensic medical examination payment requirement

Section 3796gg-4 of Title 42 requires states to ensure that the state or another governmental entity bears the “full out-of-pocket” costs of sexual assault medical forensic examinations. Section 90.13(b) provides a definition of “full out-of-pocket costs.” Paragraph (d) clarifies that, if states use victims’ personal health insurance to pay for the exams, they must ensure that any expenses not covered by insurance are not billed to the victims, as these would constitute “out-of-pocket” costs. Paragraph (e) implements a new provision from VAWA 2013, 42 U.S.C. 3796gg-4(a)(1)(B), which requires states to coordinate with health care providers in the region to notify victims of the availability of forensic examinations.

Two commenters expressed that the victim’s insurance should never be billed. In some cases, insurance billing can present a hardship for victims. For example, a victim of

spousal rape may not want her husband to find out that she sought a forensic exam. If the victim is forced to submit the claim to her insurance company and she is covered by her husband's insurance, he may receive a statement from the insurance indicating that she received the exam. OVW agrees and strongly discourages the practice of billing a victim's insurance. The statute, however, clearly permits it. *See* 42 U.S.C. 3796gg-4(c) (specifying that states may only use grant funds to pay for forensic examinations if the examinations are performed by a trained examiner and victims are not required to seek reimbursement from their insurance). OVW, however, has added language to section 90.13(d) to discourage the practice. Another commenter wrote in response to this section as well as sections 90.15 (the provision prohibiting polygraph testing) and 90.16 (regarding fees and costs for criminal charges and protection orders) to request that states be required to provide notice to victims of their rights in relevant languages. Section 90.13(e) (implementing 42 U.S.C. 3796gg-4(1)(B)) already contains a notice requirement regarding rape examination payment. Additional reminders with regard to language access are not needed in this rule because it is covered by the relevant federal civil rights laws and regulations. Finally, although OVW encourages states to inform victims about the prohibition on polygraph testing and the provisions relating to costs for criminal charges and protection orders, OVW declines to impose a notice requirement, because Congress included it in the rape examination payment certification but did not in the certifications regarding polygraph testing and costs for criminal charges and protection orders.

§ 90.14 Judicial notification requirement

Section 90.14 implements the requirements of 42 U.S.C. 3796gg-4(e), which provides that states and units of local government are not entitled to funds unless they

certify that their judicial administrative policies and practices include notification to domestic violence offenders of relevant federal, state, and local firearms prohibitions that might affect them. This requirement was added by VAWA 2005. One commenter stated that the judicial notice should be in the language of the offender and that funding should be reduced if it is not. OVW declines to make this change because, as discussed above, language access is addressed by existing civil rights laws and regulations.

§ 90.15 Costs for criminal charges and protection orders

Section 90.15 implements the requirements of 42 U.S.C. 3796gg-5, which provides that states, tribes, and units of local government are not entitled to funds unless they certify that victims of domestic violence, dating violence, sexual assault, or stalking are not charged certain costs associated with criminal prosecution or protection orders. These requirements were amended by VAWA 2000 and VAWA 2013. No comments were received on this section other than the comment regarding notice discussed above under § 90.13.

§ 90.16 Polygraph testing prohibition

Section 90.16 implements 42 U.S.C. 3796gg-8, which provides that, to be eligible for STOP Program funding, states, tribes, and units of local government must certify that their laws, policies, and practices ensure that law enforcement officers, prosecutors, and other government officials do not ask or require sexual assault victims to submit to a polygraph examination or other truth telling device as a condition for investigating the offense. These requirements were added by VAWA 2005. OVW received two comments on this section, in addition to the comment regarding notice discussed above under § 90.13. The first recommended language to clarify that state-level police and

prosecutors must comply with this requirement. OVW has not accepted this suggestion, because although it is correct that the state must comply, OVW believes the language of the proposed rule is clear. The second commenter recommended that polygraphing be prohibited outright. OVW lacks the authority to do this because the statute (and therefore the regulation) only prohibits polygraphing as a condition of proceeding with the investigation of the offense. OVW, however, has changed “restricting” in paragraph (a) to “prohibiting” to track the language of the statute. OVW also agrees that polygraphing of victims should not be done as a routine matter. The Attorney General Guidelines for Victim and Witness Assistance (2011 Edition, https://www.justice.gov/sites/default/files/olp/docs/ag_guidelines2012.pdf) provides that investigating agents may request victims to take a polygraph only in extraordinary circumstances and only with the concurrence of the Special Agent in Charge or the Supervisory Assistant United States Attorney. The guidelines further provide that all reasonable alternative investigatory methods should be exhausted before requesting or administering a sexual assault victim polygraph examination. OVW recommends that states and local jurisdictions adopt similar guidelines to limit the improper use of polygraph tests on sexual assault victims.

§ 90.17 Subgranting of funds

Section 90.17(a) describes the type of entities that may receive subgrants from the state (state agencies and offices, courts, local governments, public agencies, tribal governments, victim service providers, community-based organizations, and legal services programs).

Section 90.17(b) allows states to use up to ten percent of each allocation category (law enforcement, prosecution, victim services, courts, and discretionary) to support the state's administrative costs. Examples of such costs include the salary and benefits of staff who administer the program and costs of conducting peer review. This paragraph codifies a long-standing OVW policy regarding state administrative costs. OVW added language from the OVC VOCA Assistance Program Rule regarding the use of funds for administrative costs. The programs often have the same administrators, so it is important that the regulations governing the two programs are consistent.

§ 90.18 Matching funds

Section 90.18 implements the match provisions of 42 U.S.C. 3796gg-1(f) and 13925(b)(1). VAWA 2005 provided that match could not be required for subgrants to tribes, territories, or victim service providers. It also authorized a waiver of match for states that have "adequately demonstrated [their] financial need." 42 U.S.C. 13925(b)(1). VAWA 2013 further specified that the costs of subgrants for victim services or tribes would not count toward the total amount of the STOP award in calculating match. 42 U.S.C. 3796gg-1(f).

Section 90.18(a) states the match requirement in general and reflects that the match requirement does not apply to territories.

Section 90.18(b) allows for in-kind match, consistent with 2 CFR 200.306, and provides information on calculating the value of in-kind match.

Section 90.18(c) provides that states may not require match for subgrants for Indian tribes or victim service providers. This is consistent with 42 U.S.C. 13925(b)(1), as added by VAWA 2005.

Section 90.18(d) implements the waiver provisions of 42 U.S.C. 13925(b)(1), as added by VAWA 2005. In developing the criteria for waiver, OVW balanced the importance of state and local support for the efforts funded under the STOP Program with the need for waiver where there is demonstrated financial need. The paragraph ensures that the financial need identified by the state is specifically tied to funding for violence against women programs. For example, if a state has had across-the-board budget cuts, it would need to show how those cuts have impacted state funding for violence against women programs (and hence, its ability to provide matching funds). In most cases, a state would receive a partial waiver based on the specific impact of the cuts. For example, if the state had a 20 percent reduction in violence against women funding, then it would receive a 20 percent waiver. The 20 percent cut should leave the state with 80 percent of funds that could still be used toward match. In most cases, the states pass the match on to subgrantees, except for Indian tribes and victim service providers. In cases of awards to Indian tribes or awards to victim service providers for victim services purposes, as opposed to another purpose, such as law enforcement training, the state is exempted from the match requirement.

Section 90.18(e) provides that matching funds must be used for the same purposes as the federal funds and must be tracked for accountability purposes.

OVW received one comment on section 90.18. The commenter was seeking clarification that subgrants to victim service providers that are either awarded from the discretionary allocation or from funds that were returned from subgrantees under other allocations are exempt from match. OVW agrees and has amended paragraph (a) in the

final rule to clarify that funds awarded under these two scenarios are excluded from the total award amount for purposes of calculating match.

§ 90.19 Application content

Section 90.19 provides that states must apply for STOP Program funding using an annual solicitation issued by OVW. VAWA 2013 streamlined the application process by including most information and documentation in the implementation plan, but also requiring the plan to be submitted at the time of application. No comments were received on this section.

§ 90.21 Evaluation

Section 90.21 encourages states to have plans for evaluating the impact and effectiveness of their projects and requires them to cooperate with federally-sponsored evaluations of their projects. No comments were received on this section.

§ 90.22 Review of state applications

Section 90.22 provides the statutory basis for review of state applications and implements the Single Point of Contact requirement of Executive Order 12372 (Intergovernmental Review of Federal Programs). No comments were received on this section.

§ 90.23 Annual grantee and subgrantee reporting

Section 90.23 describes the annual reporting requirement for the program. Subgrantees submit annual progress reports to the state, which then forwards them to OVW, or as otherwise directed by OVW. States also must submit an annual progress report. Information on progress reports, along with the forms and instructions, are available at <http://muskie.usm.maine.edu/vawamei/stopformulamain.htm>. OVW

received one comment on this section. The commenter was concerned that the current annual reports are time consuming, expensive, and intrusive to survivors and recommended that OVW consider whether the reporting process can be simplified. OVW is considering ways to improve the progress reporting process. Under the current process, it is expected that grantees and subgrantees will determine in some cases that, under the circumstances, it is not appropriate to ask a victim for certain information. The grantee or subgrantee only needs to report demographic information to the extent that it can be obtained in the course of providing victim-centered services, and there is generally an “unknown” category they can use, if needed. The information generated from the progress reports is used for a report to Congress, which highlights the accomplishments of the program, and also has other valuable uses. For example, progress reports are used by both OVW and states for monitoring purposes, and data from the progress reports may be used at the state and national level for identifying trends, promising practices, and areas of need.

§ 90.24 Activities that may compromise victim safety and recovery

Section 90.24 provides that grant funds may not be used to support activities that compromise victim safety and recovery. This section is based on the overall purpose of VAWA to enhance victim safety. Specific examples of such activities are included in the STOP Program solicitation each year and in special conditions attached to each OVW grant award. For example, past solicitations explained that such unsafe activities include procedures or policies that exclude victims from receiving safe shelter, advocacy services, counseling, and other assistance based on their actual or perceived age, immigration status, race, religion, sexual orientation, gender identity, mental health condition, physical health

condition, criminal record, work in the sex industry, or the age and/or gender of their children. No comments were received on this section.

§ 90.25 Reallocation of funds

Section 90.25 implements a new provision from VAWA 2013, 42 U.S.C. 3796gg-1(j), which allows states to reallocate funds in the law enforcement, prosecution, courts, and victim services (including culturally specific services) allocation categories if they did not receive “sufficient eligible applications.” The section defines an “eligible” application and provides the information that states must maintain on file to document a lack of sufficient eligible applications. The section ensures that states conduct sufficient outreach to the eligible category of subgrantees before reallocating the funds. One commenter noted that, while they generally agree with the provision, they request more detail on what is needed for a state to be allowed to reallocate funds to another category. Another commenter specifically stated that, if there have been insufficient applications in the culturally specific category, the state should also provide documentation as to whether there were applicants that applied but failed to qualify and if the state reached out to any applicants that failed to apply. OVW agrees with these suggestions but has concluded that they apply not just to the culturally specific category, but to all of the categories. OVW has added a requirement regarding additional documentation on applications that were unfunded for all of the categories (i.e., law enforcement, courts, victim services, prosecution, and culturally-specific) and reorganized the section for better clarity.

IV. Regulatory Certifications

Executive Orders 12866 and 13563—Regulatory Review

This regulation 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 Department of Justice has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f) because it is not likely to: (1) have an annual effect on the economy of \$100 million or more; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues.

(1) The rule’s impact is limited to OVW grant funds. It does not change the economic impact of the grant funds and will impose very few economic costs as discussed below.

(2) The Department of Health and Human Services (HHS) has a similar program under the Family Violence Prevention and Services Act (FVPSA), which uses some of the same definitions and a similar confidentiality provision. OVW and the HHS FVPSA office coordinate to ensure consistency in implementation of programs.

(3) The requirements in the rule are statutory and apply only to OVW grantees. In some cases, OVW has added some additional specificity to clarify the statutory

requirements. The rule provides details on what information the states must provide as “documentation,” but does not impose new requirements.

(4) This rule does not raise any novel legal or policy issues.

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and to select regulatory approaches that maximize net benefits. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits. In most cases, the rule simply clarifies the statutory requirements, such as providing definitions, which would not have any cost or might reduce costs by providing administrators with clear guidance.

OVW provides the following analysis of the most noteworthy costs, benefits, and alternative choices.

Subpart A. In general, most of this subpart comes from the statute. OVW developed all of these provisions to answer questions received regularly from grantees and provide greater clarity for grantees and save them the time and effort of analyzing the requirements and seeking further guidance from OVW staff. Under this final rule, a victim service component of a larger organization, agency, or government will need a victim release to share identifying victim information with other divisions or leadership of the organization, agency or government. The use of the release will increase the degree of control that the victim has over his/her information, which is widely considered a best practice in the violence against women field. The cost of the rule is the time and

administrative burden in executing and tracking the release. This cost cannot be quantified, however, because the discussion of release with the victim would take place in the context of a larger conversation between the victim and the service provider about options for the victim and next steps. OVW considered whether to prevent the release of information about deceased victims in the context of fatality reviews, out of consideration for surviving family members. OVW found a balance that allows for release but also requires the fatality review to attempt to get permission from an authorized representative and surviving minor children (and/or guardians of such) and limits the release to information necessary for the fatality review.

Subpart B. In general, changes to subpart B reflect a balance between the burden on the state administrators and the need to ensure compliance with the statute. The relevant statute requires state implementation plans that must identify how the state will use STOP funds and meet certain statutory requirements. OVW opted to require full plans only every four years to reduce the burden on states in developing these plans. In the other years, states only submit updates to their plans.

Executive Order 13132—Federalism

This regulation 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. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The OVW, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reason: except for the match provisions in §90.18, the direct economic impact is limited to the OVW's appropriated funds. For more information on economic impact, please see above.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This rule will not result in substantial direct increased costs to Indian tribal governments. The definitions and confidentiality provisions of the rule will impact grantees that are tribes. OVW currently has 351 active awards to 226 tribes and tribal organizations, for a total of over \$182 million. As discussed above, any financial costs imposed by the rule are minimal.

In addition, although a small number of tribes are subgrantees of the STOP Program, discussed in subpart B, the requirements of the rule are imposed on grantees, not subgrantees. The one provision in subpart B that will have a direct effect on tribes is

§ 90.12(b)(3), which implements the statutory requirement that states consult with “tribal governments in those States with State or federally recognized Indian tribes.” 42 U.S.C. 3796gg-1(c)(2)(F). The rule requires states to invite all state or federally recognized tribes in the state to participate in the planning process. This approach was recommended by tribal participants in the tribal listening session and at OVW’s annual government-to-government tribal consultations in 2013 and 2014.

As discussed above, OVW included regulatory implementation of statutory changes to the STOP Program as a topic at its annual tribal consultations in 2013 and 2014. At the 2013 consultation, tribal leaders were asked for testimony on terms that should be defined in the regulations, additional entities that states should consult with in developing their implementation plans, how states should document the participation of planning committee members, and how states should consult with tribes, among other specific questions. The questions presented at the 2014 consultation included how states might better consult with tribes during STOP implementation planning, and how states should include tribes in the equitable distribution of funds for underserved populations and culturally specific services. At both consultations, tribal leaders emphasized the importance of states engaging in meaningful consultation with all tribes in their state. Tribal leaders noted that such consultation should involve a cooperative decision-making process designed to reach consensus before a decision is made or action is taken, and that effective consultation leads to an implementation plan that takes into account the needs of tribes. Tribal leaders also pointed out that a state’s failure to consult with tribes can prevent tribes from accessing STOP funds or even being aware that they are available.

Finally, testimony at the tribal consultations raised concerns about states asking tribal shelters to volunteer to provide matching funds in order to receive STOP subgrant funding.

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 uniquely affect small governments. Therefore, no actions were deemed 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 cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete in domestic and export markets.

List of Subjects in 28 CFR Part 90

Grant programs; judicial administration.

For the reasons set forth in the preamble, the Office on Violence Against Women amends 28 CFR part 90 as follows:

PART 90 – VIOLENCE AGAINST WOMEN

1. The authority for part 90 is revised to read as follows:

Authority: 42 U.S.C. 3796gg *et seq.*; 42 U.S.C. 3796hh *et seq.*, 42 U.S.C. 13925

Subpart A—General Provisions

2. Section 90.1 is revised to read as follows:

§ 90.1 General

(a) This part implements certain provisions of the Violence Against Women Act (VAWA), and subsequent legislation as follows:

(1) The Violence Against Women Act (VAWA), Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322 (Sept. 13, 1994);

(2) The Violence Against Women Act of 2000 (VAWA 2000), Division B of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 (Oct. 28, 2000);

(3) The Violence Against Women Office Act, Title IV of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273 (Nov. 2, 2002);

(4) The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. No. 109-162 (January 5, 2006); and,

(5) The Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. No. 113-4 (Mar. 7, 2013).

(b) Subpart B of this part defines program eligibility criteria and sets forth requirements for application for and administration of formula grants to States to combat violent crimes against women. This program is codified at 42 U.S.C. 3796gg through 3796gg-5 and 3796gg-8.

(c) Subpart C of this part was removed on September 9, 2013.

(d) Subpart D of this part defines program eligibility criteria and sets forth requirements for the discretionary Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program.

(e) Subpart A of this part applies to all grants made by OVW and subgrants made under the STOP Violence Against Women Formula Program (STOP Program) and the Sexual Assault Services Formula Grant Program after the effective date of this rule. Subpart B of this part applies to all STOP Program grants issued by OVW after the effective date of the rule and to all subgrants issued by states under the STOP Program after the effective date of the rule, even if the underlying grant was issued by OVW prior to the effective date of the rule.

3. Section 90.2 is revised to read as follows:

§ 90.2 Definitions

(a) In addition to the definitions in this section, the definitions in 42 U.S.C. 13925(a) apply to all grants awarded by the Office on Violence Against Women and all subgrants made under such awards.

(b) The term “community-based program” has the meaning given the term “community-based organization” in 42 U.S.C. 13925(a).

(c) The term “forensic medical examination” means an examination provided to a victim of sexual assault by medical personnel to gather evidence of a sexual assault in a manner suitable for use in a court of law.

(1) The examination should include at a minimum:

- (i) Gathering information from the patient for the forensic medical history;
- (ii) Head-to-toe examination of the patient;

(iii) Documentation of biological and physical findings; and

(iv) Collection of evidence from the patient.

(2) Any costs associated with the items listed in paragraph (c)(1) of this section, such as equipment or supplies, are considered part of the “forensic medical examination.”

(3) The inclusion of additional procedures (e.g., testing for sexually transmitted diseases) may be determined by the State, Indian tribal government, or unit of local government in accordance with its current laws, policies, and practices.

(d) The term “prevention” includes both primary and secondary prevention efforts. “Primary prevention” means strategies, programming, and activities to stop both first-time perpetration and first-time victimization. Primary prevention is stopping domestic violence, dating violence, sexual assault, and stalking before they occur. “Secondary prevention” is identifying risk factors or problems that may lead to future domestic violence, dating violence, sexual assault, or stalking and taking the necessary actions to eliminate the risk factors and the potential problem. “Prevention” is distinguished from “outreach,” which has the goal of informing victims and potential victims about available services.

(e) The term “prosecution” means any public agency charged with direct responsibility for prosecuting criminal offenders, including such agency's component bureaus (such as governmental victim services programs). Public agencies that provide prosecution support services, such as overseeing or participating in Statewide or multi-jurisdictional domestic violence, dating violence, sexual assault, or stalking task forces, conducting training for State, tribal, or local prosecutors or enforcing victim compensation and domestic violence, dating violence, sexual assault, or stalking-related

restraining orders also fall within the meaning of “prosecution” for purposes of this definition.

(f) The term “public agency” has the meaning provided in 42 U.S.C. 3791.

(g) For the purpose of this part, a “unit of local government” is any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State. The following are not considered units of local government for purposes of this part:

(1) Police departments;

(2) Pre-trial service agencies;

(3) District or city attorneys’ offices;

(4) Sheriffs’ departments;

(5) Probation and parole departments;

(6) Shelters;

(7) Nonprofit, nongovernmental victim service agencies including faith-based or community-based organizations; and

(8) Universities.

(h) The term “victim services division or component of an organization, agency, or government” refers to a division within a larger organization, agency, or government, where the division has as its primary purpose to assist or advocate for domestic violence, dating violence, sexual assault, or stalking victims and has a documented history of work concerning such victims.

4. Section 90.4 is added to subpart A to read as follows:

§ 90.4 Grant conditions.

(a) *Applicability.* In addition to the grant conditions in paragraphs (b) and (c) of this section, the grant conditions in 42 U.S.C. 13925(b) apply to all grants awarded by the Office on Violence Against Women and all subgrants made under such awards.

(b) *Nondisclosure of confidential or private information—(1) In general.* In order to ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking and their families, grantees and subgrantees under this part shall protect the confidentiality and privacy of persons receiving services.

(2) *Nondisclosure.* (i) Subject to paragraph (b)(3) of this section, grantees and subgrantees shall not disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected.

(ii) This paragraph applies whether the information is being requested for a Department of Justice grant program or another Federal agency, State, tribal, or territorial grant program. This paragraph also limits disclosures by subgrantees to grantees, including disclosures to Statewide or regional databases.

(iii) This paragraph also applies to disclosures from the victim services divisions or components of an organization, agency, or government to other non-victim service divisions within an organization, agency, or government. It also applies to disclosures from victim services divisions or components of an organization, agency, or government to the leadership of the organization, agency, or government (e.g., executive director or chief executive). Such executives shall have access without releases only in extraordinary and

rare circumstances. Such circumstances do not include routine monitoring and supervision.

(3) *Release.* (i) Personally identifying information or individual information that is collected as described in paragraph (b)(2) of this section may not be released except under the following circumstances:

(A) The victim signs a release as provided in paragraph (b)(3)(ii) of this section;

(B) Release is compelled by statutory mandate, which includes mandatory child abuse reporting laws; or

(C) Release is compelled by court mandate, which includes a legal mandate created by case law, such as a common-law duty to warn.

(ii) Victim releases must meet the following criteria—

(A) Releases must be written, informed, and reasonably time-limited. Grantees and subgrantees may not use a blanket release and must specify the scope and limited circumstances of any disclosure. At a minimum, grantees and subgrantees must: discuss with the victim why the information might be shared, who would have access to the information, and what information could be shared under the release; reach agreement with the victim about what information would be shared and with whom; and record the agreement about the scope of the release. A release must specify the duration for which information may be shared. The reasonableness of this time period will depend on the specific situation.

(B) Grantees and subgrantees may not require consent to release of information as a condition of service.

(C) Releases must be signed by the victim unless the victim is a minor who lacks the capacity to consent to release or is a legally incapacitated person and has a court-appointed guardian. Except as provided in paragraph (b)(3)(ii)(D) of this section, in the case of an unemancipated minor, the release must be signed by the minor and a parent or guardian; in the case of a legally incapacitated person, it must be signed by a legally-appointed guardian. Consent may not be given by the abuser of the minor or incapacitated person or the abuser of the other parent of the minor. If a minor is incapable of knowingly consenting, the parent or guardian may provide consent. If a parent or guardian consents for a minor, the grantee or subgrantee should attempt to notify the minor as appropriate.

(D) If the minor or person with a legally appointed guardian is permitted by law to receive services without the parent's or guardian's consent, the minor or person with a guardian may consent to release information without additional consent.

(iii) If the release is compelled by statutory or court mandate, grantees and subgrantees must make reasonable efforts to notify victims affected by the disclosure and take steps necessary to protect the privacy and safety of the affected persons.

(4) *Fatality reviews.* Grantees and subgrantees may share personally identifying information or individual information that is collected as described in paragraph (b)(2) of this section about deceased victims being sought for a fatality review to the extent permitted by their jurisdiction's law and only if the following conditions are met:

(i) The underlying objectives of the fatality review are to prevent future deaths, enhance victim safety, and increase offender accountability;

(ii) The fatality review includes policies and protocols to protect identifying information, including identifying information about the victim's children, from further release outside the fatality review team;

(iii) The grantee or subgrantee makes a reasonable effort to get a release from the victim's personal representative (if one has been appointed) and from any surviving minor children or the guardian of such children (but not if the guardian is the abuser of the deceased parent), if the children are not capable of knowingly consenting; and

(iv) The information released is limited to that which is necessary for the purposes of the fatality review.

(5) *Inadvertent release.* Grantees and subgrantees are responsible for taking reasonable efforts to prevent inadvertent releases of personally identifying information or individual information that is collected as described in paragraph (b)(2) of this section.

(6) *Confidentiality assessment and assurances.* Grantees and subgrantees are required to document their compliance with the requirements of this paragraph. All applicants for Office on Violence Against Women funding are required to submit a signed acknowledgement form, indicating that they have notice that, if awarded funds, they will be required to comply with the provisions of this paragraph, will mandate that subgrantees, if any, comply with this provision, and will create and maintain documentation of compliance, such as policies and procedures for release of victim information, and will mandate that subgrantees, if any, will do so as well.

(c) *Victim eligibility for services.* Victim eligibility for direct services is not dependent on the victim's immigration status.

(d) *Reports.* An entity receiving a grant under this part shall submit to the Office on Violence Against Women reports detailing the activities undertaken with the grant funds. These reports must comply with the requirements set forth in 2 CFR 200.328 and provide any additional information that the Office on Violence Against Women requires.

5. Subpart B is revised to read as follows:

Subpart B — The STOP (*Services * Training * Officers * Prosecutors*) Violence Against Women Formula Grant Program

Sec.

- 90.10 STOP (*Services * Training * Officers * Prosecutors*) Violence Against Women Formula Grant Program-general.
- 90.11 State office.
- 90.12 Implementation plans.
- 90.13 Forensic medical examination payment requirement.
- 90.14 Judicial notification requirement.
- 90.15 Costs for criminal charges and protection orders.
- 90.16 Polygraph testing prohibition.
- 90.17 Subgranting of funds.
- 90.18 Matching funds.
- 90.19 Application content.
- 90.21 Evaluation.
- 90.22 Review of State applications.
- 90.23 Annual grantee and subgrantee reporting.
- 90.24 Activities that may compromise victim safety and recovery.
- 90.25 Reallocation of funds.

§ 90.10 STOP (*Services * Training * Officers * Prosecutors*) Violence Against Women Formula Grant Program-general.

The purposes, criteria, and requirements for the STOP Violence Against Women Formula Grant Program are established by 42 U.S.C. 3796gg *et seq.* Eligible applicants for the program are the 50 States, American Samoa, Guam, Puerto Rico, Northern Mariana Islands, U.S. Virgin Islands, and the District of Columbia, hereinafter referred to as “States.”

§ 90.11 State office.

(a) *Statewide plan and application.* The chief executive of each participating State shall designate a State office for the purposes of:

(1) Certifying qualifications for funding under this program;

(2) Developing a Statewide plan for implementation of the STOP Violence Against Women Formula Grants as described in § 90.12; and

(3) Preparing an application to receive funds under this program.

(b) *Administration and fund disbursement.* In addition to the duties specified by paragraph (a) of this section, the State office shall administer funds received under this program, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing, and fund disbursements.

(c) *Allocation requirement.* (1) The State office shall allocate funds as provided in 42 U.S.C. 3796gg-1(c)(4) to courts and for law enforcement, prosecution, and victim services (including funds that must be awarded to culturally specific community-based organizations).

(2) The State office shall ensure that the allocated funds benefit law enforcement, prosecution and victim services and are awarded to courts and culturally specific community-based organizations. In ensuring that funds benefit the appropriate entities, if funds are not subgranted directly to law enforcement, prosecution, and victim services, the State must require demonstration from the entity to be benefitted in the form of a memorandum of understanding signed by the chief executives of both the entity and the subgrant recipient, stating that the entity supports the proposed project and agrees that it is to the entity's benefit.

(3) Culturally specific allocation: 42 U.S.C. 13925 defines “culturally specific” as primarily directed toward racial and ethnic minority groups (as defined in 42 U.S.C. 300u-6(g)). An organization will qualify for funding for the culturally specific allocation if its primary mission is to address the needs of racial and ethnic minority groups or if it has developed a special expertise regarding services to address the demonstrated needs of a particular racial and ethnic minority group. The organization must do more than merely provide services to the targeted group; rather, the organization must provide culturally competent services designed to meet the specific needs of the target population. This allocation requires States to set aside a minimum of ten percent (within the thirty-percent allocation for victim services) of STOP Program funds for culturally specific services, but States are encouraged to provide higher levels of funding to address the needs of racial and ethnic minority groups. States should tailor their subgrant application process to assess the qualifications of applicants for the culturally specific set aside, such as reviewing the mission statement of the applicant, the make-up of the board of directors or steering committee of the applicant (with regard to knowledge and experience with relevant cultural populations and language skills), and the history of the organization.

(4) Sexual assault set aside: As provided in 42 U.S.C. 3796gg-1(c)(5), the State must also award at least 20 percent of the total State award to projects in two or more allocations in 42 U.S.C. 3796gg-1(c)(4) that meaningfully address sexual assault. States should evaluate whether the interventions are tailored to meet the specific needs of sexual assault victims including ensuring that projects funded under the set aside have a legitimate focus on sexual assault and that personnel funded under such projects have sufficient expertise and experience on sexual assault.

(d) *Pass-through administration.* The State office has broad latitude in structuring its administration of the STOP Violence Against Women Formula Grant Program. STOP Program funding may be administered by the State office itself or by other means, including the use of pass-through entities (such as State domestic violence or sexual assault coalitions) to make determinations regarding award distribution and to administer funding. States that opt to use a pass-through entity shall ensure that the total sum of STOP Program funding for administrative and training costs for the State and pass-through entity is within the limit established by § 90.17(b), the reporting of activities at the subgrantee level is equivalent to what would be provided if the State were directly overseeing sub-awards, and an effective system of monitoring sub-awards is used. States shall report on the work of the pass-through entity in such form and manner as OVW may specify from time to time.

§ 90.12 Implementation plans.

(a) *In general.* Each State must submit a plan describing its identified goals under this program and how the funds will be used to accomplish those goals. The plan must include all of the elements specified in 42 U.S.C. 3796gg-1(i). The plan will cover a four-year period. In years two through four of the plan, each State must submit information on any updates or changes to the plan, as well as updated demographic information.

(b) *Consultation and coordination.* In developing and updating this plan, a State must consult and coordinate with the entities specified in 42 U.S.C. 3796gg-1(c)(2).

(1) This consultation process must include at least one sexual assault victim service provider and one domestic violence victim service provider and may include other victim service providers.

(2) In determining what population specific organizations, representatives from underserved populations, and culturally specific organizations to include in the consultation process, States should consider the demographics of their State as well as barriers to service, including historical lack of access to services, for each population. The consultation process should involve any significant underserved and culturally specific populations in the State, including organizations working with lesbian, gay, bisexual, and transgender (LGBT) people and organizations that focus on people with limited English proficiency. If the State does not have any culturally specific or population specific organizations at the State or local level, the State may use national organizations to collaborate on the plan.

(3) States must invite all State or federally recognized tribes to participate in the planning process. Tribal coalitions and State or regional tribal consortia may help the State reach out to the tribes but cannot be used as a substitute for consultation with all tribes.

(4) States are encouraged to include survivors of domestic violence, dating violence, sexual assault, and stalking in the planning process. States that include survivors should address safety and confidentiality considerations in recruiting and consulting with such survivors.

(5) States should include probation and parole entities in the planning process.

(6) As provided in 42 U.S.C. 3796gg-1(c)(3), States must coordinate the plan with the State plan for the Family Violence Prevention and Services Act (42 U.S.C. 10407), the State Victim Assistance Formula Grants under the Victims of Crime Act (42 U.S.C. 10603), and the Rape Prevention and Education Program (42 U.S.C. 280b-1b). The

purposes of this coordination process are to provide greater diversity of projects funded and leverage efforts across the various funding streams.

(7) Although all of the entities specified in 42 U.S.C. 3796gg-1(c)(2) must be consulted, they do not all need to be on the “planning committee.” The planning committee must include the following, at a minimum:

(i) The State domestic violence and sexual assault coalitions as defined by 42 U.S.C. 13925(a)(32) and (33) (or dual coalition)

(ii) A law enforcement entity or State law enforcement organization

(iii) A prosecution entity or State prosecution organization

(iv) A court or the State Administrative Office of the Courts

(v) Representatives from tribes, tribal organizations, or tribal coalitions

(vi) Population specific organizations representing the most significant underserved populations and culturally specific populations in the State other than tribes, which are addressed separately.

(8) The full consultation should include more robust representation than the planning committee from each of the required groups as well as all State and Federally recognized tribes.

(c) *Documentation of consultation.* As part of the implementation plan, the State must either submit or retain documentation of collaboration with all the entities specified in paragraph (b) of this section and in 42 U.S.C. 3796gg-1(c)(2), as provided in this paragraph.

(1) States must retain all of the following documentation but are not required to submit it to OVW as part of the implementation plan:

(i) For in-person meetings, a sign-in sheet with name, title, organization, which of the required entity types (e.g., tribal government, population specific organization, prosecution, court, state coalition) the person is representing, phone number, email address, and signature;

(ii) For online meetings, the web reports or other documentation of who participated in the meeting;

(iii) For phone meetings, documentation of who was on the call, such as a roll call or minutes; and

(iv) For any method of document review that occurred outside the context of a meeting, information such as to whom the draft implementation plan was sent, how it was sent (for example, email versus mail), and who responded.

(2) States must submit all of the following documentation to OVW as part of the implementation plan:

(i) A summary of major concerns that were raised during the planning process and how they were addressed or why they were not addressed, which should be sent to the planning committee along with any draft implementation plan and the final plan;

(ii) Documentation of collaboration for each planning committee member that documents, at a minimum:

(A) Which category the participant represents of the entities listed in 42 U.S.C. 3796gg-1(c)(2), such as law enforcement, state coalition, or population specific organization;

(B) Whether they were informed about meetings;

(C) Whether they attended meetings;

(D) Whether they were given drafts of the implementation plan to review;

(E) Whether they submitted comments on the draft;

(F) Whether they received a copy of the final plan and the summary of major concerns; and

(G) Any significant concerns with the final plan;

(iii) A description of efforts to reach tribes, if applicable;

(iv) An explanation of how the State determined which underserved and culturally specific populations to include.

(d) *Equitable distribution.* The implementation plan must describe, on an annual or four-year basis, how the State, in disbursing monies, will:

(1) Give priority to areas of varying geographic size with the greatest showing of need based on the range and availability of existing domestic violence and sexual assault programs in the population and geographic area to be served in relation to the availability of such programs in other such populations and geographic areas, including Indian reservations;

(2) Determine the amount of subgrants based on the population and geographic area to be served;

(3) Equitably distribute monies on a geographic basis including nonurban and rural areas of various geographic sizes;

(4) Recognize and meaningfully respond to the needs of underserved populations and ensure that monies set aside to fund linguistically and culturally specific services and funds for underserved populations are distributed equitably among culturally specific and other underserved populations; and

(5) Take steps to ensure that eligible applicants are aware of the STOP Program funding opportunity, including applicants serving different geographic areas and culturally specific and other underserved populations.

(e) *Underserved populations.* Each State may determine the methods it uses for identifying underserved populations within the State, which may include public hearings, needs assessments, task forces, and United States Census Bureau data. The implementation plan must include details regarding the methods used and the results of those methods. It must also include information on how the State plans to meet the needs of identified underserved populations, including, but not limited to, culturally specific populations, victims who are underserved because of sexual orientation or gender identity, and victims with limited English proficiency.

(f) *Goals and objectives for reducing domestic violence homicide.* As required by 42 U.S.C. 3796gg-1(i)(2)(G), State plans must include goals and objectives for reducing domestic violence homicide.

(1) The plan must include available statistics on the rates of domestic violence homicide within the State.

(2) As part of the State's consultation with law enforcement, prosecution, and victim service providers, the State and these entities should discuss and document the perceived accuracy of these statistics and the best ways to address domestic violence homicide.

(3) The plan must identify specific goals and objectives for reducing domestic violence homicide, based on these discussions, which include challenges specific to the State and how the plan can overcome them.

(g) *Additional contents.* State plans must also include the following:

(1) Demographic information regarding the population of the State derived from the most recent available United States Census Bureau data including population data on race, ethnicity, age, disability, and limited English proficiency.

(2) A description of how the State will reach out to community-based organizations that provide linguistically and culturally specific services.

(3) A description of how the State will address the needs of sexual assault victims, domestic violence victims, dating violence victims, and stalking victims, as well as how the State will hold offenders who commit each of these crimes accountable.

(4) A description of how the State will ensure that eligible entities are aware of funding opportunities, including projects serving underserved populations as defined by 42 U.S.C. 13925(a).

(5) Information on specific projects the State plans to fund.

(6) An explanation of how the State coordinated the plan as described in paragraph (b)(6) and the impact of that coordination on the contents of the plan.

(7) If applicable, information about whether the State has submitted an assurance, a certification, or neither under the Prison Rape Elimination Act (PREA) standards (28 CFR part 115) and, if an assurance, how the State plans to spend STOP funds set aside for PREA compliance.

(8) A description of how the State will identify and select applicants for subgrant funding, including whether a competitive process will be used.

(h) *Deadline.* State plans will be due at application. If the Office on Violence Against Women determines the submitted plan is incomplete, the State will receive the

award, but will not be able to access funding until the plan is completed and approved.

The State will have 60 days from the award date to complete the plan. If the State does not complete it in that time, then the funds may be deobligated and the award closed.

§ 90.13 Forensic medical examination payment requirement.

(a) To be eligible for funding under this program, a State must meet the requirements at 42 U.S.C. 3796gg-4(a)(1) with regard to incurring the full out-of-pocket costs of forensic medical examinations for victims of sexual assault.

(b) “Full out-of-pocket costs” means any expense that may be charged to a victim in connection with a forensic medical examination for the purpose of gathering evidence of a sexual assault (e.g., the full cost of the examination, an insurance deductible, or a fee established by the facility conducting the examination). For individuals covered by insurance, full out-of-pocket costs means any costs that the insurer does not pay.

(c) Coverage of the cost of additional procedures (e.g., testing for sexually transmitted diseases) may be determined by the State or governmental entity responsible for paying the costs.

(d) States are strongly discouraged from billing a victim’s private insurance and may only do so as a source of payment for the exams if they are not using STOP Program funds to pay for the cost of the exams. In addition, any expenses not covered by the insurer must be covered by the State or other governmental entity and cannot be billed to the victim. This includes any deductibles or denial of claims by the insurer.

(e) The State or other governmental entity responsible for paying the costs of forensic medical exams must coordinate with health care providers in the region to notify victims of sexual assault of the availability of rape exams at no cost to the victims. States

can meet this obligation by partnering with associations that are likely to have the broadest reach to the relevant health care providers, such as forensic nursing or hospital associations. States with significant tribal populations should also consider reaching out to local Indian Health Service facilities.

§ 90.14 Judicial notification requirement.

(a) To be eligible for funding under this program, a State must meet the requirements of 42 U.S.C. 3796gg-4(e) with regard to judicial notification to domestic violence offenders of Federal prohibitions on their possession of a firearm or ammunition in 18 U.S.C. 922(g)(8) and (9) and any applicable related Federal, State, or local laws..

(b) A unit of local government shall not be eligible for subgrants from the State unless it complies with the requirements of 42 U.S.C. 3796gg-4(e) with respect to its judicial administrative policies and practices.

§ 90.15 Costs for criminal charges and protection orders.

(a) To be eligible for funding under this program, a State must meet the requirements of 42 U.S.C. 3796gg-5 with regard to not requiring victims to bear the costs for criminal charges and protection orders in cases of domestic violence, dating violence, sexual assault, or stalking.

(b) An Indian tribal government, unit of local government, or court shall not be eligible for subgrants from the State unless it complies with the requirements of 42 U.S.C. 3796gg-5 with respect to its laws, policies, and practices not requiring victims to bear the costs for criminal charges and protection orders in cases of domestic violence, dating violence, sexual assault, or stalking.

§ 90.16 Polygraph testing prohibition.

(a) For a State to be eligible for funding under this program, the State must meet the requirements of 42 U.S.C. 3796gg-8 with regard to prohibiting polygraph testing of sexual assault victims.

(b) An Indian tribal government or unit of local government shall not be eligible for subgrants from the State unless it complies with the requirements of 42 U.S.C. 3796gg-8 with respect to its laws, policies, or practices prohibiting polygraph testing of sexual assault victims.

§ 90.17 Subgranting of funds.

(a) *In general.* Funds granted to qualified States are to be further subgranted by the State to agencies, offices, and programs including, but not limited to, State agencies and offices; State and local courts; units of local government; public agencies; Indian tribal governments; victim service providers; community-based organizations; and legal services programs to carry out programs and projects to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women, and to develop and strengthen victim services in cases involving violent crimes against women, and specifically for the purposes listed in 42 U.S.C. 3796gg(b) and according to the allocations specified in 42 USC 3796gg-1(c)(4) for law enforcement, prosecution, victim services, and courts.

(b) *Administrative costs.* States are allowed to use up to ten percent of the award amount for each allocation category under 42 U.S.C. 3796gg-1(c)(4) (law enforcement, prosecution, courts, victim services, and discretionary) to support the State's administrative costs. Amounts not used for administrative costs should be used to support subgrants.

(1) Funds for administration may be used only for costs directly associated with administering the STOP Program. Where allowable administrative costs are allocable to both the STOP Program and another State program, the STOP Program grant may be charged no more than its proportionate share of such costs.

(2) Costs directly associated with administering the STOP Program generally include the following:

(i) Salaries and benefits of State office staff and consultants to administer and manage the program;

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

(iii) Monitoring compliance of STOP Program subgrantees with Federal and State requirements, provision of technical assistance, and evaluation and assessment of program activities, including, but not limited to, travel, mileage, and other associated expenses;

(iv) Reporting and related activities necessary to meet Federal and State requirements;

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

(vi) Program audit costs and related activities necessary to meet Federal audit requirements for the STOP Program grant;

(vii) Technology-related costs, generally including for grant management systems, electronic communications systems and platforms (e.g., web pages and social media), geographic information systems, related equipment (e.g., computers, software, facsimile and

copying machines, and TTY/TDDs) and related technology support services necessary for administration of the program;

(viii) Memberships in organizations that support the management and administration of violence against women programs, except if such organizations engage in lobbying, and publications and materials such as curricula, literature, and protocols relevant to the management and administration of the program;

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

(x) Coordination and collaboration efforts among relevant Federal, State, and local agencies and organizations to improve victim services;

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

(xii) General program improvements — enhancing overall State office operations relating to the program and improving the delivery and quality of STOP Program funded services throughout the State.

§ 90.18 Matching funds.

(a) *In general.* Subject to certain exclusions, States are required to provide a 25-percent non-Federal match. This does not apply to territories. This 25-percent match may be cash or in-kind services. States are expected to submit written documentation that identifies the source of the match. Funds awarded to victim service providers for victim services or to tribes are excluded from the total award amount for purposes of calculating match. This includes funds that are awarded under the “discretionary” allocation for

victim services purposes and funds that are reallocated from other categories to victim services.

(b) *In-kind match.* In-kind match may include donations of expendable equipment; office supplies; workshop or education and training materials; work space; or the monetary value of time contributed by professional and technical personnel and other skilled and unskilled labor, if the services provided are an integral and necessary part of a funded project. Value for in-kind match is guided by 2 CFR 200.306. The value placed on loaned equipment may not exceed its fair rental value. The value placed on donated services must be consistent with the rate of compensation paid for similar work in the organization or the labor market. Fringe benefits may be included in the valuation. Volunteer services must be documented and, to the extent feasible, supported by the same valuation methods used by the recipient organization for its own employees. The value of donated space may not exceed the fair rental value of comparable space, as established by an independent appraisal of comparable space and facilities in a privately owned building in the same locality. The value for donated supplies shall be reasonable and not exceed the fair market value at the time of the donation. The basis for determining the value of personal services, materials, equipment, and space must be documented.

(c) *Tribes and victim services providers.* States may not require match to be provided in subgrants for Indian tribes or victim services providers.

(d) *Waiver.* States may petition the Office on Violence Against Women for a waiver of match if they are able to adequately demonstrate financial need.

(1) *State match waiver.* States may apply for full or partial waivers of match by submitting specific documentation of financial need. Documentation must include the following:

(i) The sources of non-Federal funds available to the State for match and the amount available from each source, including in-kind match and match provided by subgrantees or other entities;

(ii) Efforts made by the State to obtain the matching funds, including, if applicable, letters from other State agencies stating that the funds available from such agencies may not be used for match;

(iii) The specific dollar amount or percentage waiver that is requested;

(iv) Cause and extent of the constraints on projected ability to raise violence against women program matching funds and changed circumstances that make past sources of match unavailable; and

(v) If applicable, specific evidence of economic distress, such as documentation of double-digit unemployment rates or designation as a Federal Emergency Management Agency-designated disaster area.

(vi) In a request for a partial waiver of match for a particular allocation, the State could provide letters from the entities under that allocation attesting to their financial hardship.

(2) *Demonstration of ability to provide violence against women matching funds.*

The State must demonstrate how the submitted documentation affects the State's ability to provide violence against women matching funds. For example, if a State shows that across the board budget cuts have directly reduced violence against women funding by 20

percent, that State would be considered for a 20 percent waiver, not a full waiver.

Reductions in Federal funds are not relevant to State match unless the State can show that the reduced Federal funding directly reduced available State violence against women funds.

(e) *Accountability.* All funds designated as match are restricted to the same uses as the program funds as set forth in 42 U.S.C. 3796gg(b) and must be expended within the grant period. The State must ensure that match is identified in a manner that guarantees its accountability during an audit.

§ 90.19 Application content.

(a) *Format.* Applications from the States for the STOP Program must be submitted as described in the annual solicitation. The Office on Violence Against Women will notify each State office as designated pursuant to § 90.11 when the annual solicitation is available. The solicitation will include guidance on how to prepare and submit an application for grants under this subpart.

(b) *Requirements.* The application shall include all information required under 42 U.S.C. 3796gg-1(d).

§ 90.21 Evaluation.

(a) Recipients of funds under this subpart must agree to cooperate with Federally-sponsored evaluations of their projects.

(b) Recipients of STOP Program funds are strongly encouraged to develop a local evaluation strategy to assess the impact and effectiveness of the program funded under the STOP Program. Funds may not be used for conducting research or evaluations. Applicants should consider entering into partnerships with research organizations that are

submitting simultaneous grant applications to the National Institute of Justice for this purpose.

§ 90.22 Review of State applications.

(a) *General.* The provisions of Part T of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3796gg *et seq.*, and of this subpart provide the basis for review and approval or disapproval of State applications and amendments.

(b) *Intergovernmental review.* This program is covered by Executive Order 12372 (Intergovernmental Review of Federal Programs) and implementing regulations at 28 CFR part 30. A copy of the application submitted to the Office on Violence Against Women should also be submitted at the same time to the State's Single Point of Contact, if there is a Single Point of Contact.

§ 90.23 Annual grantee and subgrantee reporting.

Subgrantees shall complete annual progress reports and submit them to the State, which shall review them and submit them to OVW or as otherwise directed. In addition, the State shall complete an annual progress report, including an assessment of whether or not annual goals and objectives were achieved.

§ 90.24 Activities that may compromise victim safety and recovery.

Because of the overall purpose of the STOP Program to enhance victim safety and offender accountability, grant funds may not be used to support activities that compromise victim safety and recovery. The grant program solicitation each year will provide examples of such activities.

§ 90.25 Reallocation of funds.

This section implements 42 U.S.C. 3796gg-1(j), regarding reallocation of funds.

(a) *Returned funds.* A State may reallocate funds returned to the State, within a reasonable amount of time before the award end date.

(b) *Insufficient eligible applications.* A State may also reallocate funds if the State does not receive sufficient eligible applications to award the full funding under the allocations in 42 U.S.C. 3796gg-1(c)(4). An “eligible” application is one that is from an eligible entity that has the capacity to perform the proposed services, proposes activities within the scope of the program, and does not propose significant activities that compromise victim safety. States should have the following information on file to document the lack of sufficient eligible applications:

(1) A copy of their solicitation;

(2) Documentation on how the solicitation was distributed, including all outreach efforts to entities from the allocation in question, which entities the State reached out to that did not apply, and, if known, why those entities did not apply;

(3) An explanation of their selection process;

(4) A list of who participated in the selection process (name, title, and employer);

(5) Number of applications that were received for the specific allocation category;

(6) Information about the applications received, such as what agency or organization they were from, how much money they were requesting, and any reasons the applications were not funded;

(7) If applicable, letters from any relevant State-wide body explaining the lack of applications, such as from the State Court Administrator if the State is seeking to reallocate money from courts; and

(8) For the culturally specific allocation, in addition to the items in paragraphs

(b)(1) through (7) of this section, demographic statistics of the relevant racial and ethnic minority groups within the State and documentation that the State has reached out to relevant organizations within the State or national organizations.

November 17, 2016

Date

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