



Consultation Question 1: How can the Office on Violence Against Women (OVW) improve its administration of its Grants to Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction (Tribal Jurisdiction) Program to encourage more tribes to apply for funding?

Consultation Question 2: How should OVW expend the unobligated \$1.6 million in FY 2018 funding for the Tribal Jurisdiction Program?

BACKGROUND

Section 904 of Violence Against Women Reauthorization Act of 2013 recognized the inherent power of “participating tribes” to exercise “special domestic violence criminal jurisdiction” (SDVCJ) over certain defendants, regardless of their Indian or non-Indian status, who commit acts of domestic violence or dating violence or violate certain protection orders in Indian country. This provision also created a grant program for tribal governments or their designees to: 1) strengthen tribal criminal justice systems to assist tribes in exercising SDVCJ, including law enforcement, prosecution, trial and appellate courts, probation systems, detention and correctional facilities, alternative rehabilitation centers, culturally appropriate services and assistance for victims and their families, and criminal codes and rules of criminal procedure, appellate procedure, and evidence; 2) provide indigent criminal defendants with the effective assistance of licensed defense counsel, at no cost to the defendant in SDVCJ cases; 3) ensure that, in SDVCJ cases, jurors are summoned, selected, and instructed in a manner consistent with all applicable requirements; and 4) accord victims of domestic violence, dating violence, and violations of protection orders rights that are similar to the rights of a crime victim described in section 3771(a) of Title 18, consistent with tribal law and custom.

Since enactment of VAWA 2013, at least 50 tribes have shown a strong interest in learning about and potentially exercising SDVCJ. In June of 2013, the Department of Justice established an Intertribal Technical-Assistance Working Group on Special Domestic Violence Criminal Jurisdiction (ITWG) to exchange views, information, and advice about how tribes can best exercise SDVCJ, combat domestic violence, recognize victims’ rights and safety needs, and fully protect defendants’ rights. To date, approximately 50 tribes have voluntarily joined the ITWG, and almost of all of them have remained actively engaged in ITWG meetings, webinars, and exchanges of information. Moreover, to date, 21 tribes (only some of which are ITWG members) have reported to the National Congress of American Indians that they have implemented SDVCJ.

Tribal interest in Department funding to support the implementation and exercise of SDVCJ, however, has not been robust:



- In January 2016, OVW received its first appropriation of \$2.5 million to implement the Grants to Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction (Tribal Jurisdiction) Program. OVW posted a solicitation in May 2016, received 10 applications, and made awards to seven tribes.
- In FY 2017, OVW received an appropriation of \$4 million for the Tribal Jurisdiction Program. OVW posted a solicitation for the program in December 2016, but so few applications were received that OVW re-posted the solicitation in March 2017. Between these two solicitations, OVW received seven applications and offered funding to all seven. One tribe did not accept the award, resulting in \$495,000 being returned to the program.
- In FY 2018, OVW again received an appropriation of \$4 million for the program, posted a solicitation in April 2018, received six applications, and anticipates funding all six. As a result, OVW will end FY 2018 with approximately \$1.6 million in unobligated and otherwise available Tribal Jurisdiction Program funds.

QUESTIONS

Consultation Question 1: How can the Office on Violence Against Women (OVW) improve its administration of its Grants to Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction (Tribal Jurisdiction) Program to encourage more tribes to apply for funding?

The Department's first question for tribal leaders is how OVW can change its administration of the Tribal Jurisdiction Program to make it more attractive to tribal applicants. In FY 2017, when OVW posted two separate solicitations, tribes told the Office that the issue was that the first solicitation had been open at the same time as the Consolidated Tribal Assistance Solicitation (CTAS), making it difficult for tribes to develop multiple applications. In FY 2018, OVW was careful not to repeat that mistake, posting the Tribal Jurisdiction solicitation well after CTAS had closed. Nonetheless, OVW received a disappointing number of applications. Are there solicitation requirements that are deterring tribes from applying? Should the solicitation be open for longer than six weeks (which is usual for an OVW grant solicitation)? Are there other barriers to SDVCJ implementation that OVW could address through the Tribal Jurisdiction Program funding?

Consultation Question 2: How should OVW expend the unused \$1.6 million in FY 2018 funding for the Tribal Jurisdiction Program?

By law, the Department is limited in its ability to use appropriated funds for any purpose other than the one designated by Congress in an appropriations act. Therefore, OVW cannot use most



of the \$1.6 million in unobligated (or unspent) Tribal Jurisdiction Program funds for another purpose without submitting a “reprogramming notice” to Congress.¹ This leaves OVW with limited options for how to expend these funds, which include:

- Re-issue another Tribal Jurisdictions Program solicitation in early FY 2019. This would result in FY 2019 awards.

- Re-purpose the funding for use for an existing OVW tribal program or initiative, such as:
 - Violence Against Women Tribal Special Assistant United States Attorneys (SAUSAs) Project (funding tribal prosecutors to work in collaboration with U.S. Attorneys’ Offices to prosecute cases involving domestic violence, dating violence, sexual assault, and stalking in Indian country)
 - Training and technical assistance for tribal personnel
 - Tribal Governments Program

If this approach is taken, OVW would provide the House and Senate Committees on Appropriations with a re-programming notice. This would result in FY 2019 awards.

- Reprogram \$400,000 to another tribal program (which would not require Congressional notice) but use the remaining \$1.2 million in one of the ways indicated above. Some funding might issue early in FY 2019 and some later.

The Department welcomes any other suggestions that may be permitted by law.

¹ Under the provisions of the FY 2018 appropriations act, the Department may reprogram funds to augment existing programs, projects or activities for up to \$500,000 or 10 percent, whichever is less, or reduce by 10 percent funding for any program, project or activity without providing notice to the House and Senate Appropriations Committees. This means that OVW could reprogram up to \$400,000 in Tribal Jurisdiction funds without Congressional notification, so long as it does not augment an existing program, project or activity by more than 10 percent.
