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*Via regulations.gov*

VOCA Compensation Rule Comments  
Office for Victims of Crime  
Office of Justice Programs  
U.S. Department of Justice,  
810 7th Street NW  
Washington, DC 20531

**Re: *Victims of Crime Act (VOCA) Victim Compensation Grant Program, 89 Fed. Reg. 7,639 (Feb. 5, 2024); RIN 1121-AA89; Docket No. OJP (OVC) 1808.***

Director Rose:

I write regarding the *Victims of Crime Act (VOCA) Victim Compensation Grant Program, 89 Fed. Reg. 7,639 (Feb. 5, 2024)* (“Proposed Rule”). The State of Utah joins the comment submitted by Attorney General Steve Marshall on behalf of the State of Alabama *et al.*, as well as the comment submitted by Attorney General Kris Kobach on behalf of the State of Kansas *et al.* I submit the following additional comments on behalf of the State of Utah.

*First*, I share the concerns expressed by Alabama and Kansas regarding the lack of statutory authority for the Proposed Rule. Apparently trying to sidestep that void, the Proposed Rule notes that “States ... participate in the Program voluntarily and, as a condition of receipt of funding, agree to comply with the Program’s requirements, which are predicated on the authorizing statute.” 89 Fed. Reg. at 7,647. But conditions on a State’s acceptance of federal funds must be “set out ‘unambiguously.’” *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006) (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 483 U.S. 1, 17 (1981)); *see also Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212 (2022) (“[I]f Congress intends to impose a condition on the grant of federal monies, it must do so unambiguously.”). The requisite clarity “must come directly from the statute,” not from regulations. *Texas Educ. Agency v. U.S. Dep’t of Educ.*, 992 F.3d 350, 361-62 (5th Cir. 2021). Although VOCA contains some conditions, the Proposed Rule fails to point to any of them. Worse, much of what the Proposed Rule calls for appears unmoored from the conditions that are in the statute.

*Second*, some of the conditions in the Proposed Rule directly conflict with Utah law. The Proposed Rule provides that “[a] State may not deny compensation because of a victim’s or

survivor’s incarceration, probation, or parole status, prior criminal history, or sentence.” (referencing §§ 94.222, 94.223). But under Utah law, certain individuals are not eligible to receive reparation awards, including:

- (1) “a convicted offender serving a sentence of imprisonment in any prison or jail or residing in any other correctional facility;” Utah Code § 63M-7-510(1)(f);
- (2) “an individual who is on probation or parole if the circumstances surrounding the offense of which the individual is a victim is a violation of the individual’s probation or parole;” Utah Code § 63M-7-510(1)(g); and
- (3) “an individual whose injuries are the result of criminally injurious conduct that occurred in a prison, jail, or other correctional facility while the individual was incarcerated;” Utah Code § 63M-7-510(1)(h).

It appears that several States have statutory provisions excluding access by inmates to compensation. If Utah and these other states are unable or unwilling to change State laws, they risk losing all their VOCA funding under the Proposed Rule. And even assuming OVS was statutorily authorized to impose those condition—it is not—revising statutes and regulations costs money. Accordingly, the claim that “[t]his proposed rule would impose no cost on State, local, or tribal governments,” 89 Fed. Reg. at 7,646, is simply wrong. The Proposed Rule also makes no analysis of the likelihood that some States will be unable or unwilling to change their law, and will thus drop out of the Victim Compensation Grant Program. That’s an important aspect of the problem the Proposed Rule fails to consider.

*Third*, the Proposed Rule states that the prohibition on denying claims based on criminal history is based on “unjustified disparate treatment in the criminal justice system ... [that] can result in unjustifiably disproportionate denial of claims for those populations.” 89 Fed. Reg. at 7,642. Setting aside the lack of evidence for that claim, OVC lacks statutory authority to regulate disparate impact. The non-discrimination provision in VOCA provides:

No person shall on the ground of race, color, religion, national origin, handicap, or sex be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with sums made available under this chapter.

34 U.S.C. § 20110(e). The Supreme Court long-ago held the materially identical language in Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, “only prohibits intentional discrimination.” *Alexander v. Sandoval*, 532 U.S. 275, 280-81 (2001); *see also Alexander v. Choate*, 469 U.S. 287, 293 (1985) (“Title VI itself directly reach[es] only instances of intentional discrimination.”). In contrast to VOCA, Title VI includes authority to “effectuate” its restriction on intentional discrimination, which has been DOJ’s claimed source of authority to regulate disparate impact. DOJ is not only wrong in that claim, it is preliminarily enjoined from “[i]mposing or enforcing any disparate impact based requirements against the State of Louisiana or any State agency under Title VI.” *Louisiana v. U.S.E.P.A.*, 2024 U.S. Dist. LEXIS 12124, at \*92 (W.D. La. Jan. 23, 2024). Simply enacting a new regulation doing the same thing—based on materially identical language—is arguably an attempt to circumvent the *Louisiana* injunction, and it steers dangerously close to contempt.

\* \* \* \* \*

The VOCA Grant Program is an example of State-Federal partnership that works to benefit innocent victims of crime, not criminals. I ask that you not destroy it by using the program as a cudgel to push controversial political objectives. The Proposed Rule should be withdrawn in its entirety. Any technical amendments to accommodate statutory changes should be made in a separate rulemaking, limited to just those technical amendments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sean D. Reyes". The signature is stylized with large, overlapping loops and a long horizontal tail.

Sean D. Reyes  
Utah Attorney General