

# 28 CFR Part 90: Violence Against Women

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## Structure of 28 CFR Part 90

- Subpart A - General Provisions
  - Subpart B - STOP Violence Against Women Formula Grant Program
  - Subpart C - Repealed
  - Subpart D - Arrest (ICJR) Program
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- Provisions supplement rather than restate statutory definitions, grant conditions, and requirements

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## When does new rule take effect?

- Effective date of December 29, 2016
- Subpart A (definitions and grant conditions) applies to all OVW FY 2017 grants and STOP and SASP subgrants issued on or after 12/29/16
- Subpart B (STOP Rule) applies to all FY 2017 STOP grants and STOP subgrants issued on or after 12/29/16

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### Definitions (90.2)

- Community-based program
- Forensic medical examination
- Prevention
- Prosecution
- Public agency
- Unit of local government
- Victim services division or component of an organization, agency, or government

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### Confidentiality (90.4(b))

- Grantees and subgrantees shall not disclose 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
- Grantees and subgrantees may release information if there is a statutory or court mandate or victim signs a release

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### Confidentiality (90.4(b))

- Clarifies that VAWA confidentiality provision applies to disclosures from victim services divisions/components of larger organizations to non-victim services divisions/components or organizational leadership

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### Confidentiality (90.4(b)) - Releases

- Written, informed, time-limited
- Must specify scope and limited circumstances of disclosure (no blanket releases)
- Discuss with victim why information might be shared, who would have access, and what information could be shared (record in release)
- Specify duration - reasonableness depends on situation
- Consent to release may not be requirement for services

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### Confidentiality (90.4(b)) - Who can sign a release?

- Victim
- Unemancipated minor victim:
  - The minor *and* parent or guardian
  - Parent or guardian not needed if minor allowed to receive services without additional consent
  - Abuser of minor or of other parent cannot consent
  - If minor is incapable of knowingly consenting, then parent or guardian (notify minor as appropriate)
- Legally incapacitated victim:
  - Legally-appointed guardian

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### Confidentiality (90.4(b)(4)) - Fatality Reviews

May share information about deceased victims with fatality review *if*:

- Underlying objectives: prevent future deaths, enhance safety, and increase offender accountability
- Fatality review includes policies and protocols to prevent further release
- Grantee/subgrantee makes reasonable effort to get release from victim's personal representative and any surviving minor children
- Information released is limited to that necessary for fatality review

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### Confidentiality (90.4(b)(5)) - Inadvertent Release

- Grantees and subgrantees are responsible for taking reasonable efforts to prevent inadvertent release

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### Confidentiality (90.4(b)(6)) - Assessment and Assurances

- Grantees and subgrantees must document compliance with confidentiality requirements
- Applicants for OVW funds submit signed acknowledgement of requirements, including obligation to document compliance and mandate subgrantee compliance

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### Victim Eligibility for Services (90.4(c))

- Victim eligibility for services is not dependent on victim's immigration status

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### Subpart B (STOP Program)

- Provides further information on the STOP Violence Against Women Formula Grant Program

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### State Office (90.11)

- State shall designate state office to develop STOP implementation plan, make certifications, submit STOP application, and administer funds
- Allocation Requirements:
  - Courts, law enforcement, prosecution, victim services
  - Culturally specific allocation
  - Sexual assault set aside
  - Pass-through administration

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### Implementation Plans (90.12)

- 4-year plans
- Updates required in years 2, 3, and 4
- Consultation must include both DV & SA coalitions and DV & SA service providers
- Consultation with culturally specific organizations and all tribes
- States encouraged to consult survivors but also address safety and confidentiality in doing so

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### Implementation Plans - Planning Committee (90.12(b)(7))

- At a minimum, must include:
  - State DV and SA coalitions
  - Law enforcement
  - Prosecution
  - Court
  - Representatives from tribes, tribal organizations, or tribal coalitions
  - Population specific organizations - most significant underserved and culturally specific populations

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### Implementation Plans - Documentation of Consultation (90.12(c))

- Specifies what documents states need to submit to OVW and what they need to retain but not submit

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### Implementation Plans - Underserved Populations (90.12(e))

- Plan must address how state identifies underserved populations and how it plans to meet needs of such populations

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### Implementation Plans - Reducing Domestic Violence Homicides (90.12(f))

- Plan must include goals and objectives for reducing DV homicide, including:
  - Available statistics on DV homicides in state
  - Documentation of discussion about accuracy of statistics and ways to address DV homicide
  - Specific goals and objectives for reducing DV homicides, including how to overcome state-specific challenges

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### Implementation Plans - Additional Contents (90.12(g))

- Demographic information
- How state will reach community-based organizations
- How state will address needs of victims of 4 crimes and hold offenders accountable
- How state will ensure awareness of funding
- How state coordinated plan with other related funding streams
- How states will select subgrantees
- Information on specific projects to be funded

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### Certifications

- 90.13 - Forensic exam payment requirement
- 90.14 - Judicial notification requirement
- 90.15 - Costs for criminal charges and protection orders
- 90.16 - Polygraph testing prohibition

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### Subgranting of Funds (90.17)

- States must subgrant funds according to statutory allocations for victim services, law enforcement, prosecution, and courts
- Allowed up to 10% of each allocation for administrative costs

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### Matching Funds (90.18)

- 25% non-federal match required (except territories) - amounts to tribes or to victim service providers for victim services are excluded (90.18(c))
- In-kind match (90.18(b))
- Waiver based on adequate demonstration of financial need (90.18(d))

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### Reallocation of Funds (90.25)

- Returned funds - reallocate within reasonable time before award end date
- Insufficient eligible applications:
  - May reallocate but retain documentation regarding solicitation and selection process necessary to show lack of sufficient eligible applications
  - For culturally specific allocation, additional documentation includes demographics and outreach efforts

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## Questions?

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