

(c)(4), and redesignating paragraph (c)(5) as (c)(4).

The revisions read as follows:

**§ 416.974 Evaluation guides if you are an employee.**

\* \* \* \* \*

(c) \* \* \*

(3) *If you worked 6 months or less.* We will consider work of 6 months or less to be an unsuccessful work attempt if you stopped working or you reduced your work and earnings below the substantial gainful activity earnings level because of your impairment or because of the removal of special conditions that took into account your impairment and permitted you to work.

\* \* \* \* \*

■ 15. Amend § 416.975 by revising paragraph (d)(1) and (3), removing paragraph (d)(4), and redesignating paragraph (d)(5) as (d)(4).

The revisions read as follows:

**§ 416.975 Evaluation guides if you are self-employed.**

\* \* \* \* \*

(d) \* \* \*

(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that you are no longer performing substantial gainful activity and you meet the conditions described in paragraphs (d)(2), (3), and (4) of this section.

\* \* \* \* \*

(3) *If you worked 6 months or less.* We will consider work of 6 months or less to be an unsuccessful work attempt if you stopped working or you reduced your work and earnings below the substantial gainful activity earnings level because of your impairment or because of the removal of special conditions that took into account your impairment and permitted you to work.

\* \* \* \* \*

■ 16. Amend § 416.999a by revising paragraph (a)(4)(i) and (c)(2) to read as follows:

**§ 416.999a Who is eligible for expedited reinstatement?**

(a) \* \* \*

(4) \* \* \*

(i) You are not able or become unable to do substantial gainful activity because of your medical condition as determined under paragraph (c) of this section.

\* \* \* \* \*

(c) \* \* \*

(2) You are not able or become unable to do substantial gainful activity in the

month you file your request for reinstatement; and

\* \* \* \* \*

[FR Doc. 2016-10932 Filed 5-10-16; 8:45 am]

BILLING CODE 4191-02-P

**DEPARTMENT OF JUSTICE**

**28 CFR Part 90**

[OVW Docket No. 120]

RIN 1105-AB46

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

**AGENCY:** Office on Violence Against Women, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to amend the regulations for the STOP (*Services—Training—Officers—Prosecutors*) Violence Against Women Formula Grant Program (STOP Program) and the general provisions governing Office on Violence Against Women (OVW) Programs to comply with statutory changes and reduce repetition of statutory language. Also, this document would implement statutory requirements for nondisclosure of confidential or private information relating to all OVW grant programs.

**DATES:** Written comments must be postmarked and electronic comments must be submitted on or before July 11, 2016. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

**ADDRESSES:** To ensure proper handling of comments, please reference “Docket No. OVW 120” on all electronic and written correspondence. The Department encourages the electronic submission of all comments through <http://www.regulations.gov> using the electronic comment form provided on that site. For easy reference, an electronic copy of this document is also available at the <http://www.regulations.gov> Web site. It is not necessary to submit paper comments that duplicate the electronic submission, as all comments submitted to <http://www.regulations.gov> will be posted for public review and are part of the official docket record. However, should you wish to submit written comments through regular or express

mail, they should be sent to Marnie Shiels, Office on Violence Against Women, United States Department of Justice, 145 N Street NE., 10W.100, Washington, DC 20530.

**FOR FURTHER INFORMATION CONTACT:**

Marnie Shiels, Office on Violence Against Women, 145 N Street NE., Suite 10W.100, Washington, DC 20530, by telephone (202) 307-6026 or by email at [marnie.shiels@usdoj.gov](mailto:marnie.shiels@usdoj.gov).

**SUPPLEMENTARY INFORMATION:** 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 and address) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. If you want to submit personal identifying information (such as your name and address) as part of your comment, but do not want it posted online, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You also must locate all personal identifying information that you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You also must 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 and confidential business information identified and located as set forth above will be placed in the agency’s public docket file, but not posted online. If you wish to inspect the agency’s public docket file in person by appointment, please see the paragraph above entitled **FOR FURTHER INFORMATION CONTACT**.

**I. Executive Summary**

The Violence Against Women Act (VAWA) was enacted on September 13, 1994, by title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, 108 Stat. 1796. The STOP Program is codified at

42 U.S.C. 3796gg through 3796gg-5 and 3796gg-8. The final rule for this program, found at 28 CFR part 90, subpart B, was promulgated on April 18, 1995. General provisions affecting all OVW grant programs are found at 28 CFR part 90, subpart A.

This rule proposes to amend the general provisions applicable to all OVW grant programs and the regulations governing the STOP Program to comply with the amendments to these programs enacted by the Violence Against Women Act of 2000 (VAWA 2000), Division B of the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386, 114 Stat. 1464 (Oct. 28, 2000), the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109-162, 119 Stat. 2960 (Jan. 5, 2006), and the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Public Law 113-4, 127 Stat. 54 (Mar. 7, 2013). These proposed changes to the regulations incorporate the statutory changes, make minor technical corrections, implement enhanced administrative and planning practices for formula grantees, and streamline existing regulations to reduce repetition of statutory language.

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

## II. Background

In 1994, Congress passed the Violence Against Women Act (VAWA), a comprehensive legislative package aimed at ending violence against women. VAWA was enacted on September 13, 1994, as title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, 108 Stat. 1796. VAWA was designed to improve criminal justice system responses to domestic violence, sexual assault, and stalking, and to increase the availability of services for victims of these crimes. VAWA was reauthorized and amended in 2000, 2005, and 2013, with each new reauthorization making improvements to the law and adding new programs and provisions.

### A. *The Violence Against Women Act*

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

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

VAWA's legislative history indicates that Congress passed VAWA to improve justice system responses to violence against women. For example, Congress wanted to encourage jurisdictions to treat domestic violence as a serious crime, by instituting comprehensive reforms in their arrest, prosecution, and judicial policies. Congress was further interested in giving law enforcement and prosecutors the tools to pursue domestic violence and sexual assault cases without blaming victims for behavior that is irrelevant in determining whether a crime occurred and discouraging judges from issuing lower sentences for sexual assault crimes than for other violent crimes. VAWA was intended to bring an end to archaic prejudices throughout the justice system, provide support for victims and assurance that their attackers will be prosecuted, and focus criminal proceedings on the conduct of attackers rather than the conduct of victims.<sup>1</sup>

### B. *Violence Against Women Act of 2000*

On October 28, 2000, Congress enacted the Violence Against Women Act of 2000 (VAWA 2000), Division B of the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386, 114 Stat. 1464. VAWA

2000 continued and strengthened the federal government's commitment to helping communities change the way they respond to violence against women. VAWA 2000 reauthorized critical grant programs, established new programs, and strengthened federal law. It had an emphasis on increasing responses to victims of dating violence and expanding options and services for immigrant and other vulnerable victims.

VAWA 2000 made several changes relevant to the STOP Program. First, it amended the statutory purposes for which grant funds may be used. Second, it clarified the eligibility of courts as subgrantees. Third, it modified the requirement under the STOP Program, to be eligible for funding, states must certify that victims not bear the costs for certain filing fees related to domestic violence cases. Finally, it added a new provision applicable to all OVW grant programs requiring grantees to report on the effectiveness of activities carried out with program funds.

### C. *Violence Against Women Act of 2005*

On January 5, 2006, Congress enacted the Violence Against Women and Department of Justice Reauthorization Act (VAWA 2005), Public Law 109-162, 119 Stat. 2960. VAWA 2005 strengthened provisions of the previous Acts, including revising the STOP Program, and created a number of new grant programs. It also created a set of universal definitions and grant conditions that apply to all programs authorized by VAWA and subsequent legislation. VAWA 2005 had an emphasis on enhancing responses to sexual assault, youth victims, and victims in Indian country. Its provisions included new sexual assault focused programs, the addition of sexual assault to a number of OVW grant programs, new youth-focused programs, and the creation of a comprehensive violence against women program for tribal governments.

The revisions to the STOP Program made by VAWA 2005 included adding new purpose areas to the program and modifying the requirements for the development of state implementation plans, the allocation of funds to subgrantees, and documentation of consultation with victim service programs. VAWA 2005 also required that the regulations governing the program ensure that states would recognize and meaningfully respond to the needs of underserved populations and distribute funds intended for culturally specific services—for which the act created a new set-aside—equitably among culturally specific populations. It further amended the

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

certification requirement under the program related to payment for forensic medical exams for victims of sexual assault and added new certifications related to prohibiting the use of polygraph examinations in sexual assault cases and to judicial notification to domestic violence offenders of laws prohibiting their possession of a firearm.

#### *D. Violence Against Women Reauthorization Act of 2013*

On March 7, 2013, Congress enacted the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Public Law 113–4, 127 Stat. 54. VAWA 2013 made further improvements to the OVW grant programs, including several new requirements for the STOP Program. It also included two new historic provisions, one extending civil rights protections based on gender identity and sexual orientation and another recognizing the inherent jurisdiction of Indian tribes to prosecute non-Indians who commit certain domestic violence offenses in Indian country.<sup>2</sup>

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

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

#### *E. Grants To Combat Violent Crimes Against Women*

VAWA, as amended, added a part T to the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90–351, codified at 42 U.S.C. 3711 *et seq.*, titled Grants to Combat Violent Crimes Against Women. Part T authorizes four OVW-administered grant programs: the STOP Program, Grants to Indian Tribal Governments, the Grants to State Sexual Assault and Domestic Violence Coalitions Program (State Coalitions), and the Grants to Tribal Domestic Violence and Sexual Assault Coalitions Program (Tribal Coalitions).

The STOP Program grants are awarded to states to develop and strengthen the justice system's response to violence against women and to support and enhance services for victims. As described above, each subsequent VAWA reauthorization made numerous changes to this program, including adding purpose areas, imposing new or revised certification requirements, creating set-asides for sexual assault and culturally specific services, and making changes to the funding formula, funding allocations, and matching funds requirement.

### **III. Definitions and Confidentiality Requirements Applicable to All OVW Grant Programs**

As discussed above, VAWA 2005 established universal definitions and grant conditions for OVW grant programs, and VAWA 2013 amended these provisions. This section describes how the proposed rule would implement these definitions, as well as a grant condition protecting the confidentiality and privacy of persons receiving victim services for the purpose of ensuring victim safety.

#### *A. Definitions*

The universal definitions added by VAWA 2005, codified at 42 U.S.C. 13925(a), superseded previous program-specific definitions originally enacted in 1994. This proposed rule would revise the definitions section of part 90, 28 CFR 90.2, by removing definitions from the existing regulations that are codified in statute, adding definitions for terms that are used in statute but not defined, and clarifying statutory definitions that, based on OVW's experience managing its grant programs, require further explanation.

Section 90.2 currently contains definitions for the following terms: domestic violence, forensic medical examination, Indian tribe, law enforcement, prosecution, sexual

assault, state, unit of local government, and victim services. This proposed rule would remove the definitions for domestic violence, Indian tribe, law enforcement, sexual assault, state, and victim services, as they all appear in the statute and do not need further clarification. The proposed rule would revise the definition of "forensic medical examination," a term that is used but not defined in a statutory provision directing that states, Indian tribal governments, and units of local government may not receive STOP Program funds unless they incur the full out-of-pocket cost of forensic medical exams for victims of sexual assault. See 42 U.S.C. 3796gg–4(a)(1). The proposed rule would change the list of minimum elements that the exam should include to bring the definition in line with best practices for these exams as they have developed since part 90 was implemented in 1995, and, in particular, with the Department of Justice's national protocol for sexual assault medical forensic examinations, which was updated in April 2013.<sup>3</sup>

The proposed rule's definition of "prosecution" contains minor technical changes from the definition in the existing regulation. These changes implement the VAWA 2005 provision making the definitions applicable to all OVW grant programs and conform the definition to the statute. The definition retains the existing regulation's clarification of the statutory definition, which explains that prosecution support services fall within the meaning of the term for funding purposes. This clarification continues to be important because allocating prosecution grant funds to activities such as training and community coordination helps to achieve the statutory goal of improving prosecution response to domestic violence, dating violence, sexual assault, and stalking. In addition, the statutory definition for "prosecution" uses, but does not define, the term "public agency," which the proposed rule would define using the definition for this term in the Omnibus Crime Control and Safe Streets Act. See 42 U.S.C. 3791.

The proposed rule would revise the definition of "unit of local government," which did not have a statutory definition specific to all OVW grant programs until the enactment of VAWA 2013, to make it consistent with the statutory language. In addition, it would include in the definition a list of entities

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

and organizations that do not qualify as units of local government for funding purposes and would need a unit of local government to apply on their behalf for those programs where “unit of local government” is an eligible entity but other types of public or private entities are not eligible. The list reflects OVW’s long-standing interpretation of the term “unit of local government” and is consistent with OVW’s practice of excluding these entities and organizations from eligibility to apply for OVW funding as units of local government.

The proposed rule also would add definitions to the regulation for terms that are used in OVW grant program statutes but are undefined and that OVW believes would be helpful to applicants and grantees. The term “community-based organization” is defined in 42 U.S.C. 13925(a), but the term “community-based program,” which also appears in OVW grant program statutes, is not. To preserve consistency across OVW programs and minimize confusion, OVW is proposing to use the statutory definition for both terms. The proposed rule would provide a definition of “prevention” that distinguishes the term from “outreach” both because OVW has observed that some grant applicants propose outreach activities to implement prevention programming under OVW programs and because funding for “prevention” is more limited than funding for “outreach.” Finally, the proposed rule would add a definition for “victim services division or component of an organization, agency, or government” because the proposed rule uses this term in implementing the confidentiality provision enacted by VAWA 2005 and amended by VAWA 2013, which is discussed in more detail in the next section.

#### *B. Confidentiality*

VAWA 2005 added a provision on confidentiality and privacy of victim information as part of the new, universal grant conditions, and this provision was amended by VAWA 2013. See 42 U.S.C. 13925(b)(2). This provision recognizes the critical importance to victim safety of protecting victims’ personally identifying information. It generally requires grantees and subgrantees to protect victim confidentiality and privacy to ensure the safety of victims and their families and prohibits the disclosure of victims’ information without their informed, written, and reasonably time-limited consent. These requirements, implemented in proposed § 90.4(b),

would be applicable to all OVW grant programs, not just STOP grants.

In administering this confidentiality provision, OVW has received numerous inquiries regarding what kinds of disclosures require written consent, and OVW is proposing to answer these questions in this rule. OVW welcomes comments on the impact of these issues on victims as well as comments on the specific proposals enumerated in this draft rule. OVW specifically requests comments in the following three areas:

(1) OVW has received numerous questions regarding how the confidentiality provision applies when the grantee is an organization or governmental entity with multiple divisions or components, some of which do not provide victim services. For example, if the grantee is a college campus, the campus administration might seek identifying information about victims served by the campus victim services division, and the victim services division would need to know whether such a disclosure is permissible under the VAWA confidentiality provision absent victim consent. OVW has included language in proposed § 90.4(b)(2)(C) providing that, for a victim services division of such an organization or governmental entity to disclose information to non-victim services divisions, it would need a signed, informed, reasonably time-limited release from the victim. Proposed § 90.2(h) would define such a victim services division as a division within a larger organization, agency, or government, where the division has as its primary purpose to assist or advocate for victims of domestic violence, dating violence, sexual assault, or stalking. Proposed section 90.4(b)(2) also would require a release for the leadership of the larger organization, agency, or government (*e.g.*, the executive director, mayor, tribal chair, etc.) to access identifying information. OVW welcomes comments on the impact of this proposal on grantees’ and subgrantees’ ability to protect victim confidentiality and ensure victim safety.

(2) OVW often receives questions about fatality reviews of domestic-violence-related homicides and release of information about deceased victims to individuals conducting such reviews. Fatality reviews examine the events leading up to domestic violence homicides to discover missed opportunities for intervention and points at which intervention was not effective so that communities can make systemic changes designed to improve identification, intervention, and prevention efforts in future cases. Fatality review teams usually are

comprised of representatives from a wide variety of disciplines involved in responding to domestic violence incidents, including law enforcement, prosecution, judges, medical professionals, child protection workers, and community-based advocates. The proposed rule, at § 90.4(b)(4), would allow the sharing of information about deceased victims for the purpose of a fatality review, provided that (1) the objectives of the review are to prevent future deaths, enhance victim safety, and increase offender accountability, and (2) the review includes measures to protect information from release outside the fatality review team. This provision strikes a balance between recognizing the importance of such reviews and making sure that the reviews protect information about any surviving children, keeping in mind that the confidentiality provision and fatality reviews are both intended to enhance victim safety. OVW requests comments on the impact of this proposal on grantees’ and subgrantees’ ability to ensure the safety and privacy of victims and their families.

(3) OVW has received a number of questions about the propriety of placing victim-identifying data on third-party servers, such as those maintained by “cloud storage” companies. OVW is interested in receiving comments about whether and how such third-party servers can be used without compromising victim safety or violating the confidentiality provision at 42 U.S.C. 13925(b)(2) and whether this is an area where rulemaking would be desirable. In particular, the statutory prohibition on the disclosure of victim information applies to personally identifying or individual information collected in connection with grantees’ and subgrantees’ programs, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected. OVW welcomes comments on how this language would apply to information stored on third-party servers.

## **IV. Provisions of This Proposed Rule Relating to the Stop Program**

### *A. Introduction*

The STOP Program regulations and general provisions were originally promulgated in April, 1995. On December 30, 2003, OVW published a proposed rule to clarify the match requirement for the STOP Program. On January 21, 2004, section 90.3, regarding participation by faith based organizations, was added to the general provisions. After the enactment of VAWA 2013, OVW consulted with

tribal governments about the implementation of statutory changes to the STOP Program as part of the Department of Justice's annual government-to-government violence against women tribal consultations held in October 2013 and October 2014. In addition, during November and December of 2013, OVW held a series of listening sessions with relevant constituencies to solicit input on the update to the STOP Program regulations. The specific sessions were focused on state STOP Program administrators, state coalitions, culturally specific and underserved populations, tribes and tribal coalitions, nonprofit organizations, and the justice system. Sessions were an hour each and were held by phone and web interface. Participants offered a diverse array of comments during the sessions. The following section summarizes the common themes of the comments and OVW's responses.

#### *B. Listening Sessions and Tribal Consultations*

State administrators for OVW's two state formula grant programs, the STOP and Sexual Assault Services Programs, requested that OVW be flexible in administering the program and reduce the amount of documentation required from state administrators. Because the STOP Program statute, as amended by the Violence Against Women Acts of 2000, 2005, and 2013, includes many requirements for the program (such as certifications, implementation planning, allocations, equitable distribution of funds, etc.), OVW must require a significant amount of documentation to ensure compliance with all the program's statutory mandates. Therefore, the proposed regulation does include some detailed documentation requirements, particularly in the area of statutorily-mandated consultation. OVW has attempted to minimize the burden of these documentation requirements by proposing to use checklists and permit states to submit summaries of significant concerns. OVW also has provided flexibility where possible. For example, proposed § 90.12(d) leaves it to the states to determine how they will achieve and document the equitable distribution of funds.

In contrast to the state administrators, state coalitions and victim service providers advocated strict documentation requirements for implementation planning consultation to ensure that coalitions and victim service providers are fully consulted, as required by statute. Some participants described instances where they were asked to support a state plan, but were

not given an opportunity to provide true input into the planning process. To address these concerns, proposed § 90.12(b) outlines a robust planning process, with involvement from all of the statutorily required parties, including state coalitions and victim service providers. Proposed § 90.12(c) requires that states document their outreach to planning committee members and the extent to which such members cooperated in the development of the plan.

State coalitions also recommended adding survivors in the state planning process. In response, proposed § 90.12(b)(4) provides that, if possible, states should include survivors of domestic violence, dating violence, sexual assault, and stalking in the planning process.

Victim service providers and groups representing underserved populations asked that organizations working with underserved populations be included in the state planning process and in the subgrantee pool. Proposed § 90.12(b)(2) requires each state to examine its demographics and include any significant culturally specific or underserved population in the planning process. If the state does not have any culturally specific or population specific organizations at the state or local level, the state can use national organizations to collaborate on the plan. Per the statute (42 U.S.C. 4796gg-1(e)(2)(D)), proposed § 90.12(e) requires states to include in their implementation plans information about how the state plans to meet the needs of identified underserved populations, including, but not limited to, culturally specific populations, victims who are underserved because of sexual orientation or gender identity, and victims with limited English proficiency. Participants in the listening sessions identified these specific populations as ones that particularly needed to be addressed by state implementation plans.

Tribal representatives and advocates from the tribal listening session and consultations strongly recommended that states meaningfully consult with *all* tribes in the state, including Alaska Native villages, during their planning process. Participants emphasized that tribal coalitions can assist state administrators in forging relationships with tribes, but do not speak for the tribes. Participants also emphasized that each tribe is a unique sovereign, and one tribe's input does not obviate the need for input from other tribes. Proposed § 90.12(b)(3) therefore provides that states must invite all state or federally recognized tribes to

participate in the planning process. The statutory definition of "tribe" includes Alaska Native villages. Tribal coalitions and state or regional tribal consortia can help the state reach out to tribes but cannot be used as substitutes for consultation with all tribes.

The justice system participants recommended including probation and parole entities within the mandatory implementation planning participants. In response, proposed § 90.12(b)(5) provides that states should include probation and parole entities in their planning process.

VAWA 2013 included a new provision that permits states to reallocate grant funds from one statutory "allocation" category (*i.e.*, prosecution, law enforcement, courts, and victims services) to another. Participants in all the sessions were asked what should be required before a state could reallocate funds to a different category. Many participants recommended that there should be documentation of the state's inability to award funds to entities within the assigned allocation category and that state-wide agencies, such as the administrative office of the courts, or state coalitions might be able to help both with publicizing the availability of funds and documenting the inability to award funds. For example, some participants noted that their state's administrative office of the courts will not accept the STOP funds allocated to courts. In proposed § 90.25, OVW tried to maintain a balance between ensuring that states make legitimate efforts to identify eligible subrecipients and permitting states to reallocate the funds when their efforts to adhere to the allocation categories are unsuccessful.

Participants were asked if there are any terms that should be defined in the regulations. Several commenters recommended including a definition of "prevention" to clarify the distinction between "prevention" and "outreach". Proposed § 90.2(d) specifies that a "prevention program" is "a program that has a goal of stopping domestic violence, dating violence, sexual assault, or stalking from happening in the first place."

Participants were also asked about the best way to ensure that states coordinate with health care providers to notify victims of the availability of sexual assault forensic medical examinations as required by 42 U.S.C. 3796gg-4. The consensus of commenters was that, because both the structure of health care and available resources for this coordination vary greatly by state, the regulations should be flexible. Tribal participants also recommended including Indian Health Services in this

consultation. Proposed § 90.13(e) addresses these comments by allowing states to meet this coordination obligation by partnering with associations that are likely to have the broadest reach to the relevant health care providers, such as forensic nursing or hospital associations. States with significant tribal populations are recommended to include local Indian Health Services facilities.

*C. Proposed Changes to the STOP Program Regulations*

In light of the statutory changes summarized above, the listening sessions with various constituencies and the tribal consultations, and OVW’s

experience in administering the STOP Program over the years, OVW is proposing to amend the existing STOP Program regulations in the following ways:

1. Reorganizing the Provisions of the Rule

This proposed rule would reorganize subpart B to promote a more logical flow of information, which better reflects the cycle of making and administering grants. To cite one example, the revised rule would describe the need for a state administering office, which is the starting point of a state’s work under the STOP Program, at the beginning of

subpart B rather than in the middle. In addition, proposed § 90.14 would implement the judicial notification requirement and proposed § 90.16 would implement the polygraph testing prohibition, which both were added by VAWA 2005. Proposed § 90.25 would implement a new provision from VAWA 2013, permitting states to reallocate STOP funds. Proposed § 90.24 would codify a long-standing OVW policy against funding activities that may compromise victim safety and recovery, based on the program’s purpose to enhance victim safety and offender accountability. The following chart shows the changes from the current rule to this proposed rule.

Section No.	Current rule	Proposed disposition of current section	Proposed rule
90.10	Description of STOP ( <i>Services—Training—Officers—Prosecutors</i> ) Violence Against Women Formula Grant Program.	Same	STOP ( <i>Services—Training—Officers—Prosecutors</i> ) Violence Against Women Formula Grant Program-General.
90.11	Program Criteria	Merged with 90.10 and 90.12	State office.
90.12	Eligible Purposes	Merged with 90.10	Implementation plans.
90.13	Eligibility	Now in 90.10	Forensic medical examination payment requirement.
90.14	Forensic Medical Examination Payment Requirement.	Now 90.13	Judicial notification requirement.
90.15	Filing Costs for Criminal Charges	Same	Costs for criminal charges and protection orders.
90.16	Availability and Allocation of Funds	(a) Is now in 90.17, (b) and (c) are merged with 90.12.	Polygraph testing prohibition.
90.17	Matching Requirements	Now 90.18	Subgranting of funds.
90.18	Non-supplantation	Removed	Matching funds.
90.19	State Office	Now 90.11	Application content.
90.20	Application Content	Now 90.19	
90.21	Evaluation	Same	Evaluation.
90.22	Review of State Applications	Same	Review of State applications.
90.23	State Implementation Plan	Now 90.12	Annual grantee and subgrantee reporting.
90.24	Grantee Reporting	Now 90.23	Activities that may compromise victim safety and recovery.
90.25			Reallocation of funds.

2. Removing Duplicative Regulatory Language

OVW is proposing to remove much of the existing regulation to avoid duplication with the statute. Specifically, OVW is proposing to remove the following sections and paragraphs of the current regulation for this reason: § 90.10; § 90.11(a); § 90.12; § 90.16(a); and § 90.18. Other sections have been streamlined by referencing the statutory provision rather than repeating the statutory language.

3. Statutory Changes

As discussed above, the Violence Against Women Acts of 2000, 2005, and 2013 have amended and enhanced this program. Specific changes are as follows:

- Expanded purpose areas (incorporated by reference in proposed § 90.10)
- Changes in allocations: (1) The victim services allocation increased from 25 percent to 30 percent; (2) a set aside was added of ten percent of the victim services funds (or three percent of the total award) for culturally specific community based organizations; (3) a set aside was added of five percent to courts; and (4) a 20-percent set aside was added for programs that meaningfully address sexual assault in two or more of the specified allocations (proposed § 90.11(c))
- Changes in the implementation planning process, including an expanded list of entities that the state is required to consult with and additional information that needs to be included in a state’s

implementation plan (proposed § 90.12)

- Changes to the existing certification requirements and additions of new certification requirements (proposed § 90.13, forensic medical examination payment; proposed § 90.14, judicial notification; proposed § 90.15, costs for criminal charges and protection orders; and proposed § 90.16, polygraph testing prohibition)

The proposed rule also would remove references to the Assistant Attorney General for the Office of Justice Programs to reflect statutory changes made by the Violence Against Women Office Act, Title IV of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273 (Nov. 2, 2002).

#### 4. Section-by-Section Summary of the Proposed Regulatory Text

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

Proposed § 90.10 lists the eligible applicants for the program and specifies that the purposes, criteria, and requirements for the program are established by 42 U.S.C. 3796gg *et seq.*

##### § 90.11 State Office

Proposed § 90.11 describes the role of the State office, which is to be designated by the chief executive of the state. As detailed in proposed § 90.11(a) and (b), the State office is responsible for submitting the application, including certifications, developing the implementation plan, and administering the funds. Paragraph (c) is intended to ensure that statutorily allocated funds are meaningfully targeted to the appropriate entities and activities.

##### § 90.12 Implementation Plans

As discussed above, VAWA 2013 added new requirements to the state implementation planning process. Proposed § 90.12 implements these requirements. Subsection (a) is consistent with the current § 90.23(a) and follows 42 U.S.C. 3796gg–1(i), but adds language incorporating a long-standing OVW practice of allowing states to submit a full implementation plan every three years and then updates to the plan in the other two years.

Subsections (b) and (c) are new to the regulations, but incorporate provisions from 42 U.S.C. 3796gg–1(c)(2) and (i) regarding consultation and coordination. The statute provides a list of entities that states must consult with during the implementation planning process and requires documentation from members of the planning committee as to their participation in the planning process. OVW must ensure that states consult with all the required entities and fully document such consultation. The subsections attempt to strike a balance between sufficient documentation and the burdens on state administrators inherent in providing such documentation. The proposed rule therefore would require states to submit to OVW a checklist documenting the specific extent of each partner's participation, a summary of any significant concerns that were raised during the planning process, and a description of how those concerns were resolved. In the past, when the statute required that states consult only victim service providers regarding the implementation plan, OVW heard from

some state coalitions that they were being asked to document approval of an implementation plan without having any actual input into the plan. Proposed § 90.12(c) is intended to ensure meaningful collaboration with partners, while minimizing the administrative burden on states.

Based on recommendations from the tribal listening session, consultation with tribal governments must include all tribes in a state, not just a selection of tribes or organizations that work with tribes, such as tribal coalitions. In addition to the statutorily mandated planning partners, the proposed rule also encourages states to consult with probation and parole entities and survivors based on recommendations from the listening sessions.

Proposed subsection (d) implements 42 U.S.C. 3796gg–1(e)(2). This is similar to both the current § 90.16(b) and § 90.23(b). The language in current § 90.16(b) is proposed to be removed both because it is duplicative and to provide additional flexibility for states by reducing unnecessary specificity regarding how states will document compliance with this requirement.

Proposed subsection (e) implements 42 U.S.C. 3796gg–1(i)(2)(E) and includes some of the current § 90.16(b)(4). The subsection allows states the flexibility to identify underserved populations, while requiring documentation of why the specific populations were selected. The statute requires specific consideration of culturally specific populations. At the recommendation of the participants in the listening sessions, the proposed subsection also would require states to consider the needs of victims who are underserved because of sexual orientation or gender identity and victims with limited English proficiency.

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

Proposed subsection (g) outlines additional content that implementation plans must include, as follows:

- (1) Current demographic information regarding a state's population
- (2) A description how the state will reach out to community-based

organizations that provide linguistically and culturally specific services

(3) A description of how the state will meet the needs of each category of victims (domestic violence, dating violence, sexual assault, and stalking) and how the state will hold offenders accountable

(4) A description of how the state will ensure that eligible entities are aware of funding opportunities

(5) Information on specific projects the state plans to fund

(6) An explanation of how the state coordinated the plan with other relevant state formula grant administering agencies as required by 42 U.S.C. 3796gg–1(c)(3)

(7) Information on the state's compliance with the Prison Rape Elimination Act (PREA, Pub. L. 108–79) and how the state plans to use program funds towards compliance, if applicable

(8) A description of how the state will identify and select applicants for subgrants

These required elements are designed to help OVW ensure that states follow statutory requirements for the program and to provide a better understanding of how the state plans to allocate its STOP Program funds. Proposed paragraph (7), regarding PREA, is designed to ensure that states that submit assurances under PREA that they will spend five percent of "covered funds" towards compliance with PREA are including such funds in their planning.

Proposed subsection (h) implements a change in VAWA 2013 that makes the implementation plans due at the time of application rather than 180 days after award.

##### § 90.13 Forensic Medical Examination Payment Requirement

Section 3796gg–4 of Title 42 requires states to ensure that the state or another governmental entity bears the "full out-of-pocket" costs of sexual assault medical forensic examinations. Proposed § 90.13(b) provides a definition of "full out-of-pocket costs." Proposed subsection (c) is the same as current § 90.14(c), but text has been removed to reflect the fact that VAWA 2005 changed the statute to allow states to use STOP Formula grant funds to pay for forensic exams if certain requirements are met. Proposed subsection (d) would clarify that, if states use victims' personal health insurance to pay for the exams, they must ensure that any expenses not covered by insurance are not billed to the victims, as these would constitute "out-of-pocket" costs. Proposed subsection (e) would implement a new provision from VAWA 2013 (42 U.S.C.

3796gg-4(a)(1)(B)), which requires states to coordinate with health care providers in the region to notify victims of the availability of forensic examinations.

#### § 90.14 Judicial Notification Requirement

Proposed § 90.14 implements the requirements of 42 U.S.C. 3796gg-4(e), which provides that states and units of local government are not entitled to funds unless they certify that their judicial administrative policies and practices include notification to domestic violence offenders of relevant federal, state, and local firearms prohibitions that might affect them. This requirement was added by VAWA 2005.

#### § 90.15 Costs for Criminal Charges and Protection Orders

Proposed § 90.15 would implement the requirements of 42 U.S.C. 3796gg-5, which provides that states, tribes, and units of local government are not entitled to funds unless they certify that victims of domestic violence, dating violence, sexual assault, or stalking are not charged certain costs associated with criminal prosecution or protection orders. These requirements were amended by VAWA 2000 and VAWA 2013.

#### § 90.16 Polygraph Testing Prohibition

Proposed § 90.16 would implement 42 U.S.C. 3796gg-8, which provides that, to be eligible for STOP Program funding, states, tribes, and units of local government must certify that their laws, policies, and practices ensure that law enforcement officers, prosecutors, and other government officials do not ask or require sexual assault victims to submit to a polygraph examination or other truth telling device as a condition for investigating the offense. These requirements were added by VAWA 2005.

#### § 90.17 Subgranting of Funds

Proposed § 90.17(a) describes the type of entities that can receive subgrants from the state (state agencies and offices, courts, local governments, public agencies, tribal governments, victim service providers, community-based organizations, and legal services programs). This is currently addressed in § 90.13(a), but it has been separated out for clarity and expanded to reflect statutory changes to the STOP Program and the types of entities that, in practice, receive subgrants under this program.

Proposed § 90.17(b) would allow states to use up to ten percent of each allocation category (law enforcement, prosecution, victim services, courts, and

discretionary) to support the state's administrative costs. Examples of such costs include the salary and benefits of staff who administer the program and costs of conducting peer review. This proposed subsection codifies a long-standing OVW policy regarding state administrative costs.

#### § 90.18 Matching Funds

Proposed § 90.18 would implement the match provisions of 42 U.S.C. 3796gg-1(f) and 13925(b)(1). This topic is currently addressed in § 90.17. VAWA 2005 provided that match could not be required for subgrants to tribes, territories, or victim service providers. It also authorized a waiver of match for states that have "adequately demonstrated [their] financial need." 42 U.S.C. 13925(b)(1). VAWA 2013 further specified that the costs of subgrants for victim services or tribes would not count toward the total amount of the STOP award in calculating match. 42 U.S.C. 3796gg-1(f).

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

Proposed subsection (b) would allow for in-kind match, consistent with 2 CFR 200.306, and provide information on calculating the value of in-kind match.

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

Proposed subsection (d) would implement the waiver provisions of 42 U.S.C. 13925(b)(1), as added by VAWA 2005. In developing the criteria for waiver, OVW balanced the importance of state and local support for the efforts funded under the STOP Program with the need for waiver where there is legitimate financial need. The proposed subsection would ensure that the needs identified by the state are specifically tied to funding for violence against women programs. For example, if a state has had across the board budget cuts, it would need to show how those cuts have impacted state funding for violence against women programs (and hence, its ability to provide matching funds). In most cases, a state would receive a partial waiver based on the specific impact of the cuts. For example, if the state had a 20-percent reduction in violence against women funding, then it would receive a 20-percent waiver. The 20-percent cut should leave the state with 80-percent of funds that could still be used toward match. In most cases, the states pass the match on

to subgrantees, except for Indian tribes and victim service providers. In cases of awards to Indian tribes or awards to victim service providers for victim services purposes (as opposed to another purpose, such as law enforcement training) the state is exempted from the match requirement.

Proposed subsection (e) would provide that matching funds must be used for the same purposes as the federal funds and must be tracked for accountability purposes. This is consistent with the current § 90.17(e).

#### § 90.19 Application Content

Proposed § 90.19 would provide that states will apply for STOP Program funding using an annual solicitation issued by OVW. The proposed section differs from the current § 90.20 to reflect current practice and significant changes that VAWA 2013 made to the application process. Prior to fiscal year 2014 (the year that VAWA 2013 amendments to the STOP Program took effect), a STOP application included certain documentation and information, such as documentation from the prosecution, law enforcement, court, and victim service programs to be assisted, demonstrating the need for funds, the intended use of the funds, expected results, and demographic characteristics of the population to be served. The state then had 180 days from the date of award to complete and submit its implementation plan, which included more detail. VAWA 2013 streamlined this process by including most information and documentation in the implementation plan, but also requiring the plan to be submitted at the time of application.

#### § 90.21 Evaluation

Proposed § 90.21 would encourage states to have plans for evaluating the impact and effectiveness of their programs and requires them to cooperate with federally-sponsored evaluations of their programs. This is generally consistent with current § 90.21.

#### § 90.22 Review of State Applications

Proposed § 90.22 would provide the basis for review of state applications and implement the single point of contact requirement of Executive Order 12372 (Intergovernmental Review of Federal Programs). Current subsection (c) has been removed because OVW is no longer part of the Office of Justice Programs (OJP) and the section is no longer relevant.



### § 90.23 Annual Grantee and Subgrantee Reporting

Proposed § 90.23 describes the annual reporting requirement for the program. Subgrantees submit annual progress reports to the state, which then forwards them to OVW. States also submit an annual progress report. Information on progress reports, along with the forms and instructions are available at <http://muskie.usm.maine.edu/vawamei/stopformulamain.htm>. This is different from the current § 90.24 because OVW's grant reporting processes have changed, and OVW is no longer a component within OJP.

### § 90.24 Activities That May Compromise Victim Safety and Recovery

Proposed § 90.24 would provide that grant funds may not be used to support activities that compromise victim safety and recovery. This proposed section is based on the overall purpose of the Violence Against Women Act to enhance victim safety. Specific examples of such activities are included in the STOP Program solicitation each year. For example, past solicitations explained that such unsafe activities include procedures or policies that exclude victims from receiving safe shelter, advocacy services, counseling, and other assistance based on their actual or perceived age, immigration status, race, religion, sexual orientation, gender identity, mental health condition, physical health condition, criminal record, work in the sex industry, or the age and/or gender of their children.

### § 90.25 Reallocation of Funds

Proposed § 90.25 implements a new provision from VAWA 2013 (42 U.S.C. 3796gg-1(j)), which allows states to reallocate funds in the law enforcement, prosecution, courts, and victim services (including culturally specific services) allocation categories if they did not receive "sufficient eligible applications." The proposed section defines an "eligible" application and provides the information that states must have on file to document a lack of sufficient eligible applications. The proposed section would ensure that states conduct sufficient outreach to the eligible category of subgrantees before reallocating the funds.

## V. Request for Comments

OVW is soliciting comments on the proposed amendments to part 90 subparts A and B. OVW welcomes all comments, including comments on specific sections of the rule.

### Regulatory Certifications

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

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

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

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

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

(3) The requirements in the rule are statutory and apply only to OVW grantees. In some cases, OVW has added some additional specificity to clarify the statutory requirements. The rule provides details on what information the states must provide as "documentation," but does not impose new requirements.

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

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

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

Subpart A. In general, most of this subsection comes from the statute. OVW developed all of these provisions to answer questions received regularly from grantees and provide greater clarity for grantees and save them the time and effort of analyzing the requirements and seeking further guidance from OVW staff. Under the proposed rule, the victim service component will need a victim release to share the information. The use of the release will increase the degree of control that the victim has over his/her information, which is widely considered a best practice in the violence against women field. The cost of the proposed rule is the time and administrative burden in executing and tracking the release. This cost cannot be quantified, however, because the discussion of release with the victim would take place in the context of a larger conversation between the victim and the service provider about options for the victim and next steps. OVW considered whether to prevent the release of information about deceased victims in the context of fatality reviews, out of consideration for surviving family members, but concluded that the proposed rule could include protections that would meet the needs of the fatality reviews while protecting the privacy of surviving family members.

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

#### Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Regulatory Flexibility Act

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

### Executive Order 12988—Civil Justice Reform

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

### Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This rule will not result in substantial direct increased costs to Indian Tribal governments. The definitions and confidentiality provisions of the rule will impact grantees that are tribes. OVW currently has 246 active awards to 159 tribes, for a total of over \$140 million. As discussed above, any financial costs imposed by the rule are minimal.

In addition, although a small number of tribes are subgrantees of the STOP Formula Program, discussed in subpart B, the requirements of the rule are imposed on grantees, not subgrantees. The one provision in subpart B that will have a direct effect on tribes is proposed § 90.12(b)(3), which implements the statutory requirement that states consult with "tribal governments in those States with State or federally recognized Indian tribes." 42 U.S.C. 3796gg-1(c)(2)(F). The proposed rule would require states to invite all State or federally recognized tribes in the state to participate in the planning process. This approach was recommended by tribal participants in the tribal listening session and at OVW's annual government-to-government tribal consultations in 2013 and 2014.

As discussed above, OVW included regulatory implementation of statutory changes to the STOP Program as a topic at its annual tribal consultations in 2013 and 2014. At the 2013 consultation, tribal leaders were asked for testimony on terms that should be defined in the regulations, additional entities that states should consult with in developing their implementation plans, how states should document the participation of

planning committee members, and how states should consult with tribes, among other specific questions. The questions presented at the 2014 consultation included how states might better consult with tribes during STOP implementation planning, and how states should include tribes in the equitable distribution of funds for underserved populations and culturally specific services. At both consultations, tribal leaders emphasized the importance of states engaging in meaningful consultation with all tribes in their state. Tribal leaders noted that such consultation should involve a cooperative decision making process designed to reach consensus before a decision is made or action is taken, and that effective consultation leads to an implementation plan that takes into account the needs of tribes. Tribal leaders also pointed out that a state's failure to consult with tribes can prevent tribes from accessing STOP funds or even being aware that they are available. Finally, testimony at the tribal consultations raised concerns about states asking tribal shelters to volunteer to provide matching funds in order to receive STOP subgrant funding.

### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### Small Business Regulatory Enforcement Fairness Act of 1996

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

### List of Subjects in 28 CFR Part 90

Grant programs; Judicial administration.

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

## PART 90—VIOLENCE AGAINST WOMEN

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

**Authority:** 42 U.S.C. 3711 *et seq.*; 42 U.S.C. 13925.

### Subpart A—General Provisions

■ 2. Section 90.1 is revised to read as follows:

#### § 90.1 General

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

(1) The Violence Against Women Act (VAWA), Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322 (Sept. 13, 1994);

(2) The Violence Against Women Act of 2000 (VAWA 2000), Division B of the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386 (Oct. 28, 2000);

(3) The Violence Against Women Office Act, Title IV of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107-273 (Nov. 2, 2002);

(4) The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109-162 (January 5, 2006); and,

(5) The Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Public Law 113-4 (Mar. 7, 2013).

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

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

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

■ 3. Section 90.2 is revised to read as follows:

#### § 90.2 Definitions

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

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

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

(1) The examination should include at a minimum:

(A) Gathering information from the patient for the forensic medical history;

(B) head to toe examination of the patient;

(C) documentation of biological and physical findings; and

(D) collection of evidence from the patient.

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

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

(d) A prevention program is a program that has a goal of stopping domestic violence, dating violence, sexual assault, or stalking from happening in the first place. Prevention is distinguished from “outreach,” which has the goal of informing victims and potential victims about available services.

(e) The term “prosecution” means any public agency charged with direct responsibility for prosecuting criminal offenders, including such agency’s component bureaus (such as governmental victim services programs). Public agencies that provide prosecution support services, such as overseeing or participating in Statewide or multi-jurisdictional domestic violence task forces, conducting training for State, tribal, or local prosecutors or enforcing victim compensation and domestic violence-related restraining orders also fall within the meaning of “prosecution” for purposes of this definition.

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

(g) For the purpose of this part, a “unit of local government” is any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State.

The following are not considered units of local government for purposes of this part:

- Police departments;
- Pre-trial service agencies;
- District or city attorneys’ offices;
- Sheriffs’ departments;
- Probation and parole departments;

- Shelters;
- Nonprofit, nongovernmental victim service agencies including faith-based or community organizations; and
- Universities.

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

■ 4. Section 90.4 is added to read as follows:

#### § 90.4 Grant conditions

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

(b) Nondisclosure of confidential or private information.

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

(2) Nondisclosure.

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

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

(c) This subsection also applies to disclosures from the victim services divisions or components of an organization, agency, or government to other non-victim service divisions within an organization, agency, or government. It also applies to disclosures from victim services divisions or components of an organization, agency, or government to the leadership of the organization, agency, or government (*e.g.*, executive director or chief executive). Such

executives shall have access without releases only in extraordinary and rare circumstances.

(3) Release.

(i) Personally identifying information or individual information that is collected as described in paragraph (b)(2) may not be released except under the following circumstances:

(A) the victim signs a release as provided in paragraph (b)(3)(ii);

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

(C) release is compelled by court mandate.

(ii) Victim releases must meet the following criteria—

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

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

(C) Releases must be signed by the victim unless the victim is a minor who lacks the capacity to consent to release or is a legally incapacitated person and has a court-appointed guardian. Except as provided in paragraph (b)(3)(ii)(D), in the case of an unemancipated minor, the release must be signed by the minor and a parent or guardian; in the case of a legally incapacitated person, it must be signed by a legally-appointed guardian. Consent may not be given by the abuser of the minor or incapacitated person or the abuser of the other parent of the minor.

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

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

(4) Fatality reviews. The prohibition on sharing identifying information does not apply to information about deceased victims being sought for purposes of a

fatality review, assuming the fatality review meets the following requirements:

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

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

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

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

■ 5. Subpart B is revised to read as follows:

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

90.10 STOP (Services—Training—Officers—Prosecutors) Violence Against Women Formula Grant Program—General

90.11 State office

90.12 Implementation plans

90.13 Forensic medical examination payment requirement

90.14 Judicial notification requirement

90.15 Costs for criminal charges and protection orders

90.16 Polygraph testing prohibition

90.17 Subgranting of funds

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

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

**§ 90.11 State office**

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

(1) Certifying qualifications for funding under this program;

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

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

(b) Administration and fund disbursement. In addition to the duties specified by subsection (a) of this section, the State office shall:

(1) Administer funds received under this program, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing, and fund disbursements; and

(2) Coordinate the disbursement of funds provided under this part with other State agencies receiving Federal, State, or local funds for domestic violence, dating violence, sexual assault, or stalking prosecution, prevention, treatment, education, victim services, and research activities and programs.

(c) Allocation requirement.

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

(2) The State office shall ensure that the allocated funds benefit law enforcement, prosecution and victim services and are awarded to courts and culturally specific community-based organizations. In ensuring that funds benefit the appropriate entities, if funds are not subgranted directly to law enforcement, prosecution, and victim services, the State must require demonstration from the entity to be benefitted in the form of a memorandum

of understanding signed by the chief executives of both the entity and the subgrant recipient, stating that the entity supports the proposed project and agrees that it is to the entity's benefit.

(3) Culturally Specific Allocation. 42 U.S.C. 13925 defines “culturally specific” as primarily directed toward racial and ethnic minority groups (as defined in 42 U.S.C. 300u–6(g)). An organization will qualify for funding for the culturally specific allocation if its primary mission is to address the needs of racial and ethnic minority groups or if it has developed a special expertise regarding a particular racial and ethnic minority group. The organization must do more than merely provide services to the targeted group; rather, the organization must provide culturally competent services designed to meet the specific needs of the target population.

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

**§ 90.12 Implementation plans**

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

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

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

(2) In determining what population specific organizations, representatives from underserved populations, and culturally specific organizations to

include in the consultation process, States should look at the demographics of their State and include any significant underserved and culturally specific populations in the State. This includes organizations working with lesbian, gay, bisexual, and transgender (LGBT) people and organizations that focus on people with limited English proficiency. If the State does not have any culturally specific or population specific organizations at the State or local level, the State can use national organizations to collaborate on the plan.

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

(4) If possible, States should include survivors of domestic violence, dating violence, sexual assault, and stalking in the planning process.

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

(6) As provided in 42 U.S.C. 3796gg–1(c)(3), States must also coordinate the plan with the State plan for the Family Violence Prevention and Services Act (42 U.S.C. 10407), the State Victim Assistance Formula Grants under the Victims of Crime Act (42 U.S.C. 10603), and the Rape Prevention and Education Program (42 U.S.C. 280b–1b). The purposes of this coordination process are to provide greater diversity of projects funded and leverage efforts across the various funding streams.

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

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

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

(C) A prosecution entity or State prosecution organization

(D) A court or the State

Administrative Office of the Courts

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

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

(8) The full consultation should include more robust representation from each of the required groups as well as

all State and Federally recognized tribes.

(c) Documentation of consultation. As part of the implementation plan, the grantee must submit a checklist documenting the type and extent of each entity’s or individual’s participation in the planning process, as well as major issues that were raised during the process and how they were resolved. This must include all of the entities specified in both subsection (b) and in 42 U.S.C. 3796gg–1(c)(2).

(1) The State must retain documentation regarding attendees at all planning meetings.

(2) For in-person meetings, the State should use and retain a sign-in sheet with name, title, organization, which of the required entity types (*e.g.*, tribal government, population specific organization, prosecution, courts, State coalition) the person is representing, phone number, email address, and signature.

(3) For phone or online meetings, attendees should “sign-in” by emailing or faxing that they are on the call and the State should retain these emails and/or faxes.

(4) The State must create a summary of major concerns that were raised during the development process and how they were addressed, or why they were not addressed. This should be sent to the planning committee along with any draft implementation plan and with the final plan.

(5) The State must keep track of any method of document review that occurred outside the context of a meeting, such as to whom the draft implementation plan was sent, how it was sent (for example by email versus mail), and who responded. Although States do not need to note every comment and how it was addressed, if there are serious or significant concerns with the draft implementation plan, these should be added to the summary of major concerns described above.

(6) The State must create and submit to the Office on Violence Against Women a checklist for each planning committee member that documents, at a minimum, whether they were informed of meetings, whether they attended meetings, whether they were given drafts of the implementation plan to review, whether they submitted comments on the draft, and whether they received a copy of the final plan and the State’s summary of major concerns. The checklist should also include space for participants to include any major concerns that they have with the final plan. Each participant should check the appropriate categories on the checklist, sign the form, and return it to

the State, which will attach the checklists to the plan when submitting the plan to the Office on Violence Against Women.

(7) Only the checklists and summary of significant concerns must be sent to OVW with the implementation plans. The remaining documentation described above must be kept on file by the State.

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

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

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

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

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

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

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

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

(2) As part of the State’s consultation with law enforcement, prosecution, and victim service providers, the State and

these entities should discuss and document the perceived accuracy of these statistics and the best ways to address domestic violence homicide.

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

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

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

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

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

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

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

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

(7) Information on the status of the State's compliance with the Prison Rape Elimination Act standards (28 CFR part 115) and how the State plans to use STOP Violence Against Women Formula Grant Program funds towards compliance, if applicable.

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

(h) Deadline. State plans will be due at application. If the Office on Violence Against Women determines the submitted plan is incomplete, the State will receive the award, but will not be able to access funding until the plan is completed and approved. The State will have 60 days from the award date to complete the plan. If the State does not complete it in that time, then the funds will be deobligated and the award closed.

#### **§ 90.13 Forensic medical examination payment requirement**

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

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

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

(d) States may only use the victims' private insurance as a source of payment for the exams if they are not using STOP Violence Against Women Formula Grant Program funds to pay for the cost of the exams. In addition, any expenses not covered by the insurer must be covered by the State or other governmental entity and cannot be billed to the victim. This includes any deductibles or denial of claims by the insurer.

(e) The State or other governmental entity responsible for paying the costs of forensic medical exams must coordinate with health care providers in the region to notify victims of sexual assault of the availability of rape exams at no cost to the victims. States can meet this obligation by partnering with associations that are likely to have the broadest reach to the relevant health care providers, such as forensic nursing or hospital associations. States with significant tribal populations should also consider reaching out to local Indian Health Services facilities.

#### **§ 90.14 Judicial notification requirement**

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

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

with respect to its judicial administrative policies and practices.

#### **§ 90.15 Costs for criminal charges and protection orders**

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

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

#### **§ 90.16 Polygraph testing prohibition**

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

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

#### **§ 90.17 Subgranting of funds**

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

(b) Administrative Costs. States are allowed to use up to ten percent of the award amount for each allocation category under 42 U.S.C. 3796gg-1(c)(4) (law enforcement, prosecution, courts, victim services, and discretionary) to

support the State's administrative costs. Amounts not used for administrative costs should be used to support subgrants.

#### § 90.18 Matching funds

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

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

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

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

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

(i) The sources of non-Federal funds available to the State for match and the

amount available from each source, including in-kind match and match provided by subgrantees or other entities;

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

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

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

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

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

(2) The State must demonstrate how the submitted documentation affects the State's ability to provide violence against women matching funds. For example, if a State shows that across the board budget cuts have directly reduced violence against women funding by 20 percent, that State would be considered for a 20 percent waiver, not a full waiver. Reductions in Federal funds are not relevant to State match unless the State can show that the reduced Federal funding directly reduced available State violence against women funds.

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

#### § 90.19 Application content.

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

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

#### § 90.20 [Reserved]

#### § 90.21 Evaluation.

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

(b) Recipients of STOP Violence Against Women Formula Grant Program funds are strongly encouraged to develop a local evaluation strategy to assess the impact and effectiveness of the program funded under the STOP program. Funds may not be used for conducting research or evaluations. Applicants should consider entering into partnerships with research organizations that are submitting simultaneous grant applications to the National Institute of Justice for this purpose.

#### § 90.22 Review of State applications.

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

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

#### § 90.23 Annual grantee and subgrantee reporting.

Subgrantees shall complete annual progress reports and submit them to the State, which shall review them and submit them to the Office on Violence Against Women. In addition, the State shall complete an annual progress report, including an assessment of whether or not annual goals and objectives were achieved.

#### § 90.24 Activities that may compromise victim safety and recovery.

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

#### § 90.25 Reallocation of funds.

As described in 42 U.S.C. 3796gg-1(j), States may reallocate funds returned to the State or if the State does not receive sufficient eligible applications to award the full funding under the allocations in

42 U.S.C. 3796gg-1(c)(4). An “eligible” application is one that is from an eligible entity that has the capacity to perform the proposed services, proposes activities within the scope of the program, and does not propose significant activities that compromise victim safety. States should have the following information on file to document the lack of sufficient eligible applications:

- (1) A copy of their solicitation;
- (2) Documentation on how the solicitation was distributed, including all outreach efforts to entities from the allocation in question;
- (3) An explanation of their selection process;
- (4) A list of who participated in the selection process (name, title, and employer);
- (5) Number of applications that were received for the specific allocation category;
- (6) Information about the applications received, such as who they were from, how much money they were requesting, and any reasons the applications were not funded;
- (7) Letters from any relevant State-wide body explaining the lack of applications. For example, if the State is seeking to reallocate money from courts, they should have a letter from the State Court Administrator;
- (8) For the culturally specific allocation, demographic statistics of the relevant racial and ethnic minority groups within the State and documentation that the State has reached out to relevant organizations within the State or national organizations.

Dated: April 20, 2016.

**Bea Hanson,**

*Principal Deputy Director.*

[FR Doc. 2016-10564 Filed 5-10-16; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Department of the Army

#### 32 CFR Part 553

[Docket No. USA-2015-HQ-0046]

RIN 0702-AA60

#### Army National Military Cemeteries

**AGENCY:** Department of the Army, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Army (Army) proposes to amend its regulation for the development, operation, maintenance, and administration of the

Army National Cemeteries to reflect their statutory name change to the Army National Military Cemeteries and changes in the management structure, to adopt modifications suggested by the Department of the Army Inspector General, and to implement changes in interment eligibility.

**DATES:** Consideration will be given to all comments received by July 11, 2016.

**ADDRESSES:** You may submit comments, identified by 32 CFR part 553, Docket No. USA-2015-HQ-0046 and or by Regulatory Information Number (RIN) 0720-AA60 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350-1700.

- *Instructions:* All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Quackenbush, Army National Military Cemeteries, 703-614-7150.

**SUPPLEMENTARY INFORMATION:** The revisions to this rule will be reported in future status updates as part of DoD’s retrospective plan under Executive Order 13563 completed in August 2011. DoD’s full plan can be accessed at: <http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036>.

#### A. Executive Summary

##### I. Purpose of the Regulatory Action

a. This regulatory action modifies the Army’s regulation governing Army National Military Cemeteries, which consist of Arlington National Cemetery and the U.S. Soldiers’ and Airmen’s Home National Cemetery, to reflect changes in the management structure of the Army National Military Cemeteries created by Army General Orders 2014-74 and 2014-75 and the National Defense Authorization Act for Fiscal Year 2012, Pub. L. 112-81, section 591 (2011) (adding chapter 446 to title 10); to adopt modifications suggested by the Department of the Army Inspector General; to implement interment,

inurnment, and memorialization eligibility restrictions, including those mandated by 10 U.S.C. 985 and 38 U.S.C. 2411; and to prohibit the reservation of gravesites as mandated by 38 U.S.C. 2410a.

b. The legal authority for this regulatory action is section 591 of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112-81 (2011), which added chapter 446 to title 10. Chapter 446 requires the Secretary of the Army to prescribe regulations and policies as may be necessary to administer the Army National Military Cemeteries, and it codifies the role of the Executive Director as the individual responsible for exercising authority, direction, and control over all aspects of the Army National Military Cemeteries. Throughout part 553, the Army replaces references to the Superintendent of the Cemetery, the Adjutant General, and Commanding General, Military District of Washington, with “Executive Director” to reflect the current command structure, which was implemented through Army General Orders 2014-74 and 2014-75 and codified in the National Defense Authorization Act of 2012.

##### II. Summary of the Major Provisions of the Regulatory Action in Question

The new definition of *Army National Military Cemeteries* reflects the Army National Military Cemeteries’ status as a Secretariat element of Headquarters, Department of the Army. Prior to the National Defense Authorization Act for Fiscal Year 2012, Public Law 112-81, sec. 591 (2011), the Army National Cemeteries were a civil works activity of the Department of the Army. Throughout part 553, the term *Army National Military Cemeteries* replaces “Army National Cemeteries” to reflect this statutory change.

Section 553.3 (redesignated as § 553.4), “Scope and applicability,” is amended to focus on the applicability of this part and not on the applicability of a separate internal Army regulation.

Section 553.4, “Responsibilities,” is removed, and its content is included in proposed § 553.3, “Statutory authorities.”

Section 553.5, “Federal Jurisdiction,” is removed as 10 U.S.C. chapter 446 provides that the Army National Military Cemeteries shall be under the jurisdiction of Headquarters, Department of the Army.

Section 553.6, “Donations,” is removed because its subject matter is addressed fully in other statutes and regulations.

Section 553.7, “Design and layout of Army National Cemeteries,” is renamed