



Billing Code: 4410-18

**DEPARTMENT OF JUSTICE**

**28 CFR Part 94**

**[Docket No.: OJP (OVC) 1523]**

**RIN 1121-AA69**

**VOCA Victim Assistance Program**

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

**ACTION:** Notice of proposed rulemaking.

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

**DATES:** Comments must be received by no later than 11:59 p.m., E.T., on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**.

**ADDRESSES:** You may view an electronic version of this proposed rule at <http://www.regulations.gov>, and you may also comment by using the [www.regulations.gov](http://www.regulations.gov) form for this regulation. OVC prefers to receive comments via

www.regulations.gov where possible. When submitting comments electronically, you should include OJP Docket No. 1523 in the subject box. Additionally, comments may also be submitted via U.S. mail, to: Toni Thomas, State Compensation and Assistance Division, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, N.W., Washington, D.C. 20531; or by telefacsimile transmission, to: Toni Thomas, at (202) 305-2440. To ensure proper handling, please reference OJP Docket No. 1523 on your correspondence.

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

**SUPPLEMENTARY INFORMATION:**

**I. Posting of Public Comments**

Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you wish to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not wish for it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you wish to submit confidential business information as part of your comment but do not wish it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the agency's public docket file, nor will it be posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the "For Further Information Contact" paragraph.

## **II. Executive Summary**

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

The Victims of Crime Act of 1984 (VOCA) authorizes OVC to provide an annual formula grant from the Crime Victims Fund to each State and eligible territory. These annual Victim Assistance Program formula grants are used by the States and territories to provide financial support to eligible crime victim assistance programs. *See* 42 U.S.C. 10603. OVC proposes this rule pursuant to the rulemaking authority granted to the OVC Director by 42 U.S.C. 10604(a). The proposed rule would codify and update the existing

program Guidelines to reflect changes in OVC policy, the needs of the crime victim services field, and VOCA itself.

### **B. Summary of the Major Provisions of the Proposed Regulatory Action**

OVC proposes some substantive departure from the Guidelines; however, the majority of provisions in the proposed rule are the same as the corresponding provisions of the Guidelines. The proposed rule would reorganize the program rules into five major parts: 1) General Provisions; 2) State Administering Agency Program Requirements; 3) State Administering Agency Use of VOCA Funds for Administration and Training; 4) Sub-Recipient Program Requirements; and 5) Sub-Recipient Allowable/Unallowable Costs.

The rules proposed in the General Provisions part would not substantively depart from the Guidelines. The definitions section in this part proposes to define frequently used terms, including “crime victim”, “State administering agency”, “victim of child abuse”, and “direct services”. These proposed definitions are consistent in substance with the definitions in the Guidelines. OVC proposes a new definition of the undefined statutory term “child abuse” that is intended to make patent OVC’s existing flexible approach of allowing States to address a broad variety of harm to children.

The State Administering Agency Program Requirements part proposes a basic statement of the purpose of State-level VOCA funding, and summarizes the statutory eligibility and certification requirements. OVC proposes to clarify that the existing practice (presently allowed by OVC, but not acknowledged in the existing Guidelines) in some States of passing funds along to another entity to administer the State’s victim

assistance program is permissible, and to set out rules for administering funding in this way. OVC proposes a section clearly setting forth how States must allocate VOCA funding among various types of victim service programs (e.g., those serving priority crime victim categories, and previously underserved victims), but does not propose any changes to the allocation percentages set out in the Guidelines. OVC proposes a new mandate that State administering agencies compete subawards every five years; as well as a provision allowing States to use alternative risk-based monitoring procedures instead of the standard biennial on-site monitoring of all subawards required by the Guidelines. OVC believes that competition of subawards will lead to better and more cost-effective services; while allowing States to propose alternative monitoring strategies would allow States to use innovative and more cost-effective monitoring practices. This part also proposes other situation-specific rules that State administering agencies must follow when overseeing subawards; these provisions largely track the Guidelines.

The State Administering Agency Use of VOCA Funds for Administration and Training part proposes to clarify and bring the existing guideline provisions setting out maximum amounts for administration and training costs into harmony with more recent statutory changes. The proposed part would list allowable administrative and training costs, all of which would be consistent with those set out in the Guidelines.

The Sub-Recipient Program Requirements part proposes a concise statement of the purpose of VOCA sub-awards, and summarizes the statutory eligibility requirements for sub-recipients. OVC proposes maintaining the existing project match provisions that require most sub-recipients to provide a twenty percent match for the purpose of

leveraging and augmenting assistance funding. As in the existing Guidelines, sub-recipients in U.S. territories and possessions would not be subject to match. OVC proposes to eliminate the match requirement, currently at five percent, for American Indian and tribal organizations. These entities, like those in U.S. territories and possessions, often have difficulty accessing matching resources – a match requirement in such circumstances can be counterproductive and lead to fewer victim services in those already underserved jurisdictions.

The Sub-Recipient Allowable/Unallowable Costs part proposes a list of activities that sub-recipients may undertake using VOCA funding. The majority of the listed costs are substantively the same as those listed in the existing Guidelines. OVC does, however, propose a few substantive changes: OVC proposes to allow States more flexibility to support legal services for victims. The existing Guidelines allow legal services for victims, but only in the emergency context. OVC has received feedback from victim service providers indicating that there is a significant need for legal services for victims outside of the emergency context (e.g., asserting rights in the criminal justice process, support for human trafficking victims with a myriad of complicated issues). Allowing States to provide such services will lead to better outcomes for many victims. OVC also proposes to allow States to support services to incarcerated victims (e.g., victims of sexual assault in prison) in most circumstances. The existing Guidelines do not allow such services; however, the change is consistent with the recommendations of the 2009 report by the National Prison Rape Elimination Commission, discussed in more detail below. OVC also proposes allowing States greater flexibility to support

transitional housing and relocation expenses using VOCA funds, as such services can lead to better outcomes for many victims (e.g., those abused by a caretaker). OVC proposes allowing States to permit sub-recipients to use VOCA funds for coordination activities, which often allow local organizations to more effectively leverage community resources and provide better and more cost-effective services.

### **C. Cost and Benefits**

As discussed in more detail under the Executive Orders 12866 and 13563 - Regulatory Review section below, the proposed rule would clarify and update the existing Guidelines, but would not alter the existing program structure at all. Updating the existing Guidelines to clearly and accurately reflect the statutory parameters will facilitate State compliance with VOCA requirements, and thus avoid potentially costly non-compliance findings. The proposed rule would make only a few substantive changes to the existing Guidelines, and these would be of a permissive, not mandatory, nature. Some changes, like allowing more flexibility to coordinate and leverage community resources, and adopt alternative monitoring strategies, would impose no costs but will potentially allow States to use existing funding more efficiently. Other proposed changes that allow States to allocate funding to services not presently allowable, could change the allocation of VOCA funding amongst victim services provided by sub-recipient organizations, and amongst victim service organizations. Such reallocations of funding, however, are not mandated and each State and territory would make the ultimate decision with regard to whether to change its current funding allocations, if it chooses to do so at all. This is not a change from the present discretion that States have to allocate funding

according to State priorities. OVC anticipates that most States will continue to allocate the majority of VOCA funding to victim services for certain types of crimes (intimate partner violence, sexual assault, child abuse) at consistent levels. Any potential reallocations would be relatively minor (even when taken in aggregate across States) in comparison to the overall mix of allowable victim services, and thus they are unlikely to create new costs or significant fund transfers. In any event, the real benefits of additional allowable services for currently underserved and un-served victims are significant.

### **III. Background**

#### **A. Overview**

OVC proposes this rule to implement its Victim Assistance Program, a formula grant program authorized by Section 1404 of the Victims of Crime Act of 1984 , Public Law 98-473, codified at 42 U.S.C. 10603. This section of VOCA authorizes OVC to provide an annual grant from the Crime Victims Fund to each State and eligible territory for the financial support of services to victims of crime by eligible crime victim assistance programs.

OVC's Victim Assistance Program is funded out of the Crime Victims Fund. The Fund receives Federal criminal fines, penalties, and assessments, as well as certain gifts and bequests, but does not receive any general tax revenue. The Crime Victims Fund is administered by OVC and amounts that may be obligated therefrom are allocated each year according to the VOCA formula at 42 U.S.C. 10601. In recent years, the amount available for obligation via the VOCA formula allocations has been capped by law at less than the total amount available in the Fund. The VOCA formula specifies that (in most

years) the first \$20M available in the Fund for that year will go toward child abuse prevention and treatment programs, with a certain amount to be carved out for programs to address child abuse in Indian Country. After that, such sums as may be necessary are available to the Federal Bureau of Investigation and the U.S. Attorneys Offices to improve services to victims of Federal crime, and to operate a victim notification system. Whatever is left is allocated as follows: 47.5% for OVC's Victim Compensation Program, 47.5% for OVC's Victim Assistance Program, and the remaining 5% for the OVC Director to distribute in discretionary awards in certain statutorily defined categories. Generally, under the distribution rules for the Victim Compensation Program, if a portion of the 47.5% available for Compensation is not needed for that purpose, it is (per formula) made available to augment the Victim Assistance Program. The Victim Assistance Program distributes funds to the States and eligible territories as mandated by VOCA in 42 U.S.C. 10603. The VOCA statutory distribution formula provides each State with a base amount (presently \$500,000 for each State; \$200,000 for each eligible territory), and distributes the remainder proportionately based on the State populations.

The proposed rule would supersede the existing VOCA Victim Assistance Program Guidelines that were published in the Federal Register on April 22, 1997, at 62 Fed. Reg. 19607. It reflects changes in OVC policy, in the needs of the crime victim services field, and in VOCA itself. OVC invites and welcomes comments from States and territories, organizations and individuals involved in the victim services field, and any other members of the interested public, on any aspects of this proposed rulemaking. All comments will be considered prior to publication of a final rule.

## **B. History of This Rulemaking**

OVC published the Final Program Guidelines, Victims of Crime Act, FY 1997 Victim Assistance Program on April 22, 1997. Those Guidelines were based on OVC experience with the Victim Assistance Program, legal opinions rendered since the inception of the program in 1986, and comments from the field on the Proposed Program Guidelines published in the Federal Register on February 18, 1997. On September 3, 2002, OVC published a notice of Proposed Program Guide at 67 Fed.Reg. 56444, seeking comments to refine the administration of the Victim Assistance Program further; thereafter, however, OVC chose not to issue final guidance to supersede the 1997 Guidelines. After receiving comments on the 2002 proposed guide, OVC instead decided to pursue the publication of codified program regulations rather than merely revise the guideline document. In anticipation of re-starting this rulemaking process, throughout 2010 OVC sought preliminary input from the field regarding improving victim services and potential modifications to the Victim Assistance Program rules that would facilitate such improvement.

## **C. Discussion of Changes Proposed in This Notice**

The 1997 Guidelines have served to assist and guide OVC, State administering agencies, and direct service providers, in administering, distributing, and using VOCA funds to assist victims of crime nationwide. As mentioned above, however, over the sixteen years since their promulgation, the existing Guidelines have been overtaken by changes in the VOCA statute itself, developments in the crime victim services field, as well as technological advancements, and new approaches to State administration of

VOCA funding. For example, OVC, through its funding of nationwide training and technical assistance for victim service organizations and the findings of its Vision 21 initiative, which examined the state of the victim services field, as well as through reports of other organizations, such as the Prison Rape Elimination Commission, has become aware of a need for certain types of services and gaps in services for certain types of victims. In particular, OVC wishes to address the need for increased legal services for victims, which is particularly important for human trafficking victims, but also for victims of domestic abuse, identity theft, and other crimes as well. OVC has funded programs providing services for human trafficking victims for more than a decade under the authority of the Trafficking Victims Protection Act of 2000, and, through various evaluation efforts, has gained significant experience in providing effective services for this victim population. OVC wishes to incorporate this experience into the proposed rule to allow States to effectively assist these victims. Likewise, the findings of the Prison Rape Elimination Commission illuminated an acute need for increased victim services for incarcerated victims, and OVC wishes to allow States to address this gap in services. In addition, information technology has advanced significantly since 1997, and the proposed rule would allow victim service providers greater flexibility to use VOCA funding to leverage technology to enhance victim services. For example, informational and outreach efforts via online forums and social networking may be effective and relatively inexpensive ways to reach certain victim populations. In addition, podcasting and digital video sharing enable victim service providers to continually reach victims with enriched information. Videoconferencing using real-time audio and video technology services,

administered through a secure, encrypted connection, can deliver confidential, face-to-face assistance. OVC's intent for this proposed rule is to account for developments over the last decade, and to reflect program parameters applicable to each participating entity accurately. In so doing, OVC hopes to allow administering agencies and victim service providers to fully leverage the progress that the field has made over the last decade in knowledge of victim needs, victim service strategies, and efficient program administration, with the end goal of assisting crime victims more effectively.

As a technical and structural matter, the existing Victim Assistance Program Guidelines are not in a format suitable for publication in the Code of Federal Regulations (CFR), and therefore have been re-formatted in this notice to conform to CFR formatting requirements. Moreover, the existing Guidelines are not ideally structured in terms of readability and ease of reference. The proposed rule below attempts to remedy these deficiencies by creating manageable units of information, reorganizing related concepts and rules together more logically, and attempting to use consistent terminology throughout the document.

In addition, the existing Guidelines contain extended repetition of the VOCA statutory language. OVC notes that in several instances this has caused confusion as certain statutory language was changed in subsequent laws (for example, the provisions regarding the percentage of funds that a State may use for training and administration), thereby making obsolete and inaccurate the existing guideline's recitation of the superseded law (as statutory language obviously supersedes an agency's contrary guidance or rule on the same subject pronounced through guideline or regulation). The

proposed rule omits repetition of statutory language, except where needed for context and ease of use. OVC notes that the proposed rule is drafted to be read *in conjunction* with the rules and definitions in the applicable section of VOCA (42 U.S.C. 10603).

OVC here proposes several substantive changes to the program Guidelines, although many of the provisions for the Victim Assistance Program set out in the existing Guidelines have been retained in substance. (It should be noted that, as explained above, the text of such provisions may have been reformatted as needed to accommodate the regulatory process and to improve the overall clarity of the document.) The most significant of these substantive proposed changes are discussed below in the order that they appear in the revised document, and with reference to the applicable section of the proposed rule. Cross-references to corresponding sections of the existing Guidelines are provided where possible for ease of comparison.

### **General Provisions**

The proposed rule contains several terms and definitions that are used throughout the document. These are set out in section 94.102 for ease of reference. Notably—

- The definitions of *crime victim* (or *victim of crime*) remains unchanged from the existing guideline; it is meant to be a broad definition, taking into account many kinds of harm resulting from criminal acts.
- The term *State administering agency* (“SAA”) is used to refer to the State or territorial entity receiving victim assistance program funds directly from OVC.

This terminology is more descriptive than “direct grantee” or “State grantee” and

is more consistent with terminology used in other formula programs administered by OJP entities.

- OVC has added a definition of the term “spousal abuse” that clarifies that the term includes intimate partner violence and dating violence. Spousal abuse was the terminology used in VOCA in the 1980s, but has since fallen out of use in the victim service field. OVC retains the term in the proposed rule because it is still in the statute, but clarifies that OVC understands it to encompass the concepts of intimate partner and dating violence.
- OVC has added a definition of “victim of child abuse”, to clarify that the term covers a broad variety of harm to children. Child abuse victims are a statutorily mandated priority category, and the clarification will ensure that VOCA-funded State victim assistance programs may support a broad variety of victim assistance projects that address the abuse of children. Many child victims experience poly-victimization, meaning several different kinds of direct victimization or indirect exposure to violence (either as an eyewitness or through other knowledge) over a period of time. Poly-victimization greatly increases children’s vulnerability to mental health, behavioral, school performance, and other problems, and can contribute to lifelong challenges for the affected children. In addition, children’s exposure to violence—in their homes, schools, or communities—as victims or witnesses, is often associated with long-term physical, psychological, and emotional harm, and can contribute to behavioral problems, including substance abuse, and negative health outcomes. VOCA-funded victim assistance programs

may use funding to address these various forms of child abuse. In addition, the definition clarifies that child pornography related offenses are a form of child abuse. OVC intends to permit States the flexibility to fund programs to help these victims, whose needs may arise immediately after the abuse, or much later – for example, upon distribution of images of the abuse. OVC views distribution of such images as a form of re-victimization that States and victim advocates are struggling to address, and seeks comments on this provision.

- The definition of *direct services* remains largely unchanged, except for formatting.

#### **State Administering Agency Program Requirements**

*Purpose and State administering agency eligibility.* Section 94.103(a) is self-explanatory, in that it proposes the purpose of OVC’s annual VOCA formula grants to the States and territories. Section 94.103(b) proposes the general rules for State eligibility certifications required by VOCA. It is anticipated that OVC will require that such certifications be submitted along with each State administering agency’s annual application for funding (as is the current practice). Reporting and technical requirements specific to a given fiscal year are generally set out in the annual program solicitation, or in supplemental OVC communications if time does not permit publication in the solicitation. Section 94.103(c) clarifies that a State administering agency may award its VOCA funds to another organization to distribute (pass-through administration), and highlights a State administering agency’s obligations with regard to use of administrative and training funds, monitoring, and reporting should this method be used.

*Eligible sub-recipient programs.* Section 94.104 proposes what a State must require of an entity to consider the entity an “eligible crime victim assistance program.” The criteria for an “eligible crime victim assistance program” are largely set out in VOCA, and the proposed rule merely provides clarifying interpretation needed for practical implementation. The section proposes the types of eligible entities; criteria for determining the organizational capacity of the entity’s program; project match requirements that the SAA must require the entity to meet; and mandated use of volunteers (with provision for waiver). An eligible entity must meet the organizational capacity requirements of VOCA, which requires that an eligible entity either have a history of providing direct services to victims in an effective manner and support from non-VOCA funding, or be able to show substantial support from non-VOCA funding. Entities previously not funded with VOCA funding are eligible to apply for VOCA funding. What constitutes an “effective manner” will vary depending on the State and community served, the type of victim the entity’s services address, the type of services provided, best practices within that service field, and the characteristics of the entity (e.g. small, specialized service provider; larger, comprehensive service provider). The States will determine whether an entity has a history of providing services in an effective manner for each eligible program and should be able to articulate the basis for their determinations. OVC proposes several non-exclusive considerations (which are consistent with the existing Guidelines) that States may wish to take into account in making such determinations. The proposed rule, at 94.104(h), clarifies that the statutory VOCA non-discrimination provisions that apply to any VOCA-funded undertaking,

including victim assistance programs, are administered in accordance with the Department of Justice's regulations implementing non-discrimination requirements and the guidance provided by the Office of Civil Rights within the Office of Justice Programs.

*SAA Allocation of Subawards.* Section 94.105 proposes how State administering agencies must allocate their subawards. OVC's authority to direct the allocation of a portion of each State administering agency's formula assistance award derives from the VOCA requirements (42 U.S.C. 10603(a)(2)(A) and (B)) that the chief executive of each State certify that priority shall be given to eligible programs that assist certain victim populations (specifically victims of sexual assault, spousal abuse, or child abuse), and certify that funds shall be made available for programs that serve underserved populations. Note that the allocations set out in the proposed rule are substantially the same as those set out in the existing guideline (*see* Guideline IV.A.3 and 4); the phrasing of these requirements has merely been re-worked for clarity. Under the proposed rule SAAs must identify underserved categories of victims by the type of crime they experience (such as victims of elder abuse) as well as the characteristics of the victim (such as victims of violent crime in high crime urban areas or Lesbian Gay Bisexual Transgender Queer (LGBTQ) victims). More information about types of crime victim populations will allow OVC and SAAs to better tailor their training and technical assistance and victim assistance programs to the needs of each community and victim population. The proposed rule provides for several exceptions to the required allocations. OVC especially seeks comment on whether the allocation amounts for priority categories,

and the allocation amount and method of determining previously underserved populations, remain appropriate.

Section 94.105(e) proposes to require State administrative agencies to fund eligible sub-entities through a competitive process. This is an important new requirement that will support innovation at the direct service level through regular review of approaches to victim assistance services.

*SAA Reporting Requirements.* Section 94.106 proposes the State administering agency's reporting requirements under OVC's Victim Assistance Program. OVC will continue to require States to submit sub-grant award reports and performance reports, as well as other reports that are required under Federal grant rules. (Other reports, for example, would include the requirements of the Federal Funding Accounting and Transparency Act, which requires reporting on sub-recipient expenditures where such sub-recipient receives more than \$25,000 in grant funds. This reporting is independent of OVC's sub-grant award reports.) As Federal grant rules and technology are constantly in flux, the proposed rule does not specify time or manner in which these reports are to be submitted – it is anticipated that OVC will communicate the technical details of each year's reporting requirements to grantees via annual program solicitations and supplemental guidance.

*SAA Monitoring Plans.* Section 94.107 sets out the State administering agency's obligation to monitor its sub-awards. In addition to the current monitoring plans adopted by a State administering agency (which includes regular desk monitoring of all sub-awards and on-site monitoring of all sub-recipients at least every two years), the proposed

rule will permit, upon OVC review and approval, alternative monitoring procedures from State administering agencies. An example of an alternative procedure that has been implemented at the Federal level is a risk assessment model to determine the level of monitoring necessary for various sub-recipients. OVC recognizes that certain sub-recipients may have a long established history of appropriately administering a sub-award and may therefore require less intensive scrutiny than a relatively new sub-recipient or an established sub-recipient providing new services.

*Programmatic oversight.* Section 94.108 proposes the State administrative agency's responsibilities with regard to programmatic oversight of sub-awards. This section proposes to consolidate various rules and considerations that are currently found throughout the existing guideline. Among the topics addressed are the following:

- Leasing vehicles. The SAA may authorize sub-recipients to lease vehicles, but only upon a showing that each such vehicle is essential for the delivery of victim services.
- Faith-based and neighborhood organizations. Faith-based and neighborhood organizations are valued partners for government. They support and assist victims in countless ways. In keeping with our values and our laws, the Federal Government has issued specific guidance for programs in which faith-based and neighborhood organizations may receive Federal aid to ensure that those programs are implemented in accordance with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution. The proposed rule provides a reference to the Department of Justice regulation

that implements this guidance and that applies to entities funded through this program.

- Crime victim compensation agencies. A State may use victim assistance funding for services provided by its State victim compensation staff where such services are direct services and outside of that staff's normal duties.
- SAA use of VOCA funds to provide direct services, and limits on the amount of funds that SAAs may use for these purposes.
- Funding victim service programs located in adjacent States.

*Program income.* Section 94.109 proposes the rules that State administering agencies must use when considering whether sub-recipients may generate program income. It is OVC's longstanding view that victim services provided with VOCA funds should be free of charge for victims where possible, though OVC recognizes that in some situations a service provider may be justified in charging for services or otherwise generating program income.

### **State Administering Agency Use of VOCA Funds for Administration and Training**

The existing Guidelines are inaccurate with regard to the allocation of VOCA grant funds for SAA administration and training purposes, as VOCA was amended after the issuance of the 1997 guidance. VOCA now prohibits grantees from using more than five percent of their annual OVC Victim Assistance Program funds for administrative and training purposes. This means that SAAs must allocate this five percent between both administration and training purposes; SAAs are not allowed to use five percent for

administration and an additional five percent for training. Sections 94.110 through 94.113 detail allowable uses of and necessary recordkeeping for, administration and training funds. These sections also address non-supplantation requirements as applicable to administrative and training funds, as well as indirect cost rates.

### **Sub-recipient Program Requirements**

*Purpose.* Section 94.114 proposes the purpose of VOCA sub-awards.

*Sub-recipient requirements.* Section 94.115 proposes the requirements to which sub-recipients must adhere. These requirements include—

- Using volunteers
- Promotion of community efforts to aid crime victims
- Assistance to victims in applying for compensation
- Compliance with all State requirements
- Providing services at no charge unless permitted by the SAA to generate program income

*Sub-recipient project match requirements.* Section 94.116 proposes the project match requirements applicable to activities undertaken by sub-recipients of VOCA formula victim assistance funds. These proposed match requirements are the same as those in the existing Guidelines. Each sub-recipient must contribute at least twenty percent of the total cost of each project, unless an exception applies. Requiring sub-recipients to provide matching funds serves to ensure that sub-recipients are invested and engaged in the project strategy. U.S. territories and possessions are exempt from match, as resources in these communities are often not available for match, and therefore a

match requirement is counterproductive to the goal of increasing the availability of victim services in a community. OVC proposes to eliminate the current 5% match requirement for American Indian and tribal organizations for the same reason. OVC specifically seeks comment on whether this amount of minimum match (20%) for sub-recipients and no match requirement for possessions, territories, and tribal sub-recipients is reasonable and beneficial to the goal of developing effective and financially stable victim services. OVC also specifically seeks comment on professional services used as match and how such services should be valued for reporting purposes.

***Sub-recipient Allowable and Unallowable Costs***

*Allowable costs.* Section 94.117 proposes allowable costs for which sub-recipient entities may obligate and expend VOCA formula victim assistance funds when providing direct services. Most of these allowable costs (and the parameters under which the direct services may be provided) are essentially the same as those in the existing Guidelines. The following activities, however, have been added or significantly modified in the proposed rule:

- *Legal assistance for victims.* The proposed rule leaves unchanged the provision in the current Guidelines allowing sub-recipients to use VOCA funds for emergency legal assistance to ensure a victim's immediate physical and psychological health and safety – including, but not limited to, assistance filing for restraining orders, protective orders, and obtaining emergency custody orders and visitation rights. The proposed rule would add a provision under the sub-recipient allowable and unallowable costs provisions, also allowing VOCA funds

to be used outside of the context of an emergency, for reasonable legal assistance services where the need for such arises as a direct result of a person's victimization. The proposed rule contemplates two contexts where this may occur – legal assistance to assert a victim's rights or protect a victim's safety, privacy, or other interests, in a criminal proceeding directly related to the person's victimization; and civil legal assistance where the need for such assistance arises as a direct result of a person's victimization.

The proposed rule offers several examples of circumstances under which legal services may be appropriate as victim assistance and supported with VOCA funding. It also clarifies that criminal defense, tort suits, and divorce proceedings generally are not allowable costs. It is important to note that the proposed rule merely *permits* the use of VOCA funding for legal services – it does not mandate that such services be provided. OVC recognizes that the available resources in each State and territory differ, and, therefore, each jurisdiction retains broad discretion to set limits on the type and scope of legal services that it allows its sub-recipients to provide with VOCA funding. OVC seeks comments addressing any aspect of permitting or not permitting the use of VOCA funds for legal services for victims, and the scope of such services.

- *Services to incarcerated individuals.* The existing Guidelines do not allow OVC Victim Assistance Program funds to be used for rehabilitative services or support services to incarcerated individuals (*see* Guidelines, section IV.E.3.b). In 2003, however, the Prison Rape Elimination Act (PREA) established an independent

commission to examine the issue of prison rape in prisons, jails, and juvenile detention facilities nationwide, and to recommend actions for reducing rates of prison rape. The National Prison Rape Elimination Commission's report was released in 2009. One of the recommendations was that the prohibition on providing VOCA-funded victim services to incarcerated victims be removed, so that incarcerated victims of sexual assault in detention/correctional facilities might have additional resources available to address victimization-related needs.

With this in mind, OVC is proposing a provision specifically allowing for VOCA-funded victim service providers to serve incarcerated individuals, provided that the incarcerated individual is a victim, the service addresses issues directly arising from the victimization, and the need for such services does not directly arise from the crime for which that individual was incarcerated. For example, under the proposed rule a State could choose to fund a service provider to provide mental health services to an individual incarcerated for illegal distribution of drugs who is a victim of sexual assault while so incarcerated. By contrast, VOCA funding could not be used to support medical or mental health services relating to a pre-incarceration assault of that individual by a co-conspirator for not dividing up in an equitable manner the proceeds from sales of illegal drugs.

It is important to note that a person who is targeted and victimized while incarcerated because of the crime for which he is incarcerated (e.g., a person

imprisoned for child abuse who is subsequently sexually assaulted by other inmates) would not be excluded from receiving VOCA-funded assistance.

In addition, VOCA victim assistance does not cover non-emergency medical costs – therefore, it is anticipated that the majority of any costs incurred for services to incarcerated victims would be related to forensic exams for sexual assault victims and mental health services to address the consequences of a victimization.

Finally, the rule does not mandate that States make funding available for services to incarcerated victims, but rather, merely permits them to do so. OVC anticipates that State administering agencies will make their own determinations regarding the appropriate delegation of responsibility (and fiscal burden) between victim service agencies/organizations and detention/correctional facilities with regard to caring for this victim population. OVC welcomes comments on any aspect of this proposed rule provision.

- *Transitional housing.* OVC recognizes that transitional housing is a necessary victim expense for certain types of victims – for example, victims of human trafficking, victims with a disability abused by caretakers, and victims of domestic violence and their dependents. The existing guideline limits VOCA funding for transitional housing (*see* Guidelines sections IV.E.1.a and IV.E.3.i). The proposed rule would allow States the flexibility to permit sub-recipients to provide transitional housing to victims, and would permit the State to set limits on time and types of victims that might be eligible for such housing. Under the proposed rule, States may use VOCA funds for housing and shelter purposes to

the extent that such housing is related to the individual's victimization. For example, shelters for victims of domestic violence or human trafficking would be allowable uses of VOCA funds because the victims have been taken away from or forced out of their housing by the nature of their victimization. States would be allowed to use VOCA funds to support transitional housing expenses, including travel; rental assistance; first month deposit; utilities; support services, such as childcare; and counseling. To the extent State administering agencies choose to permit VOCA funds to be used for transitional housing purposes, OVC anticipates that these agencies would focus on those victims with the most need, such as victims of human trafficking, minor victims, victims with disabilities, and victims of domestic violence.

- *Relocation expenses.* The rule proposes to allow States to use VOCA funding to pay relocation expenses for victims to preserve life, safety and well-being of victims, including, but not limited to, domestic violence victims, children, victims of sexual assault, victims of stalking, and victims of trafficking. Relocation expenses for crime victims must be reasonable, and may include, but are not limited to, moving expenses, security deposits on housing, rental and mortgage assistance, and utility startup.
- *Traditional/Alternative Healing.* The proposed rule would allow sub-recipients to provide traditional/alternative healing methods, and participation in Native American traditional healing ceremonies, if allowed by the State administering agency.

*Costs to Support Direct Services.* Section 94.118 proposes certain activities that *support* direct services for crime victims and that are expenses for which sub-recipients may obligate and expend VOCA funds. Generally, under VOCA (42 U.S.C. 10603(b)(2)), OVC formula victim assistance funding may only be used by sub-recipients for services to victims of crime. The existing Guidelines hold to this general rule somewhat strictly, in that they limit the use of funds available for coordination and oversight at the sub-recipient level. Over the last decade, however, it has become apparent that coordination and oversight activities are desirable and may in many cases improve the provision of direct victim services. The proposed rule reflects this recognition, and gives State administering agencies the latitude to allow sub-recipients to use VOCA funds for coordination activities, including supervisory coordinator positions, supervising staff where necessary and permitted by the State administering agency, and the support of costs to facilitate multi-system/ interagency/ multi-disciplinary responses to crime victims. In contrast to the existing guideline, this section also permits sub-recipients to contract for professional services not available within the sub-recipient organization, as well as for automated systems and technology, where these contracts, systems, and technology support delivery of direct services to victims. The proposed rule also allows for the use of direct service funding in certain circumstances to train direct service providers, including Court Appointed Special Advocate (CASA) volunteers and clinical social workers. The proposed rule clarifies that use of direct service funds for such trainings are permissible when the funded entity provides direct services predominantly through the use of volunteers (as opposed to paid staff). The use of direct

service funds to support training and coordination of volunteer services in such circumstances is appropriate, as it typically allows funded organizations to cost-effectively leverage the available funds and volunteer efforts to provide more direct services for victims. The rule provides examples of permissible uses within each such category so that State administering agencies will be able to more easily make allowability determinations by analogy. Finally, the proposed rule allows sub-recipient direct costs to include emergency costs of non-prescription and prescription medicine, prophylactic treatment to prevent HIV/AIDS infection, durable medical devices and equipment, and other health care items, if those items cannot be funded through an alternative source within 48 hours of the crime.

*Allowable Sub-recipient Administrative Costs.* Section 94.119 proposes allowable sub-recipient administrative costs. These costs should be substantively the same as those in the existing Guidelines.

*Unallowable costs.* Section 94.120 proposes non-allowable sub-recipients costs. The majority of these are the same as those in the existing Guidelines, with the following exceptions:

- *Perpetrator rehabilitation and counseling.* The rule prohibiting use of VOCA funds for perpetrator rehabilitation and counseling has been modified to reflect that certain incarcerated individuals who have perpetrated criminal acts may also have pre-existing victim service needs unrelated to their crime, or may become victims while incarcerated. (This is a corresponding change reflecting the proposed rule in section 94.117 that would permit VOCA funding to be used for

victim services for incarcerated individuals where the need for services does not directly arise from the individual's criminal acts.) As indicated above, OVC specifically seeks comment on this aspect of the proposed rule.

- *Victim attendance at conferences.* The structure of the rule should better address the concern that States are prohibited from funding victim attendance at crime victim service related conferences. The proposed rule would only prohibit sub-recipient organizations from obligating and expending funds for this purpose – a State administering agency that chooses to hold a training conference at which a victim is invited to speak would not be prohibited from using VOCA funds to pay for the travel costs of that individual, provided that such travel is allowable under the State rules and the expense is counted against the State's training and administrative set-aside.

### **III. Regulatory Certifications**

#### **Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Office for Victims of Crime has reviewed this regulation and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. The OVC Victim Assistance Program distributes funding to States and eligible territories pursuant to the VOCA formula, a statutory provision, which is not affected by this regulation. The VOCA formula sets out the allocation of grant funds among States and territories, and designates the States and territories that will receive grant funds – the regulation alters neither the allocation of Federal funding, nor the designation of which

entities will receive annual funding pursuant to that allocation. Moreover, VOCA affords substantial latitude to the States and territories in determining where to allocate the formula funding within each jurisdiction. This rule, to the extent that it creates certain set asides and permissible areas of emphasis for State victim assistance programs, only applies to federally provided funding. As a rule governing a Federal grant program to States and major U.S. territories, the only economic impact on small entities is that of potential financial assistance, as the rule would not apply to any entity that was not a recipient of VOCA funding under this program. This regulation, therefore, will not have a significant economic impact on a substantial number of small entities.

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

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

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and, in choosing among alternative regulatory approaches, select those approaches that

maximize net benefits. Executive Order 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitative values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

The proposed rule would clarify and update the existing Guidelines, but would not alter the existing program structure at all. Updating the existing Guidelines to clearly and accurately reflect the statutory parameters will facilitate State compliance with VOCA requirements, and thus avoid potentially costly non-compliance findings. The proposed rule would make only a few substantive changes to the existing Guidelines, and these would be of a permissive, not mandatory, nature. Some changes, like allowing more flexibility to coordinate and leverage community resources, and adopt alternative monitoring strategies, would impose no costs but will potentially allow States to use existing funding more efficiently. Other proposed changes that allow States to allocate funding to services not presently allowable, could change the allocation of VOCA funding amongst victim services provided by sub-recipient organizations, and amongst victim service organizations. Such reallocations of funding, however, are not mandated and each State and territory would make the ultimate decision with regard to whether to change its current funding allocations, if it chooses to do so at all. This is not a change from the present discretion that States have to allocate funding according to State priorities. Any potential reallocations would be relatively minor (even when taken in aggregate across States) in comparison to the overall mix of allowable victim services,

and thus they are unlikely to create new costs or significant fund transfers. In any event, the benefits of additional services for underserved and un-served victims are significant.

The proposed requirement to periodically compete subawards may impose minimal costs associated with administering a competition at least every five years, but these costs are outweighed by the gains in both program effectiveness and cost efficiency that competition would create. The proposed provision allowing alternative risk-based monitoring procedures imposes no new costs on States that choose to retain their existing procedures, but will allow States that wish to implement more cost effective alternatives to do so.

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

All of the proposed changes to the provisions governing allowable and unallowable costs are in the nature of granting States additional flexibility to fund certain activities. None of the changes would require States to expend additional funding in any area, or change funding allocations. Moreover, the changes, while important, are relatively minor when compared to the entire scope of costs allowable with VOCA

funding. Consequently, to the extent that States choose to fund the newly allowable victim services (e.g., increased time allowed in transitional housing), the reallocation of funding will not result in a significant reallocation of overall funding, given the small number of newly allowable services when compared to the overall mix of allowable victim services. In addition, it is not certain which States will permit what additional services if given the flexibility to do so, and to what extent, as these decisions typically are often made through State legislative or administrative processes and address considerations unique to each State. The important benefit of such potential minor reallocations of resources, whether within organizations that presently receive VOCA funding and will provide augmented services, or (in the less common case) to new organization, would be that previously underserved or un-served victims would receive needed assistance.

#### **Executive Order 13132 - Federalism**

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government, as the relationship between the States and territories and the national government, for purposes of this program, is set out primarily in the statutory law, not this regulation. Therefore, in accordance with Executive Order No. 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

This rule meets the applicable standards set forth in sections 3(a) & (b)(2) of Executive Order No. 12988. Pursuant to section 3(b)(1)(I) of the Executive Order, nothing in this or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to the Program that is the subject of this rule is intended to create any legal or procedural rights enforceable against the United States, except as the same may be contained within subpart B of part 94 of title 28 of the Code of Federal Regulations.

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

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. The VOCA Victim Assistance Program is a formula grant program that provides funds to States to provide financial support to eligible crime victim assistance programs. Therefore, no actions 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 costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

## **Paperwork Reduction Act**

This proposed rule does not propose any new, or changes to existing, “collection[s] of information” as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.) and its implementing regulations at 5 CFR Part 1320. The existing collections (VOCA Victim Assistance Grant Program State Performance Report, 1121-0115, and OVC Subgrant Award Report, 1121-0142) have both been cleared by the Office of Management and Budget.

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

Administrative practice and procedure, victim assistance, formula grant program, Victims of Crime Act (VOCA) of 1984.

Accordingly, for the reasons set forth in the preamble, part 94 of chapter I of Title 28 of the Code of Federal Regulations is proposed to be amended as follows:

### **PART 94—CRIME VICTIM SERVICES**

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

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

2. Add subpart B to read as follows:

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

##### **General Provisions**

Sec,

94.101 Purpose; future guidance; construction and severability.

94.102 Definitions.

#### **State Administering Agency Program Requirements**

- 94.103 Purpose of State-level VOCA funding; State administering agency eligibility.
- 94.104 Eligible crime victim assistance programs.
- 94.105 Allocation of subawards.
- 94.106 Reporting requirements.
- 94.107 Monitoring requirements.
- 94.108 Programmatic oversight of subawards.
- 94.109 Sub-recipient program income.

### **State Administering Agency Use of VOCA Funds for Administration and Training**

- 94.110 Administration and training.
- 94.111 Special considerations for administrative costs.
- 94.112 Allowable administrative costs.
- 94.113 Allowable training costs.

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

- 94.114 Purpose of VOCA sub-awards.
- 94.115 Sub-recipient program requirements.
- 94.116 Project match requirements.

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

- 94.117 Direct service costs.
- 94.118 Other costs for activities supporting direct services.
- 94.119 Sub-recipient administrative costs.
- 94.120 Expressly non-allowable sub-recipient costs.

### **General Provisions**

#### **§ 94.101 Purpose; future guidance; construction and severability**

(a) *Purpose.* The purpose of this subpart is to implement and interpret the provisions of VOCA, at 42 U.S.C. 10603, which, as of the date of this regulation, authorizes the Director to make annual grants to the chief executive of each State and eligible territory for the financial support of eligible crime victim assistance programs.

VOCA sets out the statutory requirements governing this financial support to such programs, and should be read in conjunction with this regulation.

(b) *Future guidance.* Pursuant to VOCA at 42 U.S.C. 10604(a), the Director may establish such rules, regulations, Guidelines, and procedures as are necessary to carry out any function of the Director under VOCA. Pursuant to this authority, the Director may from time to time prescribe clarifying guidance for VOCA grant recipients and sub-recipients on the application of these regulations.

(c) *Construction and severability.* Any provision of this subpart held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this part and shall not affect the remainder thereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

#### **§ 94.102 Definitions**

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

*Director* means the Director of OVC.

*Direct services* are efforts that-

- (1) Respond to the emotional and physical needs of crime victims;
- (2) Assist victims of crime to stabilize their lives after victimization;
- (3) Assist victims to understand and participate in the criminal justice system; or

(4) Restore a measure of security and safety for the victim (for example, by replacing or repairing broken windows, doors, and locks).

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

*Spousal abuse* includes intimate partner violence and dating violence.

*State administering agency* or *SAA* is the governmental unit designated by the chief executive of a State or territory to administer VOCA funds.

*Victim of child abuse* means a victim of crime, where such crime involved an act or omission considered child abuse under the law of the jurisdiction of the relevant State administering agency. In addition, for purposes of this program, victims of child abuse may include, but are not limited to, victims of crime involving child physical, sexual, or emotional abuse; victims of child pornography related offenses; victims of child neglect; victims of commercial sexual exploitation of children; and children who are exposed to or witness violence.

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

### **State Administering Agency Program Requirements**

#### **§ 94.103 Purpose of State-level VOCA funding; State administering agency eligibility.**

(a) *Direct services.* VOCA funds shall be available to the State administering agency only for subawards to eligible crime victim assistance programs that provide

direct services to victims of crime, unless such funds are otherwise available to the State administering agency for training or administrative costs, or for its own direct service programs, as allowable under this subpart.

(b) *State administering agency eligibility.* State administering agencies must meet the criteria set forth in VOCA, at 42 U.S.C. 10603(a)(2). Generally, these criteria require that the chief executive of the State or territory (or a designee, under VOCA, at 42 U.S.C. 10603(d)(5)) certify (as set out in VOCA, at 42 U.S.C. 10603(a)(2)) that—

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

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

(3) VOCA funding will not supplant State and local funds otherwise available for crime victim assistance.

Such certifications shall be submitted annually in such form and manner as may be specified by the Director from time to time. In making their certifications, State administering agencies shall follow the rules regarding priority areas, underserved victims, and non-supplantation set out below.

(c) *Pass-through administration.* State administering agencies have broad latitude in structuring their administration of VOCA funding. VOCA funding may be administered by the State administering agency itself, or by other means, including using pass-through entities (such as coalitions of victim service providers) to make determinations regarding award distribution and to administer funding. State

administering agencies that choose to use a pass-through mechanism shall ensure that such a mechanism does not bypass the statutory limitation on use of administrative and training funds, that reporting of activities at the direct service level is equivalent to what would be provided if the State administering agency were directly overseeing sub-awards, and that an effective system of monitoring sub-awards is used.

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

(a) *In general.* Eligible crime victim assistance programs include those that provide services to victims of crime, and meet the requirements of VOCA, at 42 U.S.C. 10603(b)(1)(A) through (F), as provided in this section.

(b) *Types of entities.* State administering agencies may fund subawards only to programs operated by public agencies or nonprofit organizations (including tribal public agencies and tribal nonprofit organizations), or by combinations thereof.

(c) *Organizational capacity of the program.* State administering agencies shall require that each crime victim assistance program demonstrate to the satisfaction of the State administering agency that it has either a record of effective services to victims of crime and support from non-VOCA funds, or substantial financial support from non-VOCA funds.

(d) *Record of effective services to victims of crime and support from non-VOCA funds.* For purposes of this section, in determining whether a program has demonstrated a record of effective services to victims of crime and has support from non-VOCA funds, State administering agencies may take into account considerations such as (but not limited to)—

- (1) The support and approval of a program's services by the community;
- (2) The program's history of providing direct services in a cost-effective manner;

and

- (3) Financial support from sources other than VOCA.

(e) *Substantial financial support from non-VOCA funds.* For purposes of this section, a program has substantial financial support from non-VOCA funds when at least twenty-five percent of the program's funding in the year of, or the year preceding, the award consists of non-VOCA funds. Substantial financial support may include support from other Federal funding programs. A program may count the funding used to demonstrate non-VOCA substantial financial support toward its project match requirement, provided that this funding is non-Federal (or meets the OJP Financial Guide exceptions for using Federal funding for match).

(f) *Project match requirement.* State administering agencies shall require that crime victim assistance programs agree to, and meet, the project match requirements set out in § 94.116, unless a program falls under one of that section's exceptions to match, or that program is given written approval from OVC to deviate from the match requirements (upon a request from or with the concurrence of the State administering agency to OVC).

(g) *Mandated use of volunteers; waiver.* State administering agencies shall require that crime victim assistance programs utilize volunteers (to the extent determined by the State administering agency) in order to be eligible for VOCA victim assistance funds. The chief executive of the State (who may act through the State administering agency) may waive this requirement, provided that the program submits written

documentation of its efforts to recruit and maintain volunteers, or otherwise demonstrate why circumstances prohibit the use of volunteers, to the satisfaction of the chief executive.

(h) *Discrimination prohibited.* The VOCA non-discrimination provisions specified at 42 U.S.C. 10604(e) shall be implemented in accordance with 28 CFR part 42, and guidance from the Office for Civil Rights within the Office of Justice Programs.

#### **§94.105 Allocation of subawards.**

(a) *Directed allocation of forty percent overall.* State administering agencies shall set aside an overall total of forty percent of each year's VOCA grant for subawards to eligible crime victim assistance programs that serve priority categories of crime victims and previously-underserved categories of crime victims, as specified below in paragraphs (b) and (c) of this section, unless the Director permits the State administering agency to deviate from all or part of these allocations under one of the exceptions in paragraph (d) of this section.

(b) *Priority Categories of Crime Victims (thirty percent total).* State administering agencies shall allocate a minimum of ten percent of each year's VOCA grant to each of the three categories of victims specified in the certification requirement in VOCA, at 42 U.S.C. 10603(a)(2)(A), which, as of the date of this regulation, includes victims of

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

(c) *Previously underserved category (ten percent total).* State administering agencies shall allocate a minimum of ten percent of each Federal fiscal year's VOCA grant to underserved victims of violent crime, as specified in VOCA, at 42 U.S.C. 10603(a)(2)(B). To meet the underserved requirement, State administering agencies shall identify crime victims by the type of crime they have experienced as well as the characteristics of the victim. These underserved victims may include, but are not limited to, victims of Driving Under the Influence (DUI)/Driving While Intoxicated (DWI) crashes; survivors of homicide victims; victims of physical assault; adults molested as children; victims of elder abuse, robbery, hate and bias crimes, kidnapping; child victims and adult survivors of child pornography; child victims of sex trafficking; victims of violent crime in high crime areas; and LGBTQ victims.

(d) *Exceptions to required allocations.* Each State administering agency shall allocate each Federal fiscal year's VOCA grant as specified above, unless the Director approves a different allocation, pursuant to a written request from the agency that demonstrates (to the satisfaction of the Director) that—

(1) A priority category is currently receiving significant amounts of financial assistance from the State or other sources;

(2) A smaller amount of financial assistance, or no assistance, is needed for a particular priority category or previously underserved victims from the VOCA victim assistance grant program; or

(3) Crime rates for a priority category do not justify the required allocation.

(e) *Mandate to compete funding to sub-recipients.* Each State administering agency shall award funds through a competitive process, including long-term and/or ongoing projects. All subawards for victim assistance projects funded by VOCA should be re-competed at least every five years.

**§ 94.106 Reporting requirements.**

(a) *Subgrant award reports.* State administering agencies shall submit (in such form and manner as may be specified by the Director from time to time) a Subgrant Award Report (SAR) to OVC for each project that receives VOCA funds, within ninety days of the subaward date. If SAR information changes before the end of the project period, the State administering agency shall revise and resubmit the SAR within thirty days of the change.

(b) *Performance report.* State administering agencies shall submit (in such form and manner as may be specified by the Director from time to time) a Performance Report to OVC by the date specified by OVC. The Performance Report shall cover the previous Federal fiscal year's active grants.

(c) *Other reports.* OVC may from time to time request that State administering agencies submit supplemental information or reports, as it may determine to be advisable.

**§ 94.107 Monitoring requirements.**

(a) *Monitoring plan.* Except as provided in paragraph (d) of this section, State administering agencies shall develop a monitoring plan in accordance with the requirements of this section.

(b) *Monitoring frequency.* State administering agencies shall conduct regular desk monitoring of all subawards. In addition, agencies shall conduct on-site monitoring of all sub-recipients a minimum of once every two years during the grant cycle.

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

(d) *Alternative monitoring procedure.* State administering agencies may submit to OVC for approval an alternative monitoring plan that differs from that described in paragraph (a) of this section. Such monitoring plan may use risk assessment to determine the level of scrutiny and priority for conducting monitoring of sub-recipients. Any alternative monitoring plan must be approved by OVC prior to implementation.

#### **§ 94.108 Programmatic oversight of subawards.**

State administering agencies shall ensure that VOCA sub-recipients obligate and expend funds in accordance with §§ 94.117 through 94.120, which set out allowable and unallowable costs under VOCA subawards. In addition, State administering agencies shall refer to the following rules when overseeing subawards that involve the following entities or activities:

(a) *Leasing vehicles.* No State administering agency may authorize a sub-recipient to lease vehicles using VOCA funds unless the sub-recipient substantiates an essential need for the expenditure to deliver services to crime victims.

(b) *Faith-based and neighborhood organizations.* State administering agencies shall ensure that sub-recipients comply with all applicable Federal rules governing use of

Federal funding by faith-based and neighborhood organizations, including 28 CFR part 38.

(c) *Crime victim compensation programs.* State administering agencies may provide VOCA victim assistance funding to compensation programs only for the purpose of providing direct services to crime victims that extend beyond the essential duties of the staff administering the compensation program. These services may include crisis intervention; counseling; and providing information, referrals, and follow-up for crime victims.

(d) *Direct-service programs run by State administering agencies.* A State administering agency may use no more than ten percent of its annual VOCA grant to operate its own program that provides direct services to victims of crime, unless the Director approves a different allocation in writing. The State administering agency's direct-services program shall adhere to the allowable/unallowable cost rules in §§ 94.117 through 94.120. VOCA funds used under this paragraph remain subject to the rules for State administering agency use of VOCA funds for administration and training in VOCA, at 42 U.S.C. 10603(b)(3), and in §§ 94.110 through 94.113.

(e) *Victim service organizations located in an adjacent State.* State administering agencies may award VOCA victim assistance funds to otherwise eligible crime victim assistance programs that are physically located in an adjacent State. In making such awards, the State administering agency shall—

(1) Ensure that any such award is an efficient and cost-effective way to provide services to victims who reside in the awarding State;

(2) Ensure that the amount of the award is proportionate to the number of victims in the awarding State that will be served by the adjacent State program; and

(3) Enter into an interstate agreement with the adjacent State to address provision of services, monitoring, auditing Federal funds, overseeing compliance, and reporting.

**§ 94.109 Sub-recipient program income.**

(a) *Prior authorization required.* Services provided by VOCA sub-recipients shall be provided at no charge to victims served, unless the State administering agency grants prior authorization to the sub-recipient to generate program income.

(b) *Consideration for authorization of program income.* The State administering agency should weigh the following considerations prior to permitting a sub-recipient to charge fees or otherwise generate program income:

(1) The sub-recipient's justification for charging for services or otherwise generating program income in light of the particular project's objectives, and the overall purpose of victim assistance programs; and

(2) The sub-recipient's ability to track program income generated in accordance with Federal financial accounting requirements.

(c) *Uses of program income.* State administering agencies shall ensure that each sub-recipients' VOCA-funded program income be restricted to the same uses as the VOCA grant, and that the resulting income be obligated and expended during the grant period in which the income is generated.

**State Administering Agency Use of VOCA Funds for Administration and Training**  
**§ 94.110 Administration and training.**

(a) *Amount.* A State administering agency may not use more than the amount prescribed by VOCA for training and administration. At the time of this regulation, the amount was five percent of a State's annual VOCA award.

(b) *Notification.* State administering agencies shall notify OVC of their decision to use VOCA funding for administrative or training costs at the time of application for VOCA grant funds, or within thirty days of a decision to use such funds. Such notification shall indicate what portion of the five percent allowance will be allocated for training and what portion for administration.

(c) *Availability.* State administering agencies shall ensure that each training and administering activity funded by the VOCA award occurs within the project period.

(d) *Documentation.* State administering agencies shall maintain sufficient records to substantiate the expenditure of administrative and training funds.

**§ 94.111 Special considerations for administrative costs.**

(a) *Proportionate allocation of costs to the VOCA grant.* Any administrative costs (e.g., equipment purchases by the State administrative agency) charged to the VOCA award may be charged only in proportion to the percentage of use that may be allocated to the State's crime victim assistance program. This rule applies only to State administering agencies, not to sub-recipients.

(b) *Baseline for administrative costs.* If a State administering agency uses VOCA funds for administrative costs, it shall—

(1) Establish and document a baseline level of non-VOCA funding required to administer the State victim assistance program prior to expending VOCA funds for administrative costs; and

(2) Notify OVC if there is a decrease in the State's financial commitment to the cost of administering the State's crime victim assistance program.

(c) *Non-supplantation requirement.* In keeping with VOCA, at 42 U.S.C. 10603(a)(2)(C) (prohibiting supplantation of State funds with the Federal grant), a State will be understood to have supplanted if it decreases its previous financial commitment toward the administration of its victim assistance program, and Federal funds are used to maintain the baseline level of administrative funding. States will not be in violation of the prohibition on supplanting where—

(1) A serious loss of State revenue results in across-the-board budget restrictions, or

(2) A State decreases the number of State-supported staff positions used to meet the State's maintenance of effort in administering the VOCA grant program.

(d) *Indirect cost rates.* The State administrative agency may charge a federally-approved indirect cost rate to this grant, provided it does not exceed the five percent statutory cap on administrative (and training) costs for the State administering agency.

**§ 94.112 Allowable administrative costs.**

State administering agencies may use VOCA funds to support administrative costs as provided in VOCA, at 42 U.S.C. 10603(b)(3). Only those costs directly associated with administering the State administering agency's program and training its

staff, enhancing overall program operations, and ensuring compliance with Federal requirements may be reimbursed with administrative grant funds. These costs generally include the following:

(a) *Salaries and benefits.* Salaries and benefits for State administering agency staff and consultants to administer and manage the financial and programmatic aspects of the VOCA victim assistance grant. As noted above, administrative funds may only be used to support the portion of staff time that is devoted to the State-level VOCA assistance program.

(b) *Training.* Travel, registration fees, and other expenses associated with State administering agency staff attendance at OVC-sponsored and other technical assistance meetings and conferences that address issues and concerns to State administration of victim assistance programs.

(c) *Monitoring compliance.* State administering agencies use of administrative funds to monitor compliance of VOCA sub-recipients with Federal and State requirements, provide technical assistance, and/or evaluation and assessment of program activities, including travel, mileage, and other associated expenses.

(d) *Reporting.* State activities necessary to meet Federal and State reporting requirements concerning the VOCA victim assistance grant program.

(e) *Program evaluation.* Surveys or studies that inform the grantee of the impact or outcome of services received by crime victims.

(f) *Program audit costs.* State activities necessary to meet Federal audit requirements concerning the VOCA victim assistance grant program.

(g) *Technology*. Including the study, design, and implementation of grant management systems, web page construction and maintenance, Geographic Information Systems, and other automated systems that further the administration of VOCA victim assistance funds; purchase and maintenance of equipment for the State administering agency, including computers, software, fax machines, copying machines, and TTY/TDDs; and services required to support technology.

(h) *Memberships*. Memberships in crime victims organizations and the purchase of victim-related materials such as curricula, literature, and protocols; memberships in organizations that support the management and administration of the VOCA victim assistance grant program are also allowable.

(i) *Strategic planning*. Development of strategic plans, both service and financial, including conducting surveys and needs assessments.

(j) *Coordination and collaboration efforts*. Coordination and collaboration efforts made on behalf of crime victims with appropriate groups such as systems-based providers, criminal justice, victim advocacy, human services, financial assistance (including crime victim compensation), OJP bureaus and offices, and other appropriate Federal, State, and local agencies and organizations.

(k) *Publications*. Purchasing, printing, and developing training materials, victim services directories, brochures, and other relevant publications.

**§ 94.113 Allowable training costs.**

State administering agencies may use VOCA funds to support training costs as provided in VOCA, at 42 U.S.C. 10603(b)(3). Allowable training costs generally include the following:

(a) *Statewide/regional trainings.* Providing statewide or regional training of personnel providing direct assistance. Statewide or regional training supported with training funds shall target a diverse audience of victim service providers and allied professionals, including VOCA funded and non-VOCA funded personnel.

(b) *Training academies.* Supporting State victim assistance training academies.

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

#### **§ 94.114 Purpose of VOCA sub-awards.**

VOCA funds shall be available to sub-recipients only to provide direct services to victims of crime (unless such funds are otherwise available to the sub-recipient for administrative or other costs as allowable under this subpart).

#### **§ 94.115 Sub-recipient program requirements.**

Sub-recipients shall adhere to the following rules in undertaking activities using VOCA funds:

(a) *Use of volunteers.* Sub-recipients shall use volunteers where practicable to do so unless the chief executive of that State (who may act through the State administering agency) waives this requirement pursuant to § 94.104(g).

(b) *Promotion of community efforts to aid crime victims.* Sub-recipients shall, pursuant to VOCA, at 42 U.S.C. 10603(b)(1)(D), promote within the community served coordinated public and private efforts to aid crime victims. Such coordination may

include, but is not limited to, serving on Federal, State, local, or American Indian tribal task forces, work groups, committees, commissions, or coalitions, to develop written agreements and protocols, overseeing and recommending improvements to community responses to crime victims.

(c) *Assistance to victims in applying for compensation.* Sub-recipients shall, pursuant to VOCA, at 42 U.S.C. 10603(b)(1)(E), assist victims in applying for crime victim compensation benefits. Such assistance may include identifying and notifying crime victims of the availability of compensation, assisting them with application forms and procedures, obtaining necessary documentation, monitoring claim status, and intervening on behalf of the victim with the crime victims' compensation program.

(d) *Compliance with State criteria.* Sub-recipients shall abide by any additional eligibility or service criteria established by the State administering agency.

(e) *Cost of services.* Sub-recipients shall provide services funded by VOCA to crime victims at no charge, unless the sub-recipient requests (and the State administering agency provides prior approval of) a waiver, pursuant to § 94.109, allowing the sub-recipient to generate program income. If a sub-recipient receives a waiver, any program income shall be restricted to the same uses as the VOCA funds and any program income shall be expended during the grant period in which the income is generated.

#### **§ 94.116 Project match requirements.**

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

(b) *Exceptions to project match.* The following are exceptions to the project match rules set out in this section:

(1) *American Indian tribes and tribal organizations.* Sub-recipients that are federally-recognized American Indian or Alaska Native tribes, or projects that operate on reservations of federally-recognized tribes, are not required to contribute to the total cost of a VOCA-funded project.

(2) *Territories and possessions of the United States.* Sub-recipients that are territories or possessions of the United States (except for the Commonwealth of Puerto Rico), or projects that operate in such a territory or possession (except for the Commonwealth of Puerto Rico) are not required to contribute to the total cost of a VOCA-funded project.

(3) *OVC-approved exceptions.* Sub-recipients other than those listed in paragraphs (b)(1) and (2) of this section, may deviate from the match rules set out in this section only upon OVC approval of a written request submitted to OVC by (or with the concurrence of) the State administering agency.

(c) *Sources of project match.* Matching funds shall be derived from non-Federal sources, except as may be provided in the OJP Financial Guide, and may include the following:

(1) *Cash.* The value of direct non-Federal funding (or Federal funds, where permitted by the OJP Financial Guide) contributed to the project.

(2) *Volunteered professional or personal services.* The value placed on volunteer services shall be consistent with the rate of compensation paid for similar work in the

sub-recipient's organization. If the required skills are not found in the sub-recipient's organization, the rate of compensation shall be consistent with the labor market. If services are provided at a discounted rate, the difference between the rate charged the sub-recipient and the rate ordinarily charged shall be included in the valuation. Fringe benefits may be included in the valuation.

(3) *Materials/Equipment.* The value placed on loaned or donated equipment shall not exceed its fair market value.

(4) *Space.* The value of donated space shall 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.

(5) *Non-VOCA funded victim assistance activities.* Match may include victim assistance activities (including but not limited to performing direct victim service activities, coordinating or supervising those activities, training victim assistance providers, or advocating for victims) that are funded by non-VOCA and non-Federal sources, including, but not limited to, other non-Federal Governmental funding sources.

(d) *Use of match funds.* All funds designated as match are restricted to the same uses, and timing deadlines for obligation and expenditure, as the project's VOCA funding.

(e) *Recordkeeping for match.* Each sub-recipient shall maintain records that clearly show the source, amount, and period of time for which the match was allocated. The basis for determining the value of personal services, materials, equipment, and space shall be documented. Any reduction or discount provided to the sub-recipient shall be the

difference of what the sub-recipient paid from what is the provider's nominal or fair market value for the good or service. Volunteer services shall be substantiated by the same methods used by the sub-recipient for its paid employees (generally, this should include timesheets substantiating time worked on the project).

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

#### **§ 94.117 Direct service costs.**

(a) The following are allowable direct service costs for which sub-recipients may use VOCA funds:

(1) *Immediate physical and psychological health and safety.* Services that respond to the immediate emotional, psychological and physical needs (excluding medical care except as allowed under paragraph (a)(1)(ix) of this section) of crime victims are allowable. These services include, but are not limited to:

- (i) Crisis intervention services;
- (ii) Accompaniment to hospitals for medical examinations;
- (iii) Hotline counseling;
- (iv) Safety planning;
- (v) Emergency food, shelter, clothing, and transportation;
- (vi) Short-term (up to 45 days) in-home care and supervision services for children and adults who remain in their own homes when the offender/caregiver is removed;
- (vii) Short-term (up to 45 days) nursing home, adult foster care, or group home placement for adults for whom no other safe, short-term residence is available;
- (viii) Window, door, and lock replacement or repair;

(ix) Emergency costs of non-prescription and prescription medicine, prophylactic treatment to prevent HIV/AIDS infection, durable medical equipment (such as wheel chairs, crutches, hearing aids, eyeglasses), and other health care items are allowed when the State's compensation program, the victim's (or in the case of a minor child, the victim's parent's or guardian's) health insurance plan, Medicaid, or other health care funding source cannot provide for these expenses within 48 hours of the crime; and

(x) Emergency legal assistance such as filing restraining or protective orders, and obtaining emergency custody orders and visitation rights.

(2) *Personal advocacy and emotional support.* Personal advocacy and emotional support services include-

(i) Working with a victim to assess the impact of the crime;

(ii) Identify needs;

(iii) Case management;

(iv) Manage practical problems created by the victimization;

(v) Identify resources;

(vi) Provide information, referrals, advocacy, and follow-up contact for continued services, as needed; and

(vii) Traditional, cultural and/or alternative therapy/healing (e.g., art therapy, yoga).

(3) *Mental health counseling and care.* Mental health counseling and care includes out-patient therapy/counseling, including referral to substance abuse treatment,

provided by a person who meets professional standards to provide these services in the jurisdiction in which the care is administered.

(4) *Peer support*. Peer support includes activities that provide opportunities for victims to meet other victims, share experiences, and provide self-help, information, and emotional support.

(5) *Facilitation of participation in criminal justice proceedings*. Such facilitation generally involves the provision of services and payment of costs that help victims participate in the criminal justice system, and includes-

- (i) Advocacy on behalf of crime victims;
- (ii) Accompaniment to criminal justice offices and court;
- (iii) Transportation, meals, and lodging to allow victims who are not witnesses to participate in the criminal justice system;
- (iv) Interpreters for victims who are hearing-impaired, or with limited English proficiency, when they are not witnesses;
- (v) Child care and respite care to enable a victim who is a caregiver to attend criminal justice activities related to the case;
- (vi) Notification to victims regarding trial dates, case disposition, incarceration, and parole hearings;
- (vii) Assistance with victim impact statements; and
- (viii) Assistance in recovering property that was retained as evidence and projects devoted to restitution advocacy on behalf of crime victims.

(6) *Legal assistance.* Costs for legal assistance services are allowable where reasonable and where the need for such services arises as a direct result of the victimization.

(i) Legal services (including, but not limited to, those provided by pro bono legal clinics) that help victims assert their rights as victims or protect their safety, privacy, or other interests, in a criminal proceeding directly related to the victimization, are allowable.

(ii) Civil legal services for victims where the need for such services arises as a direct result of the victimization, are allowable.

(iii) The following are examples (which are merely illustrative, and not meant to be a comprehensive listing) of some circumstances where civil legal services may be appropriate: Protective and restraining orders against a stalker or abuser; campus administrative protection or stay away order proceedings; family, custody, contract, housing, and dependency matters for victims of intimate partner violence, child abuse, sexual assault, and elder abuse; immigration assistance for victims of human trafficking and domestic abuse victims; intervention with creditors, law enforcement (e.g., to obtain police reports), and other entities on behalf of victims of identity theft and financial fraud; intervention with administrative agencies, schools/colleges, tribal entities, and other circumstances where legal advice or intervention would assist in addressing the consequences of a person's victimization.

(iv) OVC encourages State administering agencies to set reasonable limits on the amount and duration of funding, and the types of legal services that are provided by their sub-recipients.

(v) In general, legal services for divorce proceedings, alteration of child support payments, criminal defense, and tort lawsuits are not an appropriate use of VOCA funding.

(7) *Forensic medical evidence collection examinations.* Forensic medical evidence collection examinations for adult and child victims are allowable to the extent that other funding sources such as State appropriations are insufficient. These costs may be covered if the examination meets standards established by the State, and appropriate crisis counseling and/or other types of victim services are offered to the victim in conjunction with the examination.

(8) *Forensic interviews.* VOCA funding may be used for forensic interviews of children and adults only when—

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

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

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

(iv) VOCA victim assistance funds are not used to supplant other State and local public funding available for forensic interviews, including criminal justice funding.

(9) *Transportation*. Transportation is allowable for victims to receive services and to participate in criminal justice proceedings.

(10) *Public awareness*. Public awareness and education presentations that are made in schools, community centers, and other public forums, and that are designed to inform crime victims of specific rights and services and provide or refer them to needed services and assistance are allowable. Costs related to these activities include the development of presentation materials, brochures, newspaper notices, and public service announcements.

(11) *Services to incarcerated individuals*. Services that respond to the needs of an incarcerated crime victim, whether arising from a victimization occurring before or during incarceration, are allowable where the need for such services does not directly arise from the crime for which that individual was incarcerated. Such services may include psychological or medical forensic services. The need for victim assistance services does not directly arise from the crime for which a person is incarcerated merely because that person, while incarcerated, is victimized, even where the person is targeted and victimized for having committed that crime.

(12) *Transitional housing*. The cost of transitional housing for victims is allowable, subject to any restrictions on amount, length of time, and eligible crimes, set by the State administering agency. Generally, transitional housing is appropriate for victims of human trafficking, victims with disabilities abused by caretakers, victims of

domestic violence and their dependents, and other victims who have a particular need for transitional housing, and who cannot (or should not) return to their previous housing situation due to the circumstances of their victimization.

(13) *Relocation*. The cost of relocation of victims is allowable, subject to any restrictions on amount, length of time, and eligible crimes, set by the State administering agency. Generally, relocation is appropriate where needed for the safety and well being of a victim, particularly for domestic violence victims, victims of sexual assault, and victims of human trafficking. Such costs must be reasonable and may include, but are not limited to, moving expenses, security deposits on housing, rental and mortgage assistance, and utility startup.

(b) [Reserved].

**§ 94.118 Other costs for activities supporting direct services.**

The following are other allowable victim-service-related costs for which sub-recipients may use VOCA funds:

(a) *Coordination of activities*. Activities that facilitate the provision of direct services are allowable, including but not limited to, statewide coordination for victim notification systems, crisis response teams, multidisciplinary teams, and other such programs. VOCA funds may be used to support the salaries and benefits of such coordinators.

(b) *Supervision of direct service providers*. VOCA funds may be used to support the costs of supervisory staff costs in a VOCA-funded project, when the State

administering agency determines that such supervision of direct service providers is necessary and essential to providing direct services to crime victims.

(c) *Multisystem, interagency, multidisciplinary response to crime victims.* VOCA funds may be used for activities that support a coordinated and comprehensive response to crime victims by direct service providers. Examples include direct service staff serving on child and adult abuse multidisciplinary investigation and treatment teams; coordinating with Federal agencies to provide services to victims of Federal crimes; and/or participation on statewide or other task forces, work groups, and committees to develop protocols, interagency, and other working agreements.

(d) *Contracts for professional services.* Sub-recipients may use VOCA funds to contract for specialized professional services that are not available within the organization. Examples of such services include, but are not limited to, psychological or psychiatric consultation; legal consultation for victim advocates who assist victims in using appropriate legal avenues to alleviate danger and in exercising their rights as victims; and interpreters for victims who are hearing impaired or with limited English proficiency. Sub-recipients generally should not use VOCA funds for contracted services that charge for administrative overhead or other indirect costs on an hourly or daily rate.

(e) *Automated systems and technology.* VOCA funds may be used for automated systems and technology that support delivery of direct services to victims. Examples are automated information and referral systems, e-mail systems that allow communications among victim service providers, automated case-tracking and management systems, and

victim notification systems. Costs may include personnel, hardware, and other expenses, as determined by the State administering agency.

(f) *Court Appointed Special Advocates (CASA) and other similar volunteer trainings.* VOCA direct service funds may be used to provide instruction to CASA volunteers on how to be an advocate. VOCA funds may also be used to instruct volunteers on how to provide direct services when such services will be provided predominantly by volunteers.

**§94.119 Sub-recipient administrative costs.**

The following are allowable administrative costs for which sub-recipients may use VOCA funds:

(a) *Personnel costs.* VOCA funds may be used to support personnel costs that are directly related to providing direct services and other allowable victim-related services, such as staff and coordinator salaries and fringe benefits, including a prorated share of liability insurance.

(b) *Skills training for staff.* VOCA funds designated for skills training shall be used exclusively for developing the skills of direct service providers, including paid staff and volunteers, so that they are better able to offer quality services to crime victims. These VOCA funds may be used for training both VOCA-funded and non-VOCA-funded service providers who work within a VOCA recipient organization. VOCA funds may be used to pay for manuals, books, videoconferencing, and other materials and training methods.

(c) *Training-related travel.* VOCA funds may support costs such as travel, meals, lodging, and registration fees for VOCA-funded direct service staff in a VOCA sub-recipient organization. These expenses may be funded for training in-State, regionally, and nationally.

(d) *Office costs.* Office costs that are necessary and essential to providing direct services and other allowable victim services are allowable. These costs include but are not limited to the prorated costs of rent; utilities; local travel expenses for service providers; and required minor building adaptations needed to meet the Department of Justice standards implementing the Americans with Disabilities Act.

(e) *Equipment and furniture.* VOCA funds may be used to purchase furniture and equipment that facilitate the delivery of direct services to crime victims. Examples of allowable costs are telephones; Braille and TTY/TDD equipment; computers and printers; beepers; video cameras and recorders for documenting and reviewing interviews with children; two-way mirrors; colposcopes; and equipment and furniture for shelters, work spaces, victim waiting rooms, and children's play areas. VOCA funds may support only the prorated share of an item that is not used exclusively for victim-related activities.

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

- (1) Supplies;
- (2) Equipment use fees, when supported by adequate documentation;
- (3) Prorated costs of property insurance;
- (4) Printing, photocopying, and postage;
- (5) Courier services;

- (6) Brochures that describe available services;
- (7) Books and other victim-related materials;
- (8) Computer backup files/tapes and storage; and
- (9) Security systems.

(g) *VOCA administrative time.* Administrative time spent performing the following activities is an allowable cost-

- (1) Completing VOCA-required time and attendance sheets and programmatic documentation, reports, and statistics;
- (2) Collecting and maintaining crime victims records;
- (3) Conducting victim satisfaction surveys and needs assessments to improve victim services delivery in the VOCA-funded project; and
- (4) Funding the prorated share of audit costs.

(h) *Leasing vehicles.* Leasing vehicles, provided that the State administering agency grants prior approval, is an allowable cost. The sub-recipient shall demonstrate to the satisfaction of the State administering agency that the vehicle is essential to delivering services to crime victims.

(i) *Maintenance, repair, or replacement of essential items.* VOCA funds may be used for maintenance, and repair or replacement of items that contribute to maintaining a healthy or safe environment for crime victims, such as a furnace in a shelter. Routine maintenance, repair costs, and automobile insurance are allowable for leased vehicles. State administering agencies shall review each sub-recipient request to ensure that other

sources of funding are not available, and that the cost of maintenance, repair, or replacement is reasonable.

(j) *Project evaluation.* Sub-recipients may use VOCA funds to support evaluations of specific victim service projects.

**§ 94.120 Expressly non-allowable sub-recipient costs.**

Notwithstanding any other provision of this subpart, VOCA funds shall not be used to fund or support the following:

(a) *Lobbying.* Lobbying or administrative advocacy activities on legislation or administrative change to regulation or administrative policy (*cf.* 18 U.S.C. 1913), whether conducted directly or indirectly, are unallowable.

(b) *Perpetrator rehabilitation and counseling.* Funds may not be used for perpetrator rehabilitation and counseling except where directly arising from the victimization of an incarcerated individual whose need for victim assistance services does not directly arise from the crime for which that individual was incarcerated, or as provided in § 94.117(a)(11).

(c) *Research and studies.* Research and studies on crime victim issues are an unallowable use of VOCA funds, as these funds should be used primarily for direct services. Note: Evaluation of specific victim service projects to determine the effectiveness of such a program is an allowable use of VOCA funds.

(d) *Criminal justice system improvement.* Activities directed at prosecuting an offender or improving the criminal justice system's effectiveness and efficiency, except

that forensic interviews and examinations may be funded in some instances, as set forth in § 94.117(a)(7) and (8).

(e) *Fundraising*. Any activities or other costs related to fundraising (with the exception of fee-based, or similar, program income as permitted by the State administering agency under these rules).

(f) *Capital expenses*. Capital improvements, liability insurance on buildings; body guards; property losses and expenses; real estate purchases; mortgage payments; and construction, except as allowable under § 94.117(a)(1) or § 94.119.

(g) *Compensation for victims of crime*. Reimbursement to crime victims for expenses incurred as a result of a crime, except as allowable property loss expenses under § 94.117(1).

(h) *Most medical care*. Except as allowed under § 94.117(a)(1)(ix).

(i) *Salaries and expenses of management*. Salaries, benefits, fees, furniture, equipment, and other expenses of executive directors, board members, and other administrators, except as allowable under § 94.118 or § 94.119.

(j) *Victim attendance at conferences*. The attendance of individual crime victims at conferences.

(k) *Funding other organizations*. The purchase of equipment for another organization or individual to perform a victim-related service.

(l) *Purchasing vehicles*. Purchasing of vehicles (as distinct from the leasing of vehicles).

(m) *Crime prevention*. Crime prevention activities.

Dated: August 14, 2013

\_\_\_\_\_  
Karol V. Mason  
Assistant Attorney General

[FR Doc. 2013-20426 Filed 08/26/2013 at 8:45 am; Publication Date: 08/27/2013]