

DEBRA MURPHY: My name is Debbie Murphy. I'm one of OVW's lawyers, and we are going to be talking today about the award conditions that are on all of OVW's awards. So, let's see. We get a lot of questions about award conditions. We get a lot of questions about individual award conditions and what they mean. Sometimes people will say, "Why do you have so many? We can't read all these." So, what we're going to talk about today is why we have them, what the purpose of award conditions are, the different types of award conditions. And then, we're going to talk specifically about award conditions that we get a lot of questions about and walk through some of those. The one thing I will say to you is we're not going to have a chance to talk about every award condition. However, we do want to make sure that you understand everything that you're signing and the documents that you're agreeing to comply with. So, if you have any questions about something that we don't cover here, a particular award condition, you can raise it, and maybe we can discuss it here. Maybe you could raise it with your grant manager, and we could certainly get an answer back to you.

So, the big question we always get from people are, "Why are there so many award conditions?" When you accept an award from DOJ, you have this long list. It's 50 plus award conditions that you agree to comply with. And I know that sometimes, they feel, or they seem to be very disparate -- sort of unconnected. Some of them seem random, like, no texting and driving. But each award condition is on there for a reason. And the reason that you need to pay attention to them is because when you accept a grant from any federal agency and you sign all of the award documents, you are entering into a contract. And like any contract, you're getting something in exchange for something that you're giving. We're giving you federal financial assistance, and in return, for that, you are agreeing to do certain things. You're agreeing to actually implement the projects that you're being awarded for, or in the case of STOP, implement the funding, but you are also agreeing to certain conditions. And I know when I bought my house, I didn't read all of the closing documents. So, I'm certainly guilty of entering into contracts that I didn't read all the terms to, but we certainly would hope and would expect that anyone getting an award from OVW is going to read all of the award conditions.

You can see them on the award document in JustGrants. And I believe the view that you get is you can click to expand them, to read the text of all of them. However, they are also posted on our website. And so, if you, or whoever the signing official is for your agency, or the lawyer, whoever is responsible for reading and understanding all of the award conditions, you can actually see them in advance of an award actually being issued in JustGrants. You can see the award conditions on our website so you can read through them and, you know, hopefully come to an understanding of what they all mean. So, I've got the link on our website where you can see them and ask questions. If there's something that doesn't make a lot of sense to you, feel free to ask questions. You will see a different set of award conditions if you're getting, for example, a grant from OVC or a grant from FVPSA than what you're going to be seeing from us. And so, it may raise questions for you about why some things are attached to some awards and not others. So, read them before you agree to them, ask questions, and make sure that you understand them.

The list of award conditions, or the collection of award conditions, has grown over time, obviously, and every year we are constantly thinking about what needs to be an award condition if there are award conditions that need to be added. But we're also thinking about ways that some award conditions might be able to be removed for whatever reason. I'm on a working group that's working on revising some of the award conditions for next year because some of them are written in ways that we think could be clearer. So, we are

always trying to improve, but each one is there for a reason. They carry out a wide range of obligations, from administrative obligations, financial ones, civil rights ones, the core tenants of OVW's mission, enhancing victim safety. Every award condition is up there for a reason, and it's carrying out something specific -- a policy, a law, or a regulation. You are expected to follow them and you can't follow what you don't understand. So, you do need to make sure that you understand them. Now, the one thing that's really critical, especially for STOP Administrators, is that many of these award conditions have to be passed on to sub-recipients. So, when a state administering agency is administering a formula grant, you are agreeing, in many ways, to sort of, stand in the place of DOJ in many respects with regard to sub-recipients. We sign a contract with you, you sign a contract with us to agree to follow these award conditions. And in turn, as you administer the funding to sub-recipients, you will also be entering into contracts with those sub-recipients, and you will be passing along the award conditions. So, you really need to understand them because you're probably going to have to understand what some of them mean. But you will have an obligation to monitor sub-recipients for their compliance with all of the obligations that attach to receiving the award, including the award conditions. So, that's an important thing to understand. A lot of the award conditions that are intended to be passed along will begin with a sentence that says something like, "The recipient and any sub-recipient at any tier, you know, agrees to or must do the following..." They're not all written like that, but many of them are.

One other thing I want to note about award conditions that you've probably noticed is many of them, in the text of the condition, will reference another DOJ document, or a statute, or a regulation. And so, oftentimes, an award condition will be written in such a way where it says you're agreeing to comply with statute blah, blah, blah, and 28 CFR Part 90 or some, you know, two CFR Part 200, you're agreeing to comply with some other document, or a set of obligations that are articulated or memorialized someplace else. And so, when an award condition is written in that way, you need to make sure that you are looking up whatever that law, regulation, or guidance document is that's referenced in the condition, because you are agreeing to that as well, even if the entire text of that particular obligation is not all spelled out in the award condition. I'll point out as we go along some of the ones that are written in that way.

So, there are three basic types of award conditions. There are General Award conditions, OVW-Specific Award conditions, and Program-Specific Award conditions. And most of the awards fall into the first two categories. I apologize for this highlighted "20" there. I think highlighted it because I was going to go back and make sure it was actually 20. The first 20 award conditions are general in the sense that they apply to all of the awards that DOJ issues with your signing or accepting an award from OVC, or VJA, or the COPS office. The first 20 award conditions are going to be common across all grant-making components of the department. And we all have to agree on them. Sometimes, the award condition is required by law, and we don't have a lot of choice in how we phrase it, but a lot of times we do and have some discretion in how we phrase the award condition so that it's understandable to our recipients. And OJP, COPS, and OVW all coordinate on that. Many of those initial general award conditions have come about in response to a problem. Not all problems at OVW, in fact most of them, I think, were not. So, a particular issue or a problem that has arisen in the past, highlighted something that maybe recipients don't completely understand, and it's been turned into an award condition. And we're going to talk about one of those today, the award condition on assessing the suitability to interact with minors. That award condition arose because there were problems in OJP's administration of some of their Juvenile Justice awards and the Office of Inspector General essentially said, "Look, recipients don't really understand much about how to screen folks

for interacting with minors, and you need to develop an award condition.” And so, that’s an example of one that was developed in response to a problem. But we’ve had others regarding conference planning, waste, fraud, and abuse that have given rise to an award condition. Some other examples of that, Part 200, all of the recipients from any grant-making component at DOJ has to comply with that, and so that’s another one that’s in the general terms and conditions.

The second category is OVW-Specific Award Conditions. These are ones that we have decided to place on our awards for whatever reason. Oftentimes, it’s to effectuate a particular policy concern. Sometimes, it’s something that’s very specific to how we operate, when you’re supposed to turn in your progress reports, that kind of thing. These are OVW-specific, and for the most part, they will be the same on all awards that come from OVW. Lastly, there are going to be -- and these are usually at the end -- a set of Program-Specific award conditions, and these are award conditions that are the same for all awards that are issued under a particular program. So, all of our LAV recipients are going to have the same award conditions about implementing that program and providing legal assistance. For example, all STOP Administrators are going to have the same Programs-specific award conditions. They’re generally at the end of the award. In the case of cooperative agreements, they are very specific. They are very specific to that particular recipient and the projects that they are going to implement. And so, those are even more specific and also appear at the end of the document.

I will pause. I’m going to move into talking about four specific award conditions. But I thought I’d pause just to see if anyone has any questions, generally about award conditions. I don’t see anything, so I’ll move on.

The first one I’m going to talk about, is an OVW award condition, and it is on all of the awards that our office administers. It’s an award condition regarding activities that compromise victim safety. And I’m sure everyone is familiar with this, but it prohibits the use of grant funds for any activities that compromise victim safety and recovery or undermine offender accountability. If you read the entire award condition, it’s about a paragraph. It gives several examples of things that fall into that category. It is not an exhaustive list. The things that are on that list are things that we have added over time based on our experience with recipients, and sometimes feedback from recipients, or things that we learn about. Things like imposing requirements on victims in order to receive services. So, you’re not allowed to say, or a service provider is not allowed to say that a victim has to get a protective order in order to receive shelter services, for example. And that’s something we consider that undermines victim safety. Denying victim services based on their mental health conditions or their participation in the sex industry, or their LGBT status. That’s actually prohibited. You can’t discriminate on the basis of sexual orientation or gender identity by law, but before it was prohibited by law, OVW prohibited you from doing that as a matter of victim safety. There is a reason behind every single thing that’s ended up on the list. And if there is something on that list that you think is problematic, you can talk to your grant manager about it to understand where that came from, or if you have certain activities that a sub-recipient is proposing to engage in and you have concerns about that compromising victim’s safety, that’s also something that you could ask your grant manager. But anyway, that award condition is really, I think, at the heart of OVW and what we do in -- putting our policies and vision, for lack of a better word, into an award condition.

The next award condition I’m going to talk about is Confidentiality. Oh, you know what? There was one thing I wanted to mention about the award condition on prohibiting

activities that compromise victim safety. That award condition includes a phrase at the end that says essentially, "You can't engage in activities that compromise victim safety. Here are a bunch of examples of those." But then at the end of that condition, it says, "Or anything else that is listed in the solicitation or the Solicitation Companion Guide." And so, some programs will put in their solicitation additional things that compromise victim safety that are very unique to their program and what they've seen maybe in the past that some recipients have proposed doing, or things that are, you know, commonplace in that particular space. And so, a recipient always needs to pay attention to any additional activities that compromise victim safety that are listed in the solicitation and the Solicitation Companion Guide also has a section on that. That's a really good example of what I was saying earlier about award conditions sometimes referencing other documents. And if it references another document, you need to understand what that other document says because you're bound by that as well.

We're going to move on to talk about confidentiality. Let me first say, this is actually a very complicated area. There are a lot of questions that come up around confidentiality. I think we learned during the pandemic, when people were going to so many virtual services, we were fielding new questions about confidentiality that we hadn't even considered before. I'm not going to be able to touch on everything here, but hopefully, we'll together understand the gist of this. This is another award condition. It's a contract term, but it's also based on the statute, and it's based on the regulations that implement the statute. And then, we also have another guidance document, a set of FAQs about the confidentiality agreement. So, you're agreeing to comply with this award condition, but you can see in the text of the condition that's on the screen right now it's cross-referencing other documents that you need to be familiar with. So, the text says that "The recipient agrees to comply with the statute." That's in VAWA, and we have a statutory citation there. "Nondisclosure of confidential or private information, which includes creating and maintaining documentation of compliance, such as policies and procedures." And then, it goes on to say that you also agree to comply with the regulations and the FAQs that we have on our website. So, if I were working for a state administering agency and I was advising the Signing Official to sign all the award documents, I would first make sure that I've gone to this statutory site, I've gone to the regulatory site, and I've gone to the FAQs, and I've read them all, and I understand them all.

We're going to talk about the key points -- we're going to talk about what personally identifying information is, and we're going to talk about the situations in which you can release information. And then, we're going to talk a little bit about who our TA providers are, in case you have questions. But the key point is that this is a recipient at any tier, who is providing services to victims to protect the confidentiality and privacy of persons receiving services. The one thing I do want to point out here, I know that you're administering funds to a number of different types of recipients according to the formula in the statute, but this applies to recipients providing victim services. So, police, for example, are providing a service that is very useful to victims, but it is not a victim service. So, confidentiality is really limited to victim services. And if you look at the FAQs, there are a few specific examples and then that teases that out. For example, I think one of the questions on the FAQs is, "Does the confidentiality provision apply to victim advocates at a Police Department or in a Prosecutor's Office?" And the answer to that is no, because even though they are providing a service that is useful to victims, they are not providing a victim service according to the way the statute has defined it, and their role is really one. If they are employed in a Prosecutor's Office or the Police Department, their role is really one that's more of a law enforcement or prosecution function. So, that's a key thing to understand. It's designed both by statute and just by our view of the meaning of

confidentiality to ensure the safety of anyone who is receiving services, so that their information can be protected. They can seek services confidentially. And the statute essentially says that a recipient may not disclose, reveal, or release personally identifying information, and we're going to talk about what that is. Or individual information collected in connection with services requested, utilized, or denied through a grantee's or sub-grantee's program regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected. And we're going to talk about some of these specific terms and phrases.

The first question is, "What is personally identifying information?" That's what you're prohibited from disclosing. So, what is it? It's information about an individual that may directly or indirectly identify that individual and that would disclose a victim's location. That's specifically out of the statute. The statute also lists several examples, including a name, an address, Social Security number, stuff that I think most of us would know to be identifying. It's very specific to who we are and our identity. It can also include other information in particular circumstances, such as the person's race, religious affiliation, number of children. For example, if you or a recipient is providing services, perhaps in a small town with a very small, or close to non-existent, Jewish population, and that service provider identifies a victim as being a Jewish woman with three children that may be enough information in that context to be personally identifying information. So, a recipient should not be revealing any of that information.

Except, there are three situations where information might be shared, and those are when a victim provides written, informed, and reasonably timed consent to the release of information. If the victim signs a release of information -- and in a couple of slides, I'm going to talk about what needs to be included in a release of information. If a statute compels that the information be released, I think, probably one of the most common examples of that are, most states have mandatory Child Abuse Reporting Law, so there are laws that say certain categories of individuals must report suspected child abuse. And that would be an example of a statute compelling that information be released, and so our VAWA's confidentiality provision would not prompt or preempt that provision. However, you would still be limited to only the information. You would still only be releasing the information that is required by statute. For example, if we're talking about a mandatory child abuse reporting statute, you would only be releasing and reporting the information that is, you know, relevant and necessary to comply with that statute. The provider is not going to be providing anything and everything about that particular victim, the services they've received, and their victimization. It would still be limited to what has to be released. And the third example is when a court compels that the information be released. If there is a case where a statute or a court does compel this release, VAWA requires that the entity, the sub-recipient, or recipient that's releasing that information make reasonable attempts to provide notice to the affected victims and take steps to protect the privacy and safety of the persons affected by that release to the extent possible. You wouldn't be required to do that.

There were a number of things that came up, especially during COVID, some very unique situations that we were asked about the confidentiality provision. One situation that came up kind of in the early days, various states and municipalities had some information or requirements around contact tracing, around people who had tested positive. And I know, at that time, we had questions from the field and from the TA providers that provide TA around confidentiality -- what does this mean and do these kinds of requirements that are mandating a positive COVID test trigger this reporting requirements around contact tracing. How do we comply with that? Whatever this requirement is, does that meet the

definition of a statute compelling or court compelling? And in each case, these things popped up during the pandemic in different states and they were sometimes written a little bit differently. And so, that's a good example of something where it's somewhat of a novel situation. We hadn't really received those kinds of questions before. We certainly hadn't been through, you know, a national/international pandemic. That's a good example of a novel situation where we really appreciated people in the field calling in to say, "How do we comply with this?" We really welcomed those questions. And it wasn't necessarily clear to us. We had to put our heads together with the TA provider, other folks in the office, and with the unit. If you come in contact, or you become aware of a novel situation like that, we really encourage you to raise it with your grant manager.

Another situation came up a year or two ago, when the census was happening. The census takers would go to shelters, and they would ask for identifying information of each person who was residing in the shelter. And we ended up forming a working group with FVPSA, and OVC, and us, and HUD, and a number of other agencies that were funding congregate living situations, and we met with the Census Bureau. That's an example of something that was somewhat novel, and we definitely wanted to get ahead of it. And so, if you become aware of those kinds of things, absolutely raise it with your grant manager.

A couple of other things about the confidentiality provision. Marnie, who I think you all know, Marnie Shiels, one of the lawyers, always talks about confidentiality as an umbrella. And it's to determine the scope -- you have to know what the umbrella is covering. Is it a golf umbrella, and is it covering a wide surface? Is it a small little umbrella that's attached to my head? What is it covering? And so, we have a regulation that's cited here. But the confidentiality provision applies to the disclosure from the Victim Services Division or component of an organization to other Non-Victim Services Division or components within the same organization. And to describe that a little bit more simply, if OVW funds are going to an organization that has several different components or divisions, and let's say one of those is a Victim Services Division, but they've got five other divisions that do other things and provide other services, maybe they run a food bank, or they run an employment training component, or they have a legal services component, that kind of thing. And we are funding the Victim Services component or division within that much larger organization. The confidentiality requirements apply in that situation within the organization, meaning that the Victim Services Component would need to either get a release of information from the victim, have a statutory requirement or a court order to release information about that victim, personal identifying information about that victim, to even the other components of the same organization. So, if a service provider is providing victim services in component one and there's a food bank that wants to have information about the victim in order to facilitate services, the Victim Service Provider needs to get a release of information, to have a conversation with the food bank. We get a lot of questions about this because organizations are structured in different ways. This would be another area to make sure you raise this question with your grant manager if you have any concerns about it.

And then, we have a definition there for the Victim Services Division or component is. Okay. So, when a Victim Service Provider is going to get a release of information, it needs to be written, informed, reasonably time-limited, and signed by the victim, or, if appropriate, a parent or guardian. We did find during the pandemic that we were faced with this issue of so many people providing services on Zoom, or through some other means besides being in person. And so, getting written releases of information, in many cases, was very difficult. We were asked quite a bit whether or not there was any leeway there, or whether that could be waived. And there is no leeway. That's in the statute. It's in the regulation. A release has to be written. What a lot of people were doing during the pandemic, if they

were providing virtual services, the Victim Service Provider might be on the phone or might be on Zoom with the victim, and then the victim would patch in, or the Service Provider would patch in this third-party entity that the victim needed services from, or maybe was going to release information from. And then, once they were all on the phone together, the victim could tell this third party, "I want you to tell them this right now." That's on them, but there was no option for VAWA recipients to waive the written part, even though we obviously have been going through these very unusual circumstances for the last three years. So, I really want to highlight that. It also cannot be just blanketed. The scope of the release needs to be limited to what you need to know, or what information you need to release. So, it should not just be anything and everything that's in a victim's file for as long as they have received services. It needs to be properly tailored to the situation. And in order to properly tailor it, you should be, or the Victim Service Provider should be, discussing with victims what kind of information can be shared, and have a conversation about how that information will be used. Reach an agreement on exactly how to crack that. And then, lastly, it needs to be time limited. It should not be something that, in perpetuity, the Victim Service Provider can forever and ever and ever speak to that food pantry or whatever that other organization is about that victim. It needs to be time-limited according to what's necessary in that particular circumstance.

And then a couple of things just to highlight. We do have FAQs, and they're not just there for your help or your assistance, although they are, but you now know they're cross referenced in the award condition itself. So, you are agreeing to comply with FAQs. And we also have a technical assistance provider on confidentiality, the National Network to End Domestic Violence. They can be helpful in all kinds of ways, particularly in helping a Victim Service Provider develop or improve their policies and procedures related to confidentiality. So, definitely use them, call your grant manager with any questions.

The next award condition I'm going to talk about -- this is one that we get a lot of questions about, or when we get questions, they always seem very tricky. This is an award condition that did come about -- it is on all awards that come out of DOJ, so OJP, OVW, and the COPS Office. And this is a great example of an award condition that came about because of a problem. DOJ's Office of the Inspector General investigated some DOJ programs coming out of the Office of Juvenile Justice and Delinquency Prevention looking at the safeguards that we required recipients to put into place to protect minors in receiving services. And so, there's a report on this OIG investigation, came out in March of 2019, but there were a number of specific findings and recommendations as a result of that. And the bottom line is, OIG said, "Look, the core mission of DOJ is public safety. And including the safety of minors that participate in grant-funded programs." And at the time, DOJ didn't have a minimal level of standards for recipients who provided services to minors had to do screen those people who were going to be interacting with minors and they essentially said, "You need to do this. You need to set up some minimum screening standards. And there were certain things that had to be in it." So, that is the background of this particular award condition.

A couple of important things about this award condition, I would probably guess, out of all of the award conditions that are listed in our award condition document, this one applies to probably the fewest number of OVW recipients. The bottom line is that it doesn't apply to everyone. The key is that this applies when the grant-funded activities are for the purpose of benefiting minors. And even though OVW does have several programs where minors, children, or youth could be served by the funding unless that particular project has specified that this is a project that is open to minors, or even targeting children and youth, quite likely, it doesn't apply. So, the key is that it applies when grant-funded activities have

the purpose of benefiting minors. And like I said, this grew out of an investigation of some JJ programs. And obviously, their programs all benefit minors. This isn't one that comes up as often across all grant-making components. But here are the basics. This is the text of the--of the award condition. "The recipient and any sub-recipient at any tier may not permit any covered individual..." I've underlined all the words that we're going to talk about -- "may not permit any covered individual to interact with any participating minor in the course of activities under the award, unless the recipient or sub-recipients has first made a written determination of the suitability of that individual to interact with participating minors based on current and appropriate information and taking into account specified factors." So, that's the award condition. The award condition also includes kind of, a follow-up statement or an additional statement that I do not have on this slide, but that statement essentially says, "the details of this requirement are posted on the OVW website at..." and then there's a link. And the reason again that I'm highlighting that is, again, when you agree to comply with the award condition, there is a cross-reference to another document in that condition and you're agreeing to comply with that, too. So, make sure you click on that link and that leads to a document that is essentially going to explain the lion's share of what I'm explaining to you today which is what each of these individual terms mean. You know, who's the covered individual? What does interact mean? So, we're going to talk about that a little bit.

So, who are these covered individuals? Who are the individuals that you're supposed to be screening? These are individuals who are expected or reasonably likely to interact with the participating minor. They do not necessarily have to be employees. It could be anybody in the organization who is expected and reasonably likely to interact with participating minors. It does not include other participating minors. So, if it's a program for youth, it doesn't include all the other youth in the program. It doesn't include other clients. It does not include a minor's parent. But the key is that the individual is expected or reasonably likely to interact in the course of the funded activities. Actually, I'm going to go back -- there are a lot staff members, for example, who might be staff of the organization or volunteers of the organization and they might be at the location or in the facility, you know, 40 hours a week, but if they are not expected or reasonably likely to interact with the participating minor, they would not be covered. So, I'll give you an example. An example might be the Executive Director. You might have a victim services organization and they have received a grant to provide some sort of activity that is directed at minors. It has the purpose of benefiting minors and the Executive Director may actually be someone who works in an office that's maybe in a different part of the building and actually is not expected or reasonably likely to interact with minors. That's a really good example of someone who-- they're not a covered individual. And that may sort of fly in the face of who you think needs to be screened because of, you know, I guess, the importance of that person but every employee is not necessarily a covered individual. In fact, generally speaking, a lot of employees are not going to be covered individuals. Now, we do suggest, and I think many recipients do, apply the same screening procedures to their entire staff in the interest of victim safety and to some extent, in the interest of the reputation of the organization. So, they could choose to do the screening that we're going to talk about on all employees, all volunteers, all contractors but that doesn't mean they have to accord by our award conditions. So, a covered individual is actually a pretty limited category of people.

So, these are covered individuals who are interacting with minors. So, what does interact mean? Interaction can be physical contact, oral or written communication and the transmission of images and sound and it may be in person or electronic or by similar means. We tried to crack that pretty broadly. But a couple of things that it does not include is brief contact that's unexpected and unintentional. So, the example I have here is the



mail carrier. It could be a board member of the organization who comes in every other Friday to sign checks, or it could be someone who is in the facility, but if a child or a youth walks past that person, it is both unexpected and unintentional. And so, that is not an interaction. Interactions do not include personally accompanied contact. These would be infrequent or occasional contact in the presence of an accompanying adult. A great example of that might be if there's someone who's brought in to do an art class or a presentation in a program that is otherwise targeted toward minors, and that guest speaker or that guest teacher is accompanied the entire time that they're in the facility by a staff member who has been screened. That person is obviously interacting with the youth, but they're accompanied at all times. And so, personally accompanied contact is also exempt from kind of the idea or the definition of interact.

Another question is, "Who are participating minors?" You might have a victim services organization that has people under the age of 18 throughout the building, getting all kinds of services, but not all of those youth are participating minors in the program that you're getting funding for. So, a participating minor means an individual who's under the age of 18, within a set of individuals described in the scope section of the condition as it appears in the award document. This is written, not in a way that I find difficult to understand. Essentially, what we're talking about is that set of under 18 individuals that are contemplated and described in the project. If the project is to provide, you know, counseling services or a support group to minors then, those individuals that are in that group or receiving counseling services under that grant award, those are the participating minors that we're talking about. The fact that there might be other children and youth in the building or in the facility receiving other kinds of services, participating in other kinds of programs, those folks are not participating minors.

The last phrase is activities under the award. So, remember, the condition has to do with permitting covered individuals to interact with participating minors in the course of activities under the award. And so, activities under the award are essentially those activities that are supported by the grant that we're talking about. We obviously give grants to a lot of organizations that are providing all kinds of other services without our funds. Those other services that we are not funding would not be activities under the award, obviously. And so, that's going to be true whether it's paid for with actual funds under the award, whether it's part of the matching funds included in the approved budget for the award or program income, but it is activities under the particular award in question.

So, I'm going to highlight an example and I don't know – there's no slide about this, but I want to throw out just a hypothetical example. It looks like there's a raised hand. So, I'll let that person ask their question.

PARTICIPANT: You might address this later on. And so, I apologize if I'm asking ahead of time.

DEBRA MURPHY: Okay.

PARTICIPANT: I oversee the SASP funds in our office. And so can we use our SASP funds to cover the cost of doing the backgrounds that are tied into this...

DEBRA MURPHY: That's a great question. I don't know the answer to that. So, if someone from OVW does know the answer to that, you can jump in. Otherwise, I'm going to have to look into that and get back to you.

PARTICIPANT: Okay. Thanks.

LATONYA EADDY: I think we're going to double check on that to the extent that it could be possible. It would have to directly be associated with the cost for a staff person funded under that project to work with minors. So, under the Sexual Assault Services Program, let's say there's a sub-recipient who has a SASP formula sub-award, and they have hired somebody who's going to be doing some work with youth. Then, assuming it's allowable, it would have to be allowable in the context of that staff person, a program couldn't use its SASP funding to cover all their staff, otherwise, it's not funded under that sub-award, if that make sense. That's probably a GFMD question too, right, Debbie?

DEBRA MURPHY: Yeah, I would think so. We will find someone who knows the answer to that.

LATONYA EADDY: Yeah. GFMD is presenting right now to State Coalitions. So, the people I would ask are occupied, but we will track down that answer and make sure we get it circulated for everybody.

DEBRA MURPHY: So, the question in the hat is to clarify if the grant application narrative does not indicate that they are targeting youth or minors and the determination of suitability condition does not apply. You know, generally speaking, that is true. If, for example, you have received an award to provide services to adult victims of sexual assault. And someone, you know, but the grant allows you to serve youth. I mean, the statute allows you to serve youth and someone, you know, a young person or someone who's under the age of 18 seeks services, generally speaking, you still would not have had to have screened the covered individuals, the adults in that situation, the staff, volunteers, or whoever. You would not have had to screen them if you're not anticipating to serve youth. That's a situation where in the interest of victim safety, we are as careful as possible. You could still follow the procedures if you think that there is a possibility that a person under the age of 18 might seek services, but by and large, if you haven't targeted that group, if you didn't describe a project that was going to be serving youth, that's not who you're intending to serve. That's not who you're reaching out to, and 99.9% of the time, that's not who you're serving. If a young person, or a person under the age of 18 -- I sound like my grandmother saying, "a young person" -- seeks services, we would not have expected you to have screened your staff and volunteers for suitability. So, yes, that's correct. I am going to throw out an example, though.

"Does this requirement apply to law enforcement and prosecution. Is it confidentiality that it only applies to victim services?" No, it's not like confidentiality. For example, this isn't even an OVW one -- this applies to the COPS Office. This applies to all the OJP programs, this applies to us. So, it wouldn't apply to any type of recipient. However, that entity still has to go through the same kinds of questions -- Who are covered individuals? What does interact mean? You know, "interact" has to do with, you know, can't be unexpected or unintentional, for example. So, any entity is still going to go through the same analysis, but it applies to every type of recipient from DOJ funds. The one thing I will say with regard to law enforcement -- they're going to have been screened anyway. I'm going to get to the kind of screening that you have to do. There are certain types of professions, and law enforcement is one of them, where all of their employees most likely are going to have had a level of screening that is above and beyond what this award condition even requires. So, you know, it's probably not going to come up in the same sort of way.

I'm going to throw out an example. If a recipient has received OVW funds to support a legal advocate who is going to accompany adult victims, presumably adult victims to court to get orders of protection, but the service provider also provides, with other funding, a children's program. Would the service provider have to screen that legal advocate on his or her suitability to interact with minors? I'll just throw that out and people can put yes or no in the chat. Again, we're funding a legal advocate who's going to help adults get protection orders. But there's another program operated by the same service provider for youth. Okay, so one brave person has put in no. No. Yes. That's correct. No. You would not have to. So, I partly drafted this example. I worked at a domestic violence shelter for about 10 years before law school -- being a lawyer's a bit of a second career for me. And my first job there was as a legal advocate. I helped people get orders of protection. But everybody on staff had to take a shift doing general coverage of the shelter, which means you were in this main area and you answered the hotline.

Now, let's say that same legal advocate, whose salary is supported -- and let's make it an easy question and say this person's salary is supported entirely by an OVW grant -- also interacts with youth or minors on this one afternoon per week when she is doing the main coverage of the shelter, including the hotline, answering the door, and doing basic intakes. Now, under that circumstance, does that individual need to be screened for the suitability to interact with minors? So, we've got yes. One yes, a couple of yeses in the box. The answer to that is we don't really know. It is, to some extent, an individualized determination for the recipient to look at the way that particular job duty is described and make a determination based on whether or not that person is expected to have interactions with youth, and that it's not the sort of unexpected or unintentional interaction. My general sense since the example is based on a job that I had 35 years ago, is, yes, that person should be screened. It may be that another service provider says, "Well, the layout of our shelter or facility is such that youth or clients who are not seeking an appointment are never going to walk through that space, or they're never going to be in that particular room, or the layout of our shelter is such that it's just not going to happen." That could be a reasonable determination on the part of that victim service provider to say, no, we're still not going to screen this legal advocate for her suitability to interact with minors because we don't think, based on her job duties and her job description, whatever interaction she has with minors, is going to be unexpected and unintentional. So, a recipient could make that determination. I think that's probably a yes, but there aren't a lot of hard-and-fast rules on this. I guess that is the point I'm trying to make. It would be somewhat of an individualized determination. And that should be documented.

I am going to move on to the next part, "What does that screening mean?" So, the award condition says once you determine who has to be screened, then what you have to do is make a written determination of the suitability of that individual to interact with participating minors based on current and appropriate information. So, what's current and appropriate information? Glad you asked. It basically includes two things. There is going to be a search of sex offender registries, and the next slide, just to give you a hint of what's coming, is there's going to be a search of criminal history registry. So, there are two types of registries that the recipient would search. The first one, public sex offender and child abuse websites or registries. The recipient is going to do a search on the pertinent and reasonably accessible federal, state, local, and tribal sex offender registries.

We get a lot of questions about what is pertinent and reasonably accessible, especially the reasonably accessible, if there's a charge or something like that. And again, we don't have a lot of hard-and-fast rules on that. We want recipients to do their best with the registries and information that is available to them to screen those individuals that they are

supposed to screen. And so, if a recipient has a particular question about whether or not a particular registry is reasonably accessible, maybe based on the cost of it, maybe based on the location or something like that, you can raise that with the grant manager, and we will try to talk through that and think through that. And there is an example at a minimum of what it needs to include, the National Sex Offender Public Registry. But here's what you have to search. You need to search for five years for any of those registries for the state in which the individual lives, works, goes to school, or has lived, worked, or gone to school. So, go back five years, any state that that person has or currently lives, works, or goes to school in. And then, secondly, the state in which that person is expected to or reasonably likely to participate to interact with those particular minors. For service providers that are on a border between two states, there may be more than one state based on where they provide their services. So, go back five years, look at any state where the person lives, works, goes to school, or has lived, worked, or gone to school, and what state are they actually going to be providing the services in. It's a similar idea with the criminal history registries.

There are several repositories for criminal history records, and, again, we are describing the kind of search that you have to do of those registries. It's going to be the same standard, go back five years, pick the state or the jurisdiction where the person lives, works, or goes to school, or has lived, worked, or gone to school, and the jurisdiction where they're expected to interact with minors. So, a couple of things about this. Once you do that screening, there are some things that are in absolute bar on allowing that person to work in that program where they are reasonably expected to interact with minors. And there are some things where the person is absolutely out -- if they have withheld consent to the searches, if they knowingly make or made a false statement that affects or is intended to affect the search. If they are listed as a registered sex offender on this national website, it's an absolute bar to working in that program. If to the knowledge of the recipient this person has been convicted under federal, state, Tribal, or local law of any of the following, and then there's a list of several crimes there including sexual or physical abuse, rape, sexual assault, kidnapping, voyeurism, or lastly, is determined by federal, state, Tribal, or local government agency not to be suitable.

A couple of questions we've gotten with regard to these convictions, the first prong includes endangering an individual under the age of 18. We have been asked whether or not if a victim who is now applying for a job or applying to be a volunteer in some program, many years earlier, as a part of their victimization included activity that resulted in a conviction like this. Can you make an exception? Or, for example, if someone is hired -- this wouldn't come up with us so much as it would in the JJ context -- if a person had a prior criminal history and there was something about that person's treatment or reform that actually led them to do the work that they're doing, might you make an exception for that kind of thing? At this point, no. The award condition does not allow for those kinds of exceptions. That is something, I think, will possibly change or possibly be softened a little bit in future fiscal years to allow a little bit of leeway in certain circumstances. But for right now, this list of things is an absolute bar. It's not something that you have discretion over.

And then, I see a question in the chat, so I'm going to read it. "I had to step away for a minute, so I'm sorry if I missed this. Does the condition apply to any youth serving organizations or only youth serving projects? For example, if we are funding a program with a shelter and crisis line that serves minors, but only funding adult legal services for the program?" So, that is exactly what we talked about with regard to activities, the covered activities are only those that we're funding. So, that's a great question, it comes up all the time, but no, you would not have to screen. If the OVW funding is for a project

that is only serving adults but there's other money that's being used to serve youth, the award condition does not apply. However, we would encourage any recipient in the interest of victim safety to consider applying the same screening procedures to anyone in the interest of victim safety.

And I think I missed another question. "Is there any guidance for exchange students from another country acting as direct service volunteers?" I never cease to get a question that I can't answer. I would assume that these are processed pretty thoroughly. "But should our sub-recipients be requesting anything additional to meet this requirement?" I do not know the answer to that. So, that's another one I will look into, unless Melissa or someone else has already fielded that and has some thoughts about that.

PARTICIPANT: Debbie, you have a lot of faith in us and our knowledge. But that would be a no. I think it's a wonderful question and fascinating, so I'm curious to know what the answer would be, partly because how would you even gain access to records from another country on such a matter? I don't even know, so I'm super curious.

DEBRA MURPHY: Yeah. And I don't know either if you would have any access to whatever information the state department collects or whoever is responsible for collecting the information for exchange students. I don't know if even DOJ would have access to any of that. So, I will look into that and get back to you. That's actually an interesting question.

PARTICIPANT: It is. And I think there's letter of the law following the award condition, but I think if we think expansively about victim safety, it's an interesting topic to grapple with of how you set up safety for your survivors in a circumstance like this. Maybe there should be another person that has had background screening and is paired with that volunteer. Overall, it's just a reminder, but there're a lot of people who abuse it and are not caught, and have never been caught, and won't show up in a background screening of any kind, so there should be robust policies for general accountability and monitoring, and that sort of thing.

DEBRA MURPHY: And the shelter where I worked was actually in a college town, so in college towns, that comes up all the time, so that's a great question. Thank you for posting that. I think I've caught the ones that are in the chat. Keep the questions coming, that's great.

So, a couple other things. This is also one of those that applies to sub-recipients at any tier. This is passed along down the chain however the award is sub-awarded. This would also be one that's going to be included in any sub-award documents and would have to be monitored by the state administering agency. It applies to the date of the acceptance of the award, and the reason that's always useful information is sometimes people say that there's a holdover volunteer, or there's a hold over staff members. It's something we used to do, but they're not working here. So, it's just from the day of the acceptance of the award and throughout the performance of the award.

Oh, and look at this. My slide actually answers a question I got earlier. I guess I've now outed myself as being the recipient of slides that I got from another lawyer now. Award funds may be obligated for the reasonable, necessary, and allocable costs of actions designed to ensure compliance with this condition. So, whoever asked that earlier about whether or not you could use your award funds, you can. And the funny thing is that I actually just did this presentation a few days ago, and I know I read that on this slide, but obviously that shows how long my memory is.

I've been at DOJ for about fourteen years, and I've only been at OVW for three. Most of my time here was in the Office for Civil Rights, in the Office of Justice Programs. We enforce civil rights obligations. This does not authorize the violation of any civil rights or non-discrimination laws, and you might say to yourself, well, of course, it doesn't, but how could that be? If that recipient were to have a complete bar of hiring or allowing anyone with a criminal history to apply for a job or be a volunteer, there is the possibility that a very neutral screening process would have a disparate impact on individuals based on their membership in a protected classification like race, color, or national origin. And DOJ actually does have -- and the EEOC -- has some additional guidance on how to make this blanket screening criteria for this employer to not run afoul of those civil rights laws. That's a pretty lengthy topic, but if you went to the website of the Office for Civil Rights and the Office of Justice Programs, they have a guidance document on using criminal history as a screening tool for employment. And so, you could look at that for more guidance, but the bottom line is that this particular grant condition doesn't allow you to subvert civil rights laws. In the interest of time, I'm going to keep moving a little bit. The bottom line is that you have to monitor this award condition. So, as you monitor sub-recipients, whatever tools you use to monitor, whether they're monitoring checklists, desk audits, or whatever, you need to think about how you're going to monitor for this.

We have a couple of resources in particular that are really useful. The COPS office put out one, obviously, as was referenced earlier, law enforcement officers are screened at a much greater level than what we're requiring here, and they've put out some documents on how to do and understand background screenings. The last thing I want to--I thought I had another slide in there, but I don't. So, I'm going to move on. We are kind of running out of time a little bit.

And the last award condition I want to talk about is an award condition that's new. It's only about two or three years old. And that is an award condition regarding recipients having a policy for responding to workplace related incidents of sexual misconduct, domestic violence, and dating violence. The award condition is written on this slide. A recipient or sub-recipient at any tier must have a policy or issue a policy within 270 days of the date of the award, to address workplace-related incidents of sexual misconduct, domestic violence, and dating violence involving an employee, a volunteer, a consultant, or a contractor. This is another award condition that when you see it in your work conditions, there's going to be a link to a longer document or a document that describes the award condition in more detail. And you will want to make sure that you click on that link because that's what's going to describe to you what this policy has to include, what's a workplace-related incident, all of that kind of stuff. In the award condition, it says, "The details of this requirement are posted on the OVW website app..." and there's a link. So, you're going to be bound by that as well. But I'm going to run through the gist of this.

This incident came up actually because we had been getting questions from people who were saying, "A staff member of ours was sexually harassed while they were doing a monitoring visit, or someone was sexually harassed or assaulted at a conference. And so, what do we do? What is our obligation as an employer?" I will also say this came up within OVW. OVW staff being offsite in another town at an event, at a conference, or on a site visit, or something like that, and something happened. What is the obligation of the employer? That's why we decided to create this award condition in the interest of safety of our employees, our volunteers, and people who are doing this work. The scope of the policy is that this applies to grant funded or grant-supported personnel including volunteers. So, again, similar to the award condition that we just talked about, if we give an

award that's going to pay the salary of two staff members, but the organization actually has twenty staff members, technically, this policy only applies to the two. However, again, in the interest of the safety of your staff, our hope would be that recipients would apply it more broadly to all of their staff.

So, there are three things that the policy has to address. And before I get to the end, I will say that Futures Without Violence and their Workplaces Respond Project is a TA provider on this, and they have put out several materials, including a guidebook and a webinar that are on their website and will help you, or help sub-recipients, develop this policy and walk through all three of these things that we're talking about. But the policy has to address three things. It has to address allegations of work-related incidents. So, when I say it has to address the allegations, describe what's supposed to happen. Who can make a report? How do they make a report? Is the organization going to investigate it? What's an investigation look like? You're going to flesh that out. A recipient is going to flesh that out in a policy. The policy has to address what kind of support is available for victims -- for your employees, volunteers, consultants, or contractors who are victims. And by support, we mean, "How are you going to support them but also accommodate their needs, their work-related needs to feel and be safe?" That might include things like moving their office. I feel like the pandemic has taught us that many, many people can telework, so it may involve allowing a victim to work remotely, allowing an employee who's reported this to have a dispensation against their workload so that they're not monitoring. For example, if they have been sexually harassed during a monitoring visit, maybe that sub-recipient is not going to be a sub-recipient that's in their portfolio anymore to monitor. So, describe the range of the supports and accommodations that are available. Lastly, the policy has to address any adjudication that would result in an employee, volunteer, contractor, or consultant being prohibited from occupying positions that could undermine the ability of the recipient or sub-recipient to carry out grant-funded projects. So, this is kind of contemplating a situation where an employee is not a purported victim, but an employee is possibly a perpetrator. And so, the policy must address any adjudication that would result in a person automatically being barred from occupying a position that undermines the ability of the recipient to carry out their activities.

I'm going to walk through some of these. A couple of particular things. What is a workplace? So, I said we're talking about workplace incidents. A workplace is pretty broad. If you are in or using the resources of the recipient's offices or facilities, using equipment or vehicles, engaged in approved telework, on-work related travel, or otherwise conducting business on behalf of the recipient. I know that one example that came up at some point was someone who was on work-related travel. They were traveling on behalf of the organization. They were staying in a hotel and an incident happened, not regarding the actual worksite or monitoring visit or whatever they were at, but something that was kind of unrelated. They were on travel. They were at a hotel and an incident happened at that hotel. And we would consider that a workplace. You're on travel. You would not be there, but for your employer having you go there. So, that's a workplace. And what are workplace-related incidents? These are acts, attempted acts, or threatened acts by or against employees, consultants, volunteers, or contractors that either occur in the workplace, or they occur outside of the workplace, but have an impact on the workplace, or otherwise undermine the ability of the person to carry out their activities, the grant-funded project. So, an example of that is someone who is perhaps a victim of domestic violence at home. It's outside of work, but that affects the person's ability. It affects their work. It affects their ability. It has an impact on their ability to carry out their jobs. That would also be someone who would be covered by this policy. And then, the policy does use the words sexual misconduct, and that is to encompass sexual harassment, stalking,

or sexual assault and then all of those terms basically have the meaning that they have under VAWA.

And then, adjudication. Remember how I said that the policy has to cover what adjudications you're going to be an absolute bar on someone working or volunteering on that project? And this could include things like a conviction, issuance of a final protection order, a court-ordered diversion program, or another judicial finding that the person has engaged in one of the four crimes, or sexual harassment, actually. However, you could expand that. A recipient could choose to expand that beyond that in the interest of victim safety. So, you could expand it to sex trafficking. You could expand it to something else at your choosing. And then, workplace supports. I think a lot of people know what this is, but you need to address the range of support that will be available to employees to help them continue in their position. We don't require anything in particular to be considered a workplace support, but you should think about this broadly. We also are not requiring you to violate any existing collective bargaining agreement, for example. Workplace supports, who gets what office, and who can telework, a lot of those are covered in bargaining agreements, and we do say that you're not required to violate those. Lastly, if you need help developing a policy, Futures Without Violence is our TA provider on this and they have already developed a number of just amazing materials. I'd encourage you to look at the webinar they have on their website and look at the guide that they have.

It looks like we have a question. "How have you seen state administering agencies..." this is a great question... "come into compliance with this where there may only be one or two staff that are directly OVW-funded?" Well, the first draft of our policy was written even more broadly, but state administering agencies pushed back, and the reason is, as you might imagine, if we give a grant to the state of Illinois, and we're funding one person or two people in the State Administering Agency's Office, we obviously cannot require the entire entity, the Department of Public Safety, or the Department of Human Services, or whatever to revise their policies. And so, our original award condition was written in such a way that we wanted it to apply to the entire recipient, not just those couple of personnel. And the reason we modified it was in the face of states essentially saying, "This is really not workable," when you consider the way policies are made on a state level and state-wide personnel decisions that are oftentimes covered by state law.

So, it's a great question. It is very challenging. The first thing I will say is that many states may already have a policy that does comply with the overarching requirements of this particular policy. That would be the first thing. If the State Personnel Office or Department of Personnel or whatever it's called, if they have a policy or a collection of policies that would already sort of cover all of these points, then we would accept that. The one thing I will say that we have found is that a lot of employers' policies, especially state governments, will cover sexual assault, sexual harassment -- a lot of times they're very detailed on sexual harassment -- but what they're missing or what they don't cover is domestic violence that happens outside of the workplace, but that affects the workplace. We have seen that even the best policies don't necessarily address that issue. An employee who is a victim of domestic violence at home but it's affecting his or her work. And so, what we have said to many state administering agencies is, number one, go to your personnel office and find out if you already have policies that cover each of these requirements. And if you don't, you will need to develop a policy that fills those gaps. And like I said, in many cases, what that is, is the domestic violence piece, a lot of state employers have great policies on sexual harassment and sexual assault, but dating and domestic violence, not so much. A lot of state agencies are already going to have great



policies about what happens when you're in work travel or what happens when you're at these offsite locations.

But the bottom line is, we know it's complicated. We did pull back a little bit in the face of some of the issues that were raised by state governments. But it still does apply to you. If you want to specifically talk with a lawyer on our staff, or maybe a lawyer and a grant manager, or maybe first go to Futures to work through some of the particulars of your state's situation, I think that's also a great idea. But we're more than happy to answer any specific questions that you have to noodle through solutions to things that may seem particularly difficult especially, you know, that last question was kind of a good one. I'm definitely looking into this foreign exchange student issue and background checks. And if you think of additional questions, you can pass them along to the OVW staff and they definitely will try to track down the answers.

MELISSA SCHMISEK: Thank you, Debbie. So, that's the conclusion of today's session. Thank you so much for joining us.