



## **CONSULTATION FRAMING PAPER ON TRIBAL SET-ASIDE FUNDING FROM THE CRIME VICTIMS FUND: FORMULA and OTHER CONSIDERATIONS**

The Department of Justice (the Department) has a long-standing commitment to improve services for victims of crime in Native communities. Adjacent to the 2020 National Congress of American Indians (NCAI) winter meeting in Washington, D.C., the Department will consult with tribal leaders about “tribal set-aside” funding administered by the Office for Victims of Crime (OVC) from the Crime Victims Fund (CVF). The Department presents this paper to help guide the conversation at the consultation by outlining issues for discussion. This paper includes: (1) Questions related to implementation of a formula solicitation, and (2) information for tribal leaders to consider at the February 2020 consultation. In addition to this in-person consultation, the Department will hold two telephone consultations to provide more opportunities for tribal leaders to discuss this important issue.

While there are numerous ways OVC tribal set-aside funding can meet the needs of crime victims in American Indian and Alaska Native communities, there are statutory limitations on how the funds may be spent.<sup>1</sup> Generally, this funding can be used for projects or services that support or assist crime victims. Conversely, unallowable costs include primary crime prevention, prosecution, investigations or law enforcement activities, capital expenses, offender services, construction, or the purchase of a building or real estate.<sup>2</sup> OVC will also work to streamline the grant application process, where possible, but federal law mandates some requirements that OVC cannot adjust.

In response to past tribal consultations and listening sessions, where tribal leaders expressed a strong preference that the set-aside funding be distributed via a formula rather than a competitive solicitation, the Department is focusing the February 2020 consultation on a proposed formula allocation scenario. While this may result in lower award amounts for some tribes, it should result in more tribes receiving funding. Based on previous consultations and

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<sup>1</sup> In February 2019, in the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2019, Congress authorized OVC to receive \$3.53 billion from the CVF to fund FY 2019 programs, and the Act designated a 5% tribal set-aside (\$167.65 million) to improve services for victims of crime, consistent with the requirements of the Victims of Crime Act. Previously, in March 2018, Congress allocated a tribal set-aside of \$133 million to fund victim service programs for tribes; the FY 2018 funding was the first such set-aside for tribal victim services.

<sup>2</sup> A detailed list of allowable and unallowable costs/activities related to how OVC funding can be used is included in the FY 2019 Tribal Set-Aside solicitation posted at <https://www.ovc.gov/grants/pdfxt/FY19-Tribal-VSSA-Solicitation.pdf> (see pages 21-33).

other dialogue, many tribal representatives believe the advantages of a formula process outweigh the disadvantages.

To further the dialogue related to potential formula funding strategies, the Department has developed a formula option for discussion purposes that assume there is \$125 million in funding to use for the formula and that there are 225 applicants (based on the number in 2018 tribal applicant pool). Further, the Department is also assuming 15 percent off the top for purposes of Training and Technical Assistance and for OVC discretionary tribal programs. This is not an indication of any DOJ decisions or preferences; these assumptions are intended for discussion purposes only.

### **Application Process**

To implement a formula and maximize the amount of funding disbursed to tribes, OVC must first establish the universe of tribes who intend to apply for funding. It is anticipated that tribes will be required to indicate an interest in applying (to establish the universe of tribes receiving funds in a given fiscal year) and to provide and/or certify population information. Using this information, OVC will then calculate how much funding each applicant is eligible for and notify each tribe of the maximum amount of funding for which they may apply. Tribes will then submit an application and budget that is responsive to the formula solicitation.

### **Eligibility for OVC Tribal Formula**

Applicants to OVC's tribal victim service formula program must be a federally recognized Indian tribal government (as determined by the Secretary of the Interior). Alaska Native villages and tribal consortia consisting of two or more federally recognized Indian tribes will also be eligible to apply.

For purposes of the formula, OVC anticipates each tribes' formula allocation will be calculated individually based on the designated formula. Tribes may opt to sum their respective formula allocations and apply as a tribal consortium; however, an individual tribe's formula allocation will not change based on whether they choose to apply independently or as part of a consortium. An application from a tribal consortium will have to contain documentation authorizing the applicant tribe to apply on behalf of the consortium members and act as the responsible fiduciary. A tribe may not apply both on its own behalf and as a part of a tribal consortium in the same grant award year.

Federally recognized Indian tribes that wish to have an organization provide services on their behalf must apply for funding and then subaward funding to their designee.

### **Proposed Formula**

Funding is divided into a base award for all applicants equal to \$350,000 and the remaining funds will be distributed based on a formula. The base award amount was derived from input provided through NCAI working with a group of tribal stakeholders. While the group suggested additional funds be provided if certain activities (i.e., shelter services, transportation services, legal services, etc.) were to be funded, the Department believes that all of those

activities, and others, are worthy of funding, and that an individual tribe should determine how best to use the funds. Establishing a base amount, without designating specific line items, will provide tribes with maximum flexibility in budgeting and avoid locking an applicant into a pre-allocated funding amount for any one victim service activity.

The formula funding would be disbursed across 5 population tiers. Awards would be capped at \$3 million. Excess funds from tribes that exceed the award cap will be reallocated to tribes in the other tiers using the same formula process. Population tiers would be:

- Tier 5 - Tribes with a population over 60,000;
- Tier 4 - Tribes with a population between 20,000–59,999;
- Tier 3 - Tribes with a population between 5,000–19,999;
- Tier 2 - Tribes with a population between 1,000–4,999;
- Tier 1 - Tribes with a population of 999 and below.

Assuming 225 eligible tribes and \$125 million dollars in tribal set-aside funding, each tribal applicant is allocated \$350,000 in base funding and a population-based formula would add additional funding based on each tier's proportion of the total population, an additional amount on top of the base amount ranging from approximately \$18,000 for Tier 1 to \$2,650,000 for Tier 5. This allocation strategy would result in awards ranging from a total of \$368,000 to \$3 million.

## **Other Topics**

The Department has received feedback from tribal leaders and representatives encouraging OVC to increase the grant project period. In response to those requests, the time period for these formula grants will be increased from 3 years (the time period used for the Fiscal Years 2018 and 2019 tribal victim service set-aside awards) to 5 years.

OVC is committed to providing vital programmatic training and technical assistance, and tribal financial management assistance, to grantees and other tribes that wish to apply for funding in the future. OVC currently supports three organizations that provide substantive, subject-matter training and technical assistance and financial grants management assistance, so that all OVC tribal program grantees have the resources and infrastructure needed to establish and/or sustain successful victim services programs. OVC is dedicated to the success of these grantees and to providing much-needed services to victims of crime. OVC is eager to increase the number of tribes receiving funding from the tribal victim services set-aside appropriation. To assist the large number of new victims' services grantees, and be responsive to any emergent victim assistance need that may arise, OVC will take a percentage off the top of the full tribal set-aside appropriation for discretionary awards and/or training and technical assistance. OVC continues to enhance its training and technical assistance programming and will be working on both location-based national and online resources to help tribes train their new victim advocates and victim services professionals; and build opportunities for professional development for program leaders as they develop and expand their programs.

The Department has received feedback from tribal leaders and representatives encouraging OVC to increase outreach efforts and build awareness about the tribal set-aside funding for victim

services – particularly to tribes that have not historically applied for OVC funding, and/or tribes that may not have well-developed grant-writing programs. The Department is continuing its outreach and assistance efforts.

## CONSULTATION QUESTIONS

**Question: How should OVC allocate tribal set-aside funding to increase programs, access, and resources for American Indian and Alaska Native crime victims and those that serve them?**

- **Please provide input on the proposed formula.**
- **Should tribes self-certify their population counts for purposes of the formula? If so, what documentation should be required?**
  - **Alternatively, should OVC calculate tribal populations? And if so, what data should OVC use to calculate “population?”**
- **What should “population” consist of, and would most tribes be able to provide an estimated “service population” (i.e., the population of potential victims they could serve directly with formula funding)?**
- **What other specific assistance could OVC provide to help existing programs, support innovative ideas to expand programs, and provide additional training and technical assistance?**

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*NOTE:* This paper is not a statement of official Department policy. It is intended to provide information and suggest questions to be considered by tribal leaders and representatives as they prepare to participate in the February 2020 consultation. The Department welcomes all input from tribes on this and other matters that are of concern to tribal communities.

## **APPENDIX A:**

### **BACKGROUND: THE CRIME VICTIMS FUND & FEDERAL VICTIMS OF CRIME ACT (VOCA) FUNDING**

A 1988 amendment to the Victims of Crime Act of 1984 (VOCA) created the Office for Victims of Crime as part of the Department's Office of Justice Programs (OJP). An important part of OVC's mission is to administer grant award programs that are funded by the Crime Victims Fund (CVF), which primarily includes criminal fines paid by convicted federal offenders. Each year Congress authorizes OVC to use the CVF to support grant programs for victim services.

### **BACKGROUND: COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS ACT, 2018, sec. 510**

In March 2018, President Donald Trump signed the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2018, (the Act) into law creating a CVF tribal set-aside for the first time. Accordingly, the set-aside totaled about \$133 million. OJP was statutorily required to obligate FY 2018 CVF grant funds no later than September 30, 2018.

OVC awarded 154 grants totaling \$88 million. Subsequently, some of the applicants who were not funded due to unallowable activities or past performance are being provided with financial technical assistance, which should equip them for success in future funding applications. Additionally, OVC obligated more than \$20 million in FY 2018 tribal set-aside funds under other FY 2018 solicitations and/or programs to enhance victim services and resources in Indian country and/or Alaska Native villages.

In February 2019, designated a 5 percent tribal set-aside (\$167.65 million) to provide grants to tribes to improve services for victims of crime, consistent with the requirements of VOCA.

To assist potential applicants, OJP hosted pre-application webinars during the FY 2019 Coordinated Tribal Assistance Solicitation (CTAS) application period, which covered topics such as budget development and grant-writing. Additionally, OJP sponsored two in-person grant-writing workshops in the Lower 48 and Alaska to aid previously unsuccessful applicants, and OVC hosted a webinar in January 2019 for applicants interested in the CTAS solicitation (Purpose Area 7 for victim services). OVC also engaged in additional outreach activities to inform potential applicants that tribal set-aside funds for victim services were available in FY 2019.

OVC has continued to explore options for programming the tribal set-aside funding to enhance victim services for AI/AN crime victims and assist tribal communities, and an expansive tribal set-aside "stand-alone" solicitation for victim services was issued (see <https://www.ovc.gov/grants/pdf/FY19-Tribal-VSSA-Solicitation.pdf>).

OVC used various methods to provide information about the newest tribal set-aside solicitation, including additional webinars, with onsite presenters in the lower 48 and in Alaska. These

webinars can be found on OVC's site at <https://www.ovc.gov/news/tribal-set-aside.html>).

OVC directly awarded more than \$107 million to 175 applicants to help tribes develop, expand and improve services to victims of crime and other public safety initiatives by providing funding, programming and technical assistance. The remaining Tribal Victim Services Set-Aside funds were awarded or transferred to academia, nonprofits, victim services providers, and other federal government agencies to enhance tribal victim services and program.