



FREQUENTLY ASKED QUESTIONS May 2016

STOP Violence Against Women Formula Grant Program and the Prison Rape Elimination Act (PREA) Certification Requirement

1. How does PREA impact STOP grants?

A State that is not in full compliance with the Department of Justice (DOJ) National Standards to Prevent, Detect, and Respond to Prison Rape (the national PREA standards), 28 C.F.R. Part 115, will be subject to a 4.75% reallocation or reduction in STOP funds.

2. Why is this the case?

Under PREA, a State must certify to DOJ that it is in compliance with the national PREA standards or else be subject to the loss or reallocation of specified funding. Beginning in FY 2014, if a State cannot certify full compliance, it will lose 5% of any DOJ grants that “may provide amounts to States for prison purposes” unless it provides an assurance that it will use 5% of such funds for the purpose of enabling the State to adopt and achieve full compliance with the standards, so that a certification of compliance may be submitted in future years. 42 U.S.C. § 15607(e).

The Violence Against Women Act of 2013 added a purpose area to the STOP program statute for “developing, enlarging, or strengthening programs addressing sexual assault against men, women, and youth in correctional and detention settings.” 42 U.S.C. § 3796gg(b)(17). This purpose area is a “prison purpose,” which makes the PREA requirement applicable to STOP.

3. Why is the potential reallocation/reduction 4.75% rather than 5%?

Of the various STOP allocations under 42 U.S.C. § 3796gg-1(c)(4), the law enforcement, prosecutors, victims services, and discretionary allocations could potentially be used, consistent with the allocation requirement, to come into compliance with the national PREA standards. The 5% allocation for State and local courts, by contrast, could not be used to come into compliance because the national PREA standards do not bear upon judicial functions. Thus, only 95% of the State’s STOP award (the portion dedicated to law enforcement, prosecutors, victims services or discretionary purposes) is relevant to PREA. If the State grantee cannot certify that it is in full compliance with the national PREA standards, the 5% reduction/reallocation will be applied to 95% of the State’s STOP award, and 5% of 95% equals 4.75%.

4. Does the PREA requirement mean that every STOP grant will be reduced by 4.75% unless the State uses 4.75% of the STOP grant for prison purposes?

No. The PREA reallocation/reduction applies *only* if the State cannot certify that it is in full compliance with the national PREA standards.

5. To what facilities in the State does the certification described above apply?

The DOJ prison rape standards provide that the certification applies “to all facilities in the State under the operational control of the State’s executive branch, including facilities operated by private entities on behalf of the State’s executive branch.” 28 C.F.R. § 115.501(b).

6. If the State uses the 4.75% of its STOP funding towards PREA compliance, does it still need to meet the requirements of the STOP Program for that funding?

Yes, funds used for PREA compliance still need to meet the requirements of the STOP Program, such as allocations. Furthermore, if a State intends to fund PREA-related projects with STOP funds, it should consider the implications for other STOP funding subrecipients, consult with its STOP planning committee, and address those projects in its STOP implementation plan. Any questions about the STOP implementation plan and how to incorporate PREA compliance activities that support the STOP program’s overall purpose of increasing offender accountability and strengthening victim services should be directed to OVW’s STOP Program unit.

7. From which allocation should funds used for PREA compliance come?

The specific allocation would depend on the area(s) where the State was deficient in PREA compliance and what it used STOP funds to accomplish. For example, if the State needed to provide forensic medical exams for sexual assault victims in prisons, this funding could come from the law enforcement, prosecution, or discretionary allocation. If the State needed to improve prevention efforts, it would need to come from the discretionary allocation (and would count toward the new 5% limit on prevention programming). States can choose to use funds from one category or more than one, as long as the funds benefit the relevant entity for the particular category selected.

8. If the State uses 4.75% of its STOP funds towards PREA compliance, can this expenditure count towards the sexual assault set-aside added by the Violence Against Women Reauthorization Act of 2013?

Yes, if the State uses 4.75% of its covered STOP award towards PREA compliance and if it does not allocate those expenditures to the discretionary allocation, this could count toward the sexual assault set-aside.

9. Can STOP funds be used to address compliance in juvenile facilities?

Yes. However, if the facilities include juveniles 10 years old or under – an unusual occurrence – then the STOP funds would need to be pro-rated to the extent the detainees housed in those facilities are 11 or older. For example, if 25% of the juveniles in a facility are 10 or younger, and 75% are 11 or older, then STOP funds could be used for up to 75% the PREA-related improvements in that facility.

10. What if the only thing the State needs to do to come into compliance with the PREA Standards involves new construction, which is unallowable with STOP funds?

If a State is in full compliance except for a deficiency that requires new construction, it cannot lawfully spend STOP funds to come into compliance, and the State therefore would not be subject to the 4.75% reduction/reallocation of STOP funds.

11. Do the PREA requirements apply to the District of Columbia and U.S. Territories that receive STOP funding?

Yes.

12. Can the PREA set aside STOP funds be used to support audits?

Yes. Audits can be supported with funds from the discretionary allocation category.

13. Can the state subgrant the PREA set aside funds to the state coalition to consult with the state prisons on PREA compliance?

Yes. The funds do not need to be subgranted to the state department of corrections, but can go to any entity that can support PREA compliance.

14. Can the state use PREA funds to install cameras in the correctional facilities?

The answer to this depends on the installation of the cameras. If they are permanently affixed to the walls, or require wiring to install, they would be considered a “renovation” and outside the scope of the STOP Program. However, if they are installed in a way that is easily movable (for example with screws or nails), then they are allowable.

15. Can the state use administrative funds to support the PREA set aside instead of programmatic funds?

No, although the state could choose to use a smaller amount of administrative funds to increase the availability of programmatic funds. Because the administrative funds come from each allocation, if the state does not use them, they return to the allocation they came from. The PREA worksheet that OVW provides to each state includes both the assessment of the PREA set aside funds and the assessment of the administrative funds.

16. Can the PREA set aside funds be used to pay for forensic exams of alleged offenders in correctional settings?

Yes, because this would be part of investigating the crime.

17. What happens to the funds that are withheld from states that do not submit an assurance or a certification?

By statute, funds are redistributed to the remaining states, based on population. States will receive these funds in the subsequent fiscal year (e.g., the FY 2014 withheld funds were redistributed in FY 2015).

18. Are the extra funds received due to redistribution from states that did not submit an assurance or certification subject to the PREA set aside?

No. These funds have already been subject to PREA, so the PREA set aside does not apply to them. However, all of the requirements of the STOP statute (allocations, purpose areas, etc.) do apply.