

**Recovery Act – VOCA Formula Grant Program
Office for Victims of Crime Conference Call with
State VOCA Assistance Administrators**
June 10, 2009

I. Background

Joye E. Frost, Acting Director of the Office for Victims of Crime (OVC), invited all VOCA Victim Assistance Administrators to participate in a conference call to discuss the Recovery Act (RA) in relation to OVC's FY09 VOCA Victim Assistance Formula Grant program. In preparation for this call, the administrators received a listing of questions that were submitted prior to the call, along with OVC's responses to the questions. This list is attached to the end of this transcript of the conference call.

II. OJP Staff Attending the Call

Toni Thomas, OVC
Joye Frost, OVC
Maureen Henneberg, Office of Justice Programs
Gena Bernhardt, Office of General Counsel
Larry Hailes, Office of Chief Financial Officer
Brad Mitchell, OVC
Charles Moses, Deputy General Counsel
DeLano Foster, OVC
Sean Lovitt, Office of Chief Financial Officer
Kris Brambila, OGC
Lucy Mungle, Office of Audit, Assessment and Management
Amy Callaghan, Office of Justice Programs
Shadine Stultz, OVC
Deserea Jackson, OVC
Joel Hall, OVC

Others in attendance at OVC

Steve Derene, National Association of VOCA Assistance Administrators
Dan Eddy, National Association of Crime Victim Compensation Boards

III. Introduction to the Call

Toni Thomas, OVC – On behalf of our Acting Director, we want to welcome you to the call. We will be joined by OJP staff. The purpose of today's call is to provide any additional clarification needed on the answers we provided yesterday. We will start with introductions of OJP staff.

(OJP staff introductions followed. Limited call time did not allow for introductions of the VOCA Administrators on the call.)

Toni Thomas, OVC –Regarding the questions and answers that were distributed, please ask any additional questions or state any points of clarification that are needed. We ask that you state the question by number and section, and would appreciate if you state your name and the state you are calling from.

Robert Gallup, Colorado – How did you distribute the questions? We did not receive an e-mail.

Toni Thomas, OVC – We sent them through a listserv message. If you did not receive the message, please let us know. They are included in the message as attachments.

Steve Derene, NAVAA – I sent out a reminder this morning on our listserv and attached a copy of the questions and answers.

IV. Discussion of Recovery Act Questions and Responses

VOCA Representative, Alaska – I would like clarification about Section 6. I also noticed on most of the questions you are waiting on guidance that will be published next week. Will we have another call to clarify this guidance?

Toni Thomas, OVC – Yes, we will have another call.

Maureen Henneberg, OJP – We are expecting OMB to issue guidance the week of June 15th, and they are currently on schedule. The federal agencies will review this guidance and provide comment. Regarding Question 6, the OMB guidance goes through the reporting responsibilities of the prime recipient and designated subrecipients. All reporting will be done through a web-based reporting system (www.federalreporting.gov). The guidance goes through the mechanics of that process as well as the reporting requirements.

VOCA Representative, Alaska – How will we receive this guidance?

Maureen Henneberg, OJP – OMB has a plan for sending it out. The OJP program offices will send out the guidance to their grantees on their listservs.

VOCA Representative, Oregon – I attended a training in Portland, Oregon on Monday where they referred to this forthcoming guidance as “interim guidance.” Is the guidance interim or final?

Maureen Henneberg, OJP – I have not heard the guidance referred to as “interim.” It builds on previous guidance. If we receive further guidance once the system is up and running, it will build on this one.

VOCA Representative, Alabama – I have a question regarding supplanting. When the phrase “existing state or local funds” is used, does this mean municipal government funds? I am referring to Question 6, under the “Financial” section.

Charles Moses, OGC – I believe you are talking about the last sentence of the answer.

VOCA Representative, Alabama – The statement is midway through and reads, “When supplanting is not permitted, federal funds must be used to supplement existing state or local funds for program activities and may not replace state or local funds that have been appropriated or allocated for the same purpose.” The reference to “local funds” indicates municipal, government funds, not donations. Is this correct?

Charles Moses, OGC – Correct. Supplanting only deals with government funds.

VOCA Representative, Ohio – I have a question regarding Question 3, under the “Financial” section. This question is in regards to the matching requirements with subgrantees and asks if the match can be waived. Has OVC been approving match waivers for subgrantees under the Recovery Act?

Toni Thomas, OVC– The question is specific to the Recovery Act. We are not aware of subgrants that have been awarded yet. If there are any, we would certainly review them in accordance with our guidelines. At this point, regarding the Recovery Act, no match waivers have been submitted or approved. Regarding standard VOCA, we have received and approved some waivers.

VOCA Representative, Arkansas – When you grant subgrantees a waiver of match, does that reduce the obligation of the state or the state’s subgrant match requirement?

Charles Moses, OGC – My understanding is the match requirement is on the state. The state may choose to meet that requirement by passing it through. If the state wants to meet the match dollar for dollar, they could do that as well.

VOCA Representative, Arkansas – If the state uses a pass-through and the subgrantee is granted a waiver of match, is the state match reduced by the amount of match that is waived?

Delano Foster –You are talking about a match requirement by the state. We do not require the state match. The match requirement is an eligibility requirement for the subrecipient. We do not require the match for the states.

VOCA Representative, Ohio – If you do not require a match, then how are you giving match waivers?

Brad Mitchell, OVC – The state does not have authority to give a waiver but feds do. We can only speak on behalf of OVC. In order for a subrecipient to receive a match waiver, the state must make a request to OVC and then OVC approves or denies the match waiver request.

Charles Moses, OGC – I do think it is important, on the match question, to clarify that it does not need to be a cash match. In-kind matches are certainly allowable. For organizations that are “strapped for cash,” an in-kind match is certainly acceptable.

VOCA Representative, Pennsylvania – I have a question about monitoring, listed on Page 2. Question 1 in the “Monitoring” Section states that the level of oversight and monitoring will be the same as with the annual VOCA grants. In Pennsylvania, we receive quarterly reports for Stimulus money; however, we do not conduct onsite monitoring of programs, except for every two years. Some programs will be scheduled for onsite monitoring after the Stimulus money has been spent and the application closed. Are there any onsite monitoring requirements involved?

OVC Representative – Onsite monitoring is currently not a requirement as mandated in our guidelines. States should continue with their same practices. This does not mean that additional guidance regarding onsite monitoring will not be issued; however, onsite monitoring is currently not required.

Charles Moses, OGC – The purpose of onsite monitoring is to make sure the state feels comfortable with the use of funds by grantees. It is up to the state to provide oversight of these funds. If you feel you need to conduct onsite monitoring to feel comfortable with how the funds are being used, then you should. If you feel that onsite monitoring is not needed to obtain this comfort level, then you do not need to do it. We hold the state responsible for all of the funds, so it is your call about oversight, but you have the responsibility.

VOCA Representative, Nebraska – Will there be a SARS report with the RA money?

Delano Foster – Is your question are we going to require SARS reporting?

VOCA Representative, Nebraska – Yes.

Delano Foster – Yes, we will require SARS reporting, and it will be through GMS.

Toni Thomas, OVC – To add to that, Special Condition Number 10 explains that this report is required. Are there any additional questions that you need clarified?

VOCA Representative, New Mexico – I think we will have more questions when we see the OMB guidance. Is there going to be an announcement when the next conference call will be held?

Toni Thomas, OVC – Yes.

VOCA Representative, Colorado – I would like to clarify the supplanting issue regarding Question 6, under the “Financial” section. The answer rules out nonprofits in the guidelines. So, supplantation does not apply to nonprofits?

OVC Representative – Yes, that is correct.

VOCA Representative, Colorado – VAWA’s legal counsel said it did apply to nonprofits.

Charles Moses, OGC – VAWA interprets different statutes. Under the Victims of Crime Act and our interpretation, supplantation does not apply to private funds.

VOCA Representative, New Mexico – In regards to buying American, is this related to computers and technology?

Charles Moses, OGC – As we have been looking at the Buy American Act, it is not going to apply to technology. It looks at “bricks and mortar” projects, so software is not included.

VOCA Representative, Alabama – I have one more question about supplanting. I heard two different things in this discussion: (1) nonsupplanting does not apply to nonprofits, and (2) VOCA nonsupplanting guidance does not apply to private funds. Correct?

Charles Moses, OGC – Both statements are correct. The issue of supplantation applies only to government funds.

VOCA Representative, Alabama – Is it okay for a private, nonprofit agency to technically supplant – for instance, using Recovery Act money for an expense that had previously been charged to a different pot of money?

Charles Moses, OGC – No. What we were talking about is the source of funding. Supplantation does not impact private money.

VOCA Representative, Oregon – Within a nonprofit, would federal funds be subject to nonsupplanting?

DeLano Foster, OVC – Nonprofits are not subject to supplanting; thus, it would not be an issue.

VOCA Representative, Oregon – So supplanting guidelines are the same as they always have been and do not involve nonprofits.

DeLano Foster, OVC – Yes.

VOCA Representative, Rhode Island – So supplanting is perfectly fine. Am I wrong about this?

Charles Moses, OGC – We are researching an answer about supplanting as we speak. Whenever there is a question of this nature, legal counsel tends to reference the statute. It is Recovery Act funding and the rules for the program are where we see the supplanting issue.

They say that an eligible crime victim assistance program will not be used to supplant state and local funds otherwise available for crime victim assistance. So essentially what we are looking at is the funds that you cannot supplant are obviously appropriated funds. The organization that cannot supplant those appropriated funds is anything that is basically an eligible program, not private nonprofit money. You look at whether it is a private nonprofit. Probably those are who you will be giving the money to – a crime victim assistance program. For this provision, the

eligible crime victim assistance program, whatever it is, is not going to supplant state or locally appropriated funds with Recovery Act funds. Does that make sense?

Reading from VOCA guidelines, VOCA Funds B, Section 1404A-C, modified, it states that this (supplanting) applies to state and local agencies only. The 1997 guidelines rule out nonprofits as being impacted by the nonsupplantation clause in Section 1404A. The guidelines talk about this in terms of funds and it is pretty clear. The key piece we can take from this is there is not an attempt to modify the regular VOCA rules on this particular question, just because we are dealing with Recovery Act money.

VOCA Representative, Illinois – For clarity, a nonprofit that received state money and Recovery Act funds cannot supplant the state money with the Recovery Act funds, is that correct?

Charles Moses, OGC – If you have a nonprofit that has appropriate state funds in the particular year you are going to use Recovery Act funds I think that, looking at that provision, supplanting only applies to state and local funds.

Joye Frost, OVC – Is there some way that we could clearly articulate this on the Web site and put out clearly defined guidance including two or three examples?

Charles Moses, OGC – OJP has an FAQ page with guidance on using Recovery Act funds, accessible at www.ojp.usdoj.gov/recovery/FAQ_Overview.htm. For specific guidance on supplanting, please visit www.ojp.usdoj.gov/recovery/supplantingguidance.htm. This question is not addressed in the FAQ guidance. We will look at the provision and post more information.

VOCA Representative, Oregon – I attended a non-VOCA conference on Monday with representatives from OMB. My question is about supplanting related to job savings and job recovery. I was under the impression from this meeting that those organizations were concerned about supplantation and that the Recovery Act money would be used to save jobs.

Charles Moses, OGC– In general, OMB is looking at this in a specific way. The thing we have which is not necessarily government-wide under the appropriation for the RA, these funds were appropriated through the VOCA and so consequently what we are having to deal with are the supplanting provisions of the VOCA. That is why you may hear us talking a little bit differently from the DHHS on Monday.

VOCA Representative, Nebraska – Initially, we had a question about funded partnerships and there was no real clarification. Do you have clarification on what a funded partnership is? The guidelines we were given talked about jobs created, jobs maintained, and funded partnerships.

Charles Moses, OGC – Was that given to you in your VOCA funding guidance?

VOCA Representative, Nebraska – Yes.

Sean Lovitt, Office of Chief Financial Officer – We are still working on guidance around this.

Toni Thomas, OVC – Thanks to everyone for participating in the call. We will have to end at this time because the victim compensation administrators will be calling in. Our Acting Director Joye Frost will be providing additional answers to your questions in the call summation.

Appendix

Victim Assistance Administrators Questions and Responses

REPORTING

- 1) **Question:** When will reporting forms and instructions be available on Federal Reporting.gov?

Answer: FederalReporting.gov will be a web-based system for central reporting of financial and program performance data as required by Section 1512 of the Recovery Act. The Office of Management and Budget (OMB) is planning to issue guidance on recipient reporting the week of June 15th.

- 2) **Question:** Can you summarize possible changes to data elements/reporting requirements being considered as a result of feedback received following the April 1, 2009, request for comments published in the *Federal Register*?

Answer: No. OMB is responsible for the process of providing a summation of comments received and the final determination of the approved form.

- 3) **Question:** Is the quarterly data required by Special Condition 20 to be reported for each quarter separately or cumulatively since the awarding of the Recovery Act grant (RA)?

Answer: A determination will be made based on forthcoming OMB guidance on recipient reporting, scheduled to be issued the week of June 15th.

- 4) **Question:** If we have a subgrantee that does not turn in their reports on time or submit inaccurate reports, can we not include them in the aggregate reporting and amend at a later time?

Answer: As with any required reporting, there may be times when the information is unavailable or inaccurate. Therefore, the grantee should have policies and procedures in place to address this issue and to obtain the required information in a timely fashion. The policy should also include noncompliance and corrective action. The responsibilities of the federal granting agency, the funding recipient, and subrecipients will be addressed in the forthcoming OMB guidance, scheduled to be issued the week of June 15th.

- 5) **Question:** If the funding is to be utilized for job creation and job retention should states total increased contractual hours to equal FTE's to report number of jobs created?

Answer: We are currently awaiting approved definitions from OMB on “job creation” and “job retention.” Further guidance is forthcoming.

- 6) **Question:** Will the subgrantees be submitting their financial and statistical reporting to the state VOCA administrating agency or directly to the Federal Government via Central Contractor Registration (CCR)?

Answer: Financial and program performance data as required under Section 1512 of the Recovery Act will be submitted by funding recipients and designated subrecipients to the future FederalReporting.gov central reporting solution. Further details on the reporting requirements and central reporting system will be provided by OMB in its upcoming guidance scheduled for the week of June 15th.

- 7) **Question:** If the subgrantees are required to submit their reporting to the Federal Government by the 10th, then how can the state administering agencies report on the 10th too?

Answer: The forthcoming Office of Management and Budget (OMB) guidance on recipient reporting will address these issues and provide grantees with more detailed information on the reporting period and requirements.

- 8) **Question:** And if the subgrantee reporting is directly into CCR then what required reporting are the state VOCA administering agencies submitting to the Federal Government by the 10th?

Answer: Recipient reporting under Section 1512 of the Recovery Act will be conducted through the future central reporting system, FederalReporting.gov. The forthcoming Office of Management and Budget (OMB) guidance on recipient reporting will address these issues and provide grantees with more detailed information on the reporting period and requirements.

MONITORING

- 1) **Question:** Can you describe further the level of oversight of subawardee spending and monitoring of specific outcomes and benefits which is expected/required?

Answer: The level of oversight and monitoring of subgrantee financial and programmatic activities should be the same as with the annual VOCA Victim Assistance Formula Grants.

- 2) **Question:** Can you describe further what would constitute effective monitoring of the civil rights compliance of subrecipients?

Answer: Recipients of federal financial assistance from the OJP are responsible for certifying that contractors and subrecipients under DOJ grant programs comply with applicable federal civil rights laws by utilizing the following four tools: (1) standard assurances or grant agreements that subrecipients must agree to comply with as a condition of receiving federal funds; (2) onsite visits and grant monitoring to ensure that in addition to programmatic and financial requirements, civil rights compliance is being monitored on a regular basis; (3) training and technical assistance for subrecipients regarding their duties to comply with applicable federal civil rights laws; and (4) written

procedures for receiving discrimination complaints received from employees and beneficiaries of subrecipients alleging discrimination in employment or the delivery of services.

FINANCIAL

- 1) **Question:** Will the state administering agencies continue to report on the SF-269a form or will it change to another financial form after the first quarter?

Answer: The new financial form will be used by grantees beginning with the first quarter of FY10 (October 1, 2009, through December 31, 2009). Financial data as required under Section 1512 of the Recovery Act will be reported through the central reporting system, FederalReporting.gov.

- 2) **Question:** What do subgrantees have to have available as an audit trail for separately tracking the Recovery Act dollars? Can you give examples of what is acceptable?

Answer: The OJP *Financial Guide* Part II - Chapter 3: Standards for Financial Management Systems provides guidance to the grantee and the subgrantee on proper fiscal management.

- 3) **Question:** The instructions issued by the U.S. Department of Justice do not address the 20% matching requirement for subgrantees. Is it possible the match may be waived? Under what circumstances?

Answer: Section IV.B.4. of the VOCA Victim Assistance Program Guidelines provides guidance on the match requirement, including the process for waivers.

- 4) **Question:** The project period for the grant is March 1, 2009 through September 30, 2012. Is there a date specific as to when the funds must be allocated/obligated?

Answer: Grantees will have to report how and when the funds are being spent and that information will be made public, so it is in their interests (and in the spirit of the Recovery Act) to have the RA funds spent relatively quickly. Funds must be obligated by the project end date of the grant award.

- 5) **Question:** Is it possible that states will be eligible to seek additional Recovery Act funding in the event other states decline their funding?

Answer: There is no reason, based on the Governor certifications, to believe that any state will refuse to accept these funds.

- 6) **Question:** Does the non-supplantation Recovery Act Special Condition 11 override the 1997 guidelines exclusion of nonprofits from the non-supplantation requirement? And if it does, can some examples be provided for nonprofits similar to the ones provided to the states for VOCA Recovery Act?

Answer: Special Condition #11 does not override the *VOCA Victim Assistance Final Program Guidelines*. **General Definition.** For a state or unit of local government to reduce state or local funds for an activity specifically because federal funds are available (or expected to be available) to fund that same activity. When supplanting is not permitted, federal funds must be used to **supplement** existing state or local funds for program activities and may not replace state or local funds that have been appropriated or allocated for the same purpose. Additionally, federal funding may not replace state or local funding that is required by law. In those instances where a question of supplanting arises, the applicant or grantee will be required to substantiate that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds. Additional guidance may be obtained by visiting the OJP Recovery Act Web page.

PROGRAMMATIC

- 1) **Question:** Special Condition 6c requires the state to certify that funds under this award, “at a minimum, assist victims in the following categories: sexual assault, child abuse, domestic violence, and underserved victims of violent crimes as identified *by State law*.” Few, if any, states have enacted a law, whether by statute or regulation, identifying “underserved victims of violent crimes” as defined in the *VOCA Victim Assistance Grant Program Guidelines*. Please clarify if this condition requires a state to enact a state statute or promulgate an administrative regulation identifying the above categories of victims, including “underserved victims of violent crimes.”

Answer: No state needs to enact a new law. If the state has identified these categories by any lawful method, be in law regulation or policy, that is sufficient. States should just do whatever they did before, no change was intended.

- 2) **Question:** Special Condition 13 requires Recovery Act recipients to agree that “its proposed project activities and deliverables are to be *accomplished without additional DOJ funding*.” Most activities to be supported by Recovery Act funds are ongoing services, such as counseling, therapy, emergency shelter, criminal justice support, etc., that are typically funded with VOCA formula grants. Special Condition 14 states that “Recovery Act funds may be used in conjunction with other funding as necessary to *complete* projects...” and Special Condition 19 requires recipients to “*complete* project and activities which are funded under the Recovery Act.” Please explain what constitutes a *completed* VOCA Victim Assistance project and clarify whether the use of VOCA Victim Assistance Formula Grants may be used to continue funding these ongoing project activities.

Answer: The completion of a project is when the project has reached the end date of the project period. As specified in Special Condition 14, “Recovery Act funds may be used in conjunction with other funding as necessary to *complete* projects, but tracking and reporting of Recovery Act funds must be separate.”

- 3) With respect to the requirements that subrecipients obtain a DUNS number and register with the Central Contract Registration database:

- a. **Question:** Must subrecipients that receive less than \$25,000 in Recovery Act funds obtain a DUNS number and register with CCR? (Note that Special Condition 19(d) allows aggregate reporting for subrecipients receiving less than \$25,000.)

Answer: According to Special Condition #16, all subrecipients must obtain a DUNS number and register with CCR.

- b. **Question:** What is the responsibility of the state to ensure that subrecipients have a DUNS number and CCR registration and what actions should a state take against subrecipients that fail to have a DUNS number and CCR registration in a timely manner?

Answer: If having a DUNS and CCR registration is an eligibility requirement for receiving Recovery Act funds, then it is the responsibility of the state to verify each applicant's eligibility status. If an applicant fails to obtain a DUNS number and CCR registration, a state should either not make the award to that applicant at all, or make the award with conditions directing the applicant to register and withholding funds until registration is complete.

- c. **Question:** What if a subrecipient's inability to register with CCR is beyond its control?

Answer: The subrecipient must continue to try to register in the CCR registry. In addition, the state might ask the subrecipient for a printout of the CCR error screen or explanation of the problem preventing registration. (In some cases, a subrecipient's failure to register is due to CCR technical problems.)

- 4) **Question:** Are there any VOCA requirements that do not apply to these awards?

Answer: No. This grant program is authorized by the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) (the Recovery Act) and by the Victims of Crime Act of 1984 (VOCA), 42 U.S.C. 10603(a). Therefore, all VOCA requirements are applicable.

PERFORMANCE REPORTS

- 1) With regards to the required Recovery Act VOCA Annual Performance Reports:

- a. **Question:** The VOCA Annual Performance Report for formula grants contains data on number of victims served and services provided during the preceding federal fiscal year; these activities may have been funded by more than one VOCA Victim Assistance Formula Grant. Special Condition 9 says that the information for the Recovery Act "will be submitted annually on the Victims of Crime Act Victim Assistance Grant Program State Performance Report." Does this mean that the Performance Report data for Recovery Act grants will be combined with the data formula grant data and reported on a single VOCA Annual Performance Report?

Answer: No. The Recovery Act VOCA Annual Performance Report will be a separate report that only provides data on the activities related to Recovery Act funds during the specified grant period.

- b. **Question:** If not, recipients (and thus subrecipients) may have to separately identify victims and services supported by Recovery Act funds. May recipients and subrecipients use a reasonable method to allocate or pro-rate the number of victims served and services supported by Recovery Act grants?

Answer: The method used to identify victims and services supported by Recovery Act funds should be no different than the method currently being used to effectively and accurately document this data.

- c. **Question:** Should the number of victims served and services provided for the Recovery Act Performance Report include victims and services provided by the required matching contribution?

Answer: Yes. The reporting should be no different than the reporting process for the annual VOCA Victim Assistance Performance Report.

PERFORMANCE MEASURES

- 1) Please define a “created job” and a “retained job.”

- a. **Question:** Can agencies use Recovery Act funds to continue existing positions? If so, are such positions considered “retained” jobs even if the positions might not have been eliminated without Recovery Act funding?

Answer: Currently, we are awaiting guidance from OMB regarding these definitions. Further guidance is forthcoming.

- b. **Question:** Should created or retained jobs be reported by number of positions (regardless of how many hours worked) or as full-time equivalents (FTEs)?

Answer: Currently, we are awaiting guidance from OMB regarding these definitions. Further guidance is forthcoming.

- c. **Question:** How should an agency using Recovery Act funds report expanding an existing 20-hour per week counselor position to a full-time 40-hour per week position?

Answer: Currently, we are awaiting guidance from OMB regarding these definitions. Further guidance is forthcoming.

- d. **Question:** Should jobs by subgrantees’ contractors be reported and counted?

Answer: Currently, we are awaiting guidance from OMB regarding these definitions. Further guidance is forthcoming.