

Updated VOCA Rule and CACs What does it mean?

On July 8, 2016, DOJ published the final Rule for guidance on VOCA Victims Assistance funding. This is the first time the VOCA guidelines have been updated since 1997. DOJ proposed updating this Rule more than 3 years ago. (Congress will likely still overhaul the Victims of Crime statute, but this Rule will expand the allowable CAC activities that can be funded by VOCA.)

VOCA - What is the Crime Victims Fund?

- Created in 1984 as a dedicated revenue source for the Victims of Crime Act (VOCA) to support state victims' assistance and crime victims' compensation.
- It is a special account – separate, self-sufficient, mandatory spending.
- Only federal funding dedicated solely to supporting services for victims of all types of crimes.
- Paid entirely by Federal criminal offenders – NOT BY TAXPAYERS!

VOCA – CVF and Recent Funding

- Since 2000, Congress has capped the amount of money released/disbursed each year from the Fund.
- From FY10-FY14 – CVF collected an average of \$2 billion each year, but only disbursed an average of \$700 million per year.
- **That changed in FY15 – Congress released \$2.36 Billion. (This was a \$1.6 Billion increase!)**
- **In FY16 – Congress released \$3 billion, which effectively released \$2.66 Billion for VOCA.**
- **In FY17, Congress is again looking to release similar levels from the CVF.**
- *This shows that Congress is committed to not returning to the FY14 funding level approach.*

VOCA, CACs and NCA Advocacy

- VOCA funding has significantly increased in recent years, but the increase didn't automatically mean increases for CACs.
- That's why NCA and others began aggressively pushing for a change to the VOCA Rule that allows VOCA funding to pay for an expanded list of CAC services – starting with Forensic Interviews, as well as reinforcing that VOCA funding could pay for CAC forensic medical exams and mental health therapy.
- In advocating for CACs to have more access to VOCA, we focused on reg change, increasing congressional support and strengthening partnerships with national advocates by:
 - ✓ Submitted comments in 2013 in support of the updated Rule
 - ✓ In 2014, began working with small coalition of VOCA advocates to overhaul/reform VOCA (DV, SA, CAC, NAVAA)
 - ✓ Built support for CACs receiving VOCA funding with our Hill CAC champions – Coons, Blunt, Shelby, Mikulski, Poe, Costa, Pelosi, etc.

- ✓ Drafted and helped lead bipartisan senate letter asking for DOJ clarification that forensic interviews were allowable under VOCA
- ✓ Secured Senate FY17 CJS Approps language urging DOJ to “expeditiously” finalize the Rule
- ✓ Presented at NAVAA conference to help educate VOCA Administrators
- ✓ Built closer relationship with Steve Derene, ED of NAVAA
- ✓ Researched and created a VOCA State-by-State report, which allows Chapters to know what their counterparts are able to secure in VOCA dollars

VOCA Rule - Finalized

Friday, July 8th, DOJ published the Final Rule for the updated VOCA guidelines. While most of the provisions in the Final Rule are substantively the same as *current* guidelines – this new Rule also spells out what is allowable for VOCA funding –

- Forensic Interviews in MDT/CACs – the Rule **expressly** states that FI is not only an investigative tool, but also the key for services.
- Forensic Medical Exams
- Mental Health
- MDT Case Management/Review
- Admin and Indirect Costs
- It updates/expands the definition of child abuse.

Specific Rule components that impact CACs:

Forensic Interviews:

- **OVC expressly states that Forensic Interviews are not only an investigative tool, but also the key to victims’ services.** Thus, the Rule keeps the language originally proposed that specifically allows VOCA Victim Assistance to pay for forensic interviews (FI). ¹ This OVC comment is important because it explicitly states that FIs are victim services. (In the past, several State VOCA administrators have explained they are philosophically opposed to VOCA funding FI because it is a part of the criminal investigation. While states continue to retain the right to administer VOCA with state autonomy, this language will give CAC Chapters, as well as individual CACs, documentation that may be of help in moving their administrators on FIs.) Similar to the DOJ VOCA letter, this language included in the final Rule is written documentation that OVC is allowing VOCA to fund FI because it is a direct service.

Forensic interviews are covered - with the following parameters:

1. Results of the interview will be used not only for law enforcement and prosecution purposes, but also for identification of needs such as social services, personal advocacy, case management, substance abuse treatment, and mental health services;
2. Interviews are conducted in the context of a multi-disciplinary investigation and diagnostic team, or in a specialized setting such as a child advocacy center; and

¹ Department of Justice Rule, Victim of Crime Act Victim Assistance Program, Federal Register/Vol. 81, No. 131/Friday, July 8, 2016, Rules and Regulations, p.44524.

3. The interviewer is trained to conduct forensic interviews appropriate to the developmental age and abilities of children, or the developmental, cognitive, and physical or communication disabilities presented by adults².

OVC received several comments asking allowable VOCA funding to be tied directly to CACs; however, OVC didn't want to prevent orgs serving adults with disabilities from accessing VOCA for their FIs. Thus this requirement was not included.

VOCA, Forensic Interviews and Supplanting:

- The final Rule waives the supplanting restriction with regards to VOCA funding forensic interviews.
- OVC expressly states that “providing States such flexibility to meet this important victim need (which if unsupported, may lead to re-traumatization of the victim) outweighs potential concerns that victims service funding will supplant law enforcement funding for this activity.”³
- This comment, while not included in the actual Rule itself, is similar to OVC's opinion about FIs being key to victim services.
- In your meetings with VOCA Administrators, you now have OVC's words to help back up your argument that VOCA funding FI would NOT be supplanting.
- It is important to note that State VOCA Administrators may likely have a stricter interpretation of supplanting and nothing in this Rule requires states to fund any of the “allowable” services, or view supplanting through the same lens.

Forensic Medical Exams:

OVC again restates that VOCA can be used to pay for Forensic Medical Exams. The Rule encourages providers to use SANEs to perform the exams, and also encourages (rather than mandates) that crisis counseling, or other services offered in conjunction with the exam, be also covered. The Rule doesn't specify on the difference between adult and ped SANEs. We will want to follow this to see if we need additional clarification.

Mental Health Therapy/Counseling:

OVC allows VOCA to fund mental health counseling and care, including, but not limited to, out-patient therapy/counseling (including, but not limited to, substance-abuse treatment so long as the treatment is directly related to the victimization) provided by a person who meets professional standards to provide these services in the jurisdiction in which the care is administered.

Relocation costs:

OVC allows VOCA to pay for relocation costs. These costs are subject to any restrictions on amount, length of time, and eligible crimes, set by the SAA, but the Rule allows for funding of the relocation of victims (generally, where necessary for the safety and well-being of a victim),

² Ibid, p. 44534.

³ Ibid.

including, but not limited to, reasonable moving expenses, security deposits on housing, rental expenses, and utility startup costs.

Trafficking:

- The final Rule does not specifically set aside a set amount of VOCA funding that must be allocated to trafficking; however, the Rules does include CSEC and child pornography to the definition of child abuse.⁴
- The Rule removes the prohibition for services to victims that are in detention facilities.⁵
- The Rule also specifically lists using VOCA funding for shelters for trafficking victims- but does not require a specific model.⁶
- Important note - the Rule does NOT list what crimes fall into the “underserved population” category – because this can change over time.⁷

MDT Case Review/Coordinated Response:

OVC allows VOCA to be used to pay for a coordination of activities:

- I. **Coordination of activities**— Coordination activities that facilitate the provision of direct services, include, but are not limited to, State-wide coordination of victim notification systems, crisis response teams, multi- disciplinary teams, coalitions to support and assist victims, and other such programs, and salaries and expenses of such coordinators⁸;
- II. **Supervision of direct service providers**—Payment of salaries and expenses of supervisory staff in a project, when the SAA determines that such staff are necessary and effectively facilitate the provision of direct services⁹;
- III. **Multi-system, interagency, multi- disciplinary response to crime victim needs**—Activities that support a coordinated and comprehensive response to crime victims needs by direct service providers, including, but not limited to, payment of salaries and expenses of direct service staff serving on child and adult abuse multi- disciplinary investigation and treatment teams, coordination with federal agencies to provide services to victims of federal crimes and/or participation on Statewide or other task forces, work groups, and committees to develop protocols, interagency, and other working agreements¹⁰.

Immediate emotional, psychological, and physical health and safety costs:

OVC also allow VOCA to fund services that respond to immediate needs (other than medical care, except as allowed under paragraph (a) (9) of this section) of crime victims, including, but not limited to, among other things:

- Crisis intervention services;

⁴ Ibid, p. 44518.

⁵ Ibid, p. 44525.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid, p. 44534.

⁹ Ibid.

¹⁰ Ibid.

- Accompanying victims to hospitals for medical examinations;
- Hotline counseling;
- Safety planning;
- Emergency food, shelter, clothing, and transportation;

Additional Costs associated with supporting direct services:

- Contracts for professional services (e.g. psychological/psychiatric consultation, legal services, interpreters);
- Volunteer trainings

Admin/Indirect Costs:

The Rule allows for (but does not limit it to) a number of Administrative Costs:

- Personnel Costs
- Skills training for staff
- Training-related travel
- Org expenses (that are necessary and essential to providing direct services)
- Operating costs – such as supplies, equipment user fees, property insurance, printing, courier service, brochures, security systems, etc.
- VOCA administrative time – costs for admin spent performing VOCA compliance, conducting satisfaction surveys and needs assessments. ***(I think this provision will allow CACs/Chapters to use VOCA to pay for OMS)***

The Rule removes the ban on VOCA funding indirect costs to bring it into alignment with all federal funding¹¹.

Unallowable Costs:

The Rule restates that VOCA still can't pay for¹²:

- Lobbying
- Research and studies
- Active investigation/prosecution of criminal activities – except for the provision of victim assistance services to crime victims
- Fundraising
- Capital expenses
- Comp for victims of crime
- Medical care (other than what has been spelled out in the rule – forensic medical exams, mental health therapy)
- Salaries and expenses of management – ED, Board Members, other administrators – unless specifically stated in Rule.

¹¹ Ibid, 44527.

¹² Ibid, 44535.

In addition, the Rule updates the definition of child abuse:

Victim of child abuse means a victim of crime, where such crime involved an act or omission considered to be child abuse under the law of the relevant SAA jurisdiction. In addition, for purposes of this program, victims of child abuse may include, but are not limited to, child victims of: Physical, sexual, or emotional abuse; child pornography- related offenses; neglect; commercial sexual exploitation; bullying; and/or exposure to violence¹³.

¹³ Ibid, 44518.