



U.S. Department of Justice

Washington, D.C. 20531

September 9, 2016

Dear Governor:

The Prison Rape Elimination Act (PREA) was passed in 2003 with unanimous support from both parties in Congress and signed into law by President George W. Bush. Eliminating prison rape remains a high priority of the U.S. Department of Justice (DOJ) because sexual abuse is a crime, and should not be the punishment for a crime. The National PREA Standards (Standards), which address both sexual abuse and sexual harassment and are found at 28 C.F.R. Part 115, took effect on August 20, 2012, and apply to DOJ, state, and local confinement facilities (including adult prisons and jails, juvenile facilities, lockups, and community confinement facilities).

As you may know, PREA contains mandates that may affect grant funding your state¹ receives from DOJ. The statute provides that, if a governor is not able to certify to DOJ that the state is in full compliance with the Standards, the governor has the option to submit an assurance to DOJ that not less than 5 percent of certain DOJ grant funds will be used solely for the purpose of enabling the state to achieve and certify full compliance with the Standards in future years. See 42 U.S.C. § 15607(e)(2). If the governor is not able to certify to DOJ that the state is in full compliance with the Standards and elects not to submit an assurance to DOJ, the state will be subject to the loss of 5 percent of certain DOJ grant funds that it would otherwise receive. In Fiscal Year (FY) 2017, it is anticipated that there will be three DOJ grant programs (or portions thereof) subject to this statutory provision. Two grant programs are administered by the Office of Justice Programs: (1) BJA's Edward Byrne Memorial Justice Assistance Grant Program, and (2) the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Juvenile Justice and Delinquency Prevention Act Formula Grant Program. The third grant program is administered by the Office on Violence Against Women (OVW): the Services, Training, Officers, and Prosecutors (STOP) Violence Against Women Formula Grant Program.

To fulfill this requirement, governors must submit either a certification or an assurance to DOJ, and any supporting materials, by **October 15, 2016** regarding the state's PREA compliance status from August 20, 2015 through August 19, 2016. Details regarding important changes to the certification/assurance timeline and what information to consider when making a certification determination are described below.

¹ In this letter, "state" refers to states, U.S. territories, and the District of Columbia.

Important Changes to the Timeline for a Governor to provide DOJ with a Certification or Assurance

In previous years, the deadline for the submission of PREA certifications and assurances was May 15; however, this date is incongruent with the audit year, which is established in the Standards to end on August 19 each year. This incongruity required governors to submit a certification or an assurance prior to the end of the audit year based on incomplete audit data.

In order to streamline these processes and address the challenges and concerns voiced to DOJ by governors and others who have responsibilities related to PREA, DOJ implemented an amended timeline in 2016 for governors to provide DOJ with a certification or assurance. Beginning in 2016, the due date for certification and assurance submissions will occur at the beginning of the federal fiscal year that follows the completion of each audit year. **In order to implement this timeline change, 2016 is a transition year when governors are making two certification and/or assurance submissions.**

- **2016 Governor's Re-Certification/Assurance for Audit Year 2.** For the first submission in 2016, governors were asked to provide a certification or assurance to DOJ for Audit Year 2 (August 20, 2014 – August 19, 2015) of Audit Cycle 1. This submission provided states with a second opportunity to provide DOJ with a certification or assurance for Audit Year 2, but with the significant benefit of having a full audit year of audit data. This submission—the first in 2016, but the second focused on Audit Year 2—impacted FY 2016 DOJ grant awards. This submission was due on March 31, 2016.
- **2016 Governor's Certification/Assurance for Audit Year 3.** For the second submission in 2016, governors are asked to provide a certification or assurance to DOJ for Audit Year 3 (August 20, 2015 – August 19, 2016) of Audit Cycle 1, and these submissions will impact FY 2017 grant funds. **This second submission is due on October 15, 2016.**

Attached is a diagram illustrating the above changes to the PREA certification/assurance timeline.

What to Consider when Making a Certification Determination

When making a determination of whether to submit a certification of full compliance with the Standards, the following considerations and requirements apply:

- “The Governor’s certification shall apply 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.” See 28 C.F.R. § 115.501(b). **IMPORTANT:** When making a certification determination, a governor must assess compliance for **all** facilities in the state that are covered under the PREA certification/assurance process, including, but not limited to, those facilities audited during the most recent audit year.
- In determining whether the state is in full compliance, “the Governor shall consider the results of the most recent agency audits.” See 28 C.F.R. § 115.501(a).
- All confinement facilities subject to the Standards must be audited by a DOJ-certified auditor at least once every 3 years, with one-third of each facility type operated by an agency, or private organization on behalf of an agency, to be audited each year. See 28 C.F.R. § 115.401. **IMPORTANT:** In order to submit a certification of full compliance for Audit Year 3 of the first three-year audit cycle, **all** facilities under the operational

control of the state's executive branch, including facilities operated by private entities on behalf of the executive branch, must have **completed** an audit and achieved **full compliance** on or before August 19, 2016.

- Pursuant to formal guidance issued by the DOJ PREA Working Group, DOJ intends audits to be a primary, but not the only, factor in determining whether a state is in full compliance. Neither the PREA statute nor the Standards restrict the sources of information that governors may use in deciding whether to certify full compliance with the Standards.
- DOJ recognizes that in some states, sexual abuse and sexual harassment investigations are conducted by agencies that are different than the agencies that confine inmates, residents, and/or detainees. Formal guidance issued by the DOJ PREA Working Group on December 3, 2013 (See <http://www.prearesourcecenter.org/node/3278>) indicates that "To the extent that these state agencies investigate sexual abuse or sexual harassment in covered confinement facilities, compliance with the National PREA Standards by these agencies also falls within the scope of the Governor's certification." Therefore, in order for governors to submit a certification of full compliance, these external state investigative agencies must be fully compliant with the PREA Standards that apply to them. For additional guidance and information, refer to the attached PREA Compliance Checklist for External State Investigative Agencies: Prisons and Jails that was developed by DOJ to serve as a tool for governors and others to assess compliance with the PREA Standards by these external agencies.
- A certification applies to the timeframe covering the most recent audit year; therefore, before a certification can be submitted, all covered facilities within your state must have been in full compliance with all the Standards as of August 19, 2016. Because August 19, 2016 represents the end of the first three-year audit cycle, before a certification can be submitted, a state must have had at least one PREA audit completed for each facility operated by the agency or by a private organization on behalf of an agency. 28 C.F.R. § 115.401(a). Only audits completed by August 19 may be considered when determining compliance with the audit standard (28 C.F.R. § 115.401).

Following each year's certification/assurance deadline, DOJ engages in a standard process to review certifications submitted by each state. If DOJ identifies information as part of this review process that raises questions about or contradicts a governor's certification submission, DOJ will send a notification detailing its findings and requesting additional information. DOJ's certification review process is intended to assist states in supporting and maintaining full PREA compliance.

DOJ understands that your task of assessing statewide PREA compliance is not an easy one. For that reason, DOJ has developed the attached PREA compliance worksheet and Frequently Asked Questions (FAQ) document, which will also be made available on the PREA Resource Center website at www.prearesourcecenter.org. The worksheet and FAQs are intended to aid governors in their certification and assurance decisions by detailing what questions and issues should be considered. The worksheet will also assist in the compilation of information and documentation that will provide support for either decision.

Looking Ahead to Audit Year 1 of the Second PREA Audit Cycle

Transitioning into the second PREA audit cycle, governors and other stakeholders with responsibilities under PREA should be aware of ongoing efforts underway at DOJ to increase the quality and rigor of PREA audits. DOJ is currently developing a PREA Audit Quality Oversight Function that is designed to both support PREA auditors in improving their auditing skills, and hold them accountable for a high standard of audit quality. DOJ is currently developing a PREA Auditor Handbook. The purpose of the handbook will be to articulate DOJ's expectations for all DOJ-certified PREA auditors, establish clear guidelines and requirements for auditor conduct and methodology, and enhance auditors' ability to conduct high quality, objective, transparent, comprehensive, and reliable PREA audits. In addition, DOJ is currently pilot testing an Auditor Peer Review Program. This program will examine audit reports and the audit documentation collected by auditors to determine whether auditors' compliance findings are supported by sufficient evidence. The outcomes of the Auditor Peer Review Program will assist DOJ with increasing the quality of audits and guide efforts to support auditors through continuing education opportunities and technical assistance.

As the quality and rigor of PREA audits increase, it is important to be aware that facilities that received a finding of full compliance with no corrective action in Audit Cycle 1 may be required to go through corrective action during the second audit that occurs in Cycle 2. While corrective action may be perceived as failure by confinement facilities and agencies seeking PREA compliance, DOJ views corrective action as an opportunity to enhance safety and promote a zero tolerance culture toward sexual abuse and sexual harassment. Recognizing the number and complexity of the requirements in the PREA Standards, DOJ purposefully included corrective action in the Standards to serve as a helpful tool for facilities and agencies to work in collaboration with their PREA auditor to address challenges related to sexual safety. The ultimate goal of the PREA Standards is to achieve sustained, system-wide change that keeps inmates, residents, and detainees safe from sexual abuse and sexual harassment. To accomplish this, DOJ encourages governors and other stakeholders to focus their PREA implementation efforts on achieving sexual safety and to approach corrective action as a positive opportunity to achieve long-term, meaningful change.

Submitting a Certification or Assurance

As indicated above, **October 15, 2016** is the deadline for governors to submit either a certification or assurance for Audit Year 3 of the first three-year PREA audit cycle, together with the attached PREA Certification and Assurance Submission Worksheet. The PREA Certification or Assurance Form, information completed as part of the PREA Certification and Assurance Submission Worksheet, and any other supporting materials can be sent to:

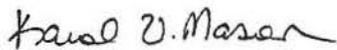
PREA Management Office
Bureau of Justice Assistance
U.S. Department of Justice
810 Seventh Street NW
Washington, D.C., 20531

Executed forms and all supporting materials may also be emailed to PREACompliance@usdoj.gov. If the PREA Management Office (PMO) does not receive a signed copy of either form by October 15, 2016, your state will be subject to a loss of 5 percent of each of the FY 2017-covered grant funds referenced above as required under 42 U.S.C. § 15607(e)(2).

For more information about the certification and assurance, including the meaning of “operational control,” please see the FAQ page of the PRC website at www.prearesourcecenter.org/faq. If you have any questions concerning the amended PREA certification/assurance timeline, PREA implementation, or the attached materials, please send inquiries to the PMO at PREACompliance@usdoj.gov. Requests for PREA implementation training or technical assistance may be directed to the PRC at <http://www.prearesourcecenter.org/training-technical-assistance/request-for-assistance>.

DOJ looks forward to continuing to work together to implement the National PREA Standards and combat sexual abuse and sexual harassment in the Nation’s confinement facilities. Thank you for your continued commitment to this important issue, and for your state’s efforts to promote and support implementation of the Standards.

Sincerely,



Karol Mason
Assistant Attorney General
Office of Justice Programs



Bea Hanson
Principal Deputy Director
Office on Violence Against Women

Attachments:

- PREA Certification Form
- PREA Assurance Form
- PREA Certification/Assurance Timeline Transition Diagram
- PREA Certification and Assurance Submission Worksheet
- PREA Certification and Assurance Frequently Asked Questions
- PREA Compliance Checklist for External State Investigative Agencies: Prisons and Jails

cc: State Administering Authorities for OJP and OVW grant programs

Governors’ Criminal Justice Policy Advisors

Robert L. Listenbee
Administrator
Office of Juvenile Justice and Delinquency Prevention

Denise E. O’Donnell
Director
Bureau of Justice Assistance

**Certification Regarding Adoption of and Full Compliance with
the National Standards to Prevent, Detect, and Respond to Prison Rape
2016 Governor's Certification for Audit Year 3 of Cycle 1**

Pursuant to 42 U.S.C. §15607(e)(2), I certify to the U.S. Department of Justice (DOJ):

As of August 19, 2016, the state¹ named below had adopted, and was in full compliance with, the National Standards to Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. Part 115.

If, after the date of signature of this certification, credible information should come to the attention of the undersigned (or his or her successor) that casts reasonable doubt on the accuracy of this certification, the same shall conduct a reassessment and determine whether this certification was accurate. If the certification is determined not to have been accurate, the undersigned or a designee will:

1. Within 15 days, notify DOJ via the email address below of the existence of the inaccuracy;
and
2. Within 15 days of providing such notice,
 - a. Submit an assurance signed by the chief executive (using the form provided by DOJ) indicating that the state will expend not less than 5 percent of its covered DOJ grant funds for FY 2017 to adopt, and achieve full compliance with, the National Prison Rape Elimination Standards (28 C.F.R. Part 115), so as to ensure that a certification may be submitted in future years;
 - b. Agree to return 5 percent of its covered DOJ grant funds for FY 2017 as calculated by DOJ; or
 - c. Take other appropriate action as instructed by the awarding agency.

Signature of Chief Executive

Printed name of Chief Executive

Name of State

Date

This form must be received by the Department of Justice, PREA Management Office, by October 15, 2016. A signed, electronic version of this form may be sent to PREACompliance@usdoj.gov.

¹ In this document, "state" refers to states, U.S. territories, and the District of Columbia.

A false statement in this certification or in the grant application that it supports may be subject to criminal prosecution, including under 18 U.S.C. § 1001 and 42 U.S.C. § 3795a. DOJ grants, including certifications provided in connection with such grants, are subject to review by the DOJ component that issued the grant and/or by the DOJ Office of the Inspector General.

**Assurance to Utilize Department of Justice Grants to Achieve Full Compliance with
the National Standards to Prevent, Detect, and Respond to Prison Rape
2016 Governor's Assurance for Audit Year 3 of Cycle 1**

Pursuant to 42 U.S.C. §15607(e)(2), I assure the U.S. Department of Justice (DOJ) that, subject to the exceptions checked below (if applicable), the state¹ named below will use not less than 5 percent of its covered DOJ grant funds for FY 2017 to enable the state to adopt, and achieve full compliance with, the National Standards to Prevent, Detect, and Respond to Prison Rape (28 C.F.R. Part 115), so as to ensure that a certification of full compliance may be submitted in future years.

Check the boxes below **only** if they apply to your state. (Note: in many cases, neither box will apply)

1. ___ As of August 19, 2016, the state named below had adopted, and was in full compliance with, the National Standards to Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. Part 115, insofar as those standards implicate juvenile facilities, as defined in 28 C.F.R. Part 115, but was not in full compliance with one or more standards insofar as those standards implicate non-juvenile facilities. Accordingly, grants issued by the Office of Juvenile Justice and Delinquency Prevention are not subject to the required set aside of funds for PREA purposes and shall not be used for purposes of the above assurance.

2. ___ As of August 19, 2016, the state named below had adopted, and was in full compliance with, the National Standards to Prevent, Detect, and Respond to Prison Rape, 28 CFR Part 115, except to the extent that full compliance would require new construction. Accordingly, grants issued by the Office on Violence Against Women are not subject to the required set aside of funds for PREA purposes and shall not be used for the purposes of the above assurance.

If the state has checked Box 1 and/or 2, and after the date of signature of this assurance, credible information should come to the attention of the undersigned (or his or her successor) that casts reasonable doubt on the accuracy of the information relied upon in checking Box 1 and/or 2, the same shall conduct a reassessment and determine whether this selection of such box(es) was accurate. If the selection of one or both boxes is determined not to have been accurate, the undersigned or a designee will:

1. Within 15 days, notify DOJ via the email address below of the existence of the inaccuracy; and
2. Within 15 days of providing such notice,
 - a. Submit a revised assurance, signed by the chief executive;
 - b. Agree to return 5 percent of its covered DOJ grant funds for FY 2017 as calculated by DOJ; or
 - c. Take other appropriate action as instructed by the awarding agency.

Signature of Chief Executive

Printed name of Chief Executive

Name of State

Date

This form must be received by the Department of Justice, PREA Management Office, by October 15, 2016. A signed, electronic version of this form may be sent to PREACompliance@usdoj.gov.

¹ In this document, "state" refers to states, U.S. territories, and the District of Columbia.

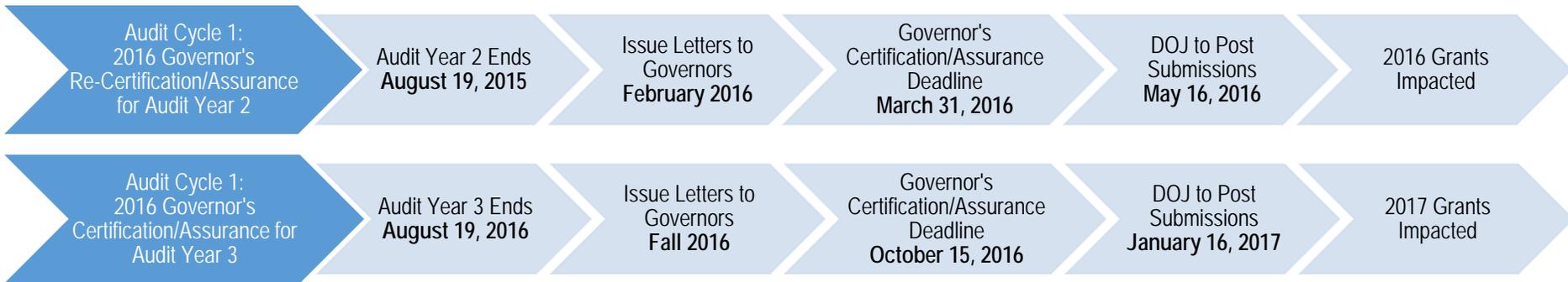
A false statement in this certification or in the grant application that it supports may be subject to criminal prosecution, including under 18 U.S.C. § 1001 and 42 U.S.C. § 3795a. DOJ grants, including certifications provided in connection with such grants, are subject to review by the DOJ component that issued the grant and/or by the DOJ Office of the Inspector General.

PREA Certification/Assurance Timeline Transition

PREA Certification/Assurance Timeline: 2014-2015



PREA Certification/Assurance Timeline: 2016 Transition



PREA Certification and Assurance Submission
WORKSHEET
Governor's Certification/Assurance for Audit Year 3 of Cycle 1

Prior to signing the PREA Certification or Assurance Form, carefully read the information included in this worksheet to ensure that all of the requirements and considerations for making a certification or assurance determination are addressed.

CONSIDERATIONS FOR SUBMITTING A CERTIFICATION OR ASSURANCE

In addition to submitting either a signed Certification or Assurance Form by October 15, 2016, provide the following supporting information:

1. **Facility Audit Activity.** Provide a list of all confinement facilities in the state¹ that are considered to be under the operational control of the executive branch, including facilities operated by private entities on behalf of the state's executive branch. The list should also include information on all PREA audit activity to date for each facility, including:
 - a. *Facility type.* Provide the facility type (jails and prisons, community confinement facilities, lockups, and juvenile facilities) for each facility listed.
 - b. *Agency.* Provide the responsible agency name for each facility.
 - c. *Audit status.* Indicate whether the audit is: 1) Scheduled, 2) In progress, 3) Complete, or 4) None if no audit is currently scheduled. For guidance on how to determine when an audit is considered complete, please see the formal guidance issued by the DOJ PREA Working Group located on the PREA Resource Center website (<http://www.prearesourcecenter.org/node/3228>).
 - d. *Audit completion date.* If the audit has been completed, use the PREA Working Group guidance referenced above to determine the date of completion.
 - e. *Audit year.* Provide the audit year in which the audit was considered complete.
 - f. *Audit cycle.* List the PREA audit cycle in which the audit was considered complete. The PREA Standards established a three-year audit cycle beginning on August 20, 2013. Please note that the second three-year PREA audit cycle commenced on August 20, 2016.
 - g. *Onsite audit date(s).* This refers to the days that the auditor spends on site at a facility to examine the physical plant; observe correctional practices; collect and review documentation; and conduct interviews with inmates/residents/detainees, staff, and others who provide paid or volunteer services at the facility. If the onsite portion of the audit is scheduled, but has not yet been completed, provide the anticipated date(s) of the onsite audit.
 - h. *Corrective action.* Indicate whether or not the facility underwent corrective action in order to address areas of noncompliance identified by a PREA auditor.
 - i. *Final report date.* Provide the date that the final audit report was submitted to the facility/agency.
 - j. *Auditor's final compliance determination.* This field applies to those facilities that have completed an audit and the auditor has submitted a final audit report. A finding of full compliance means that a DOJ-certified PREA auditor determines that a facility meets or exceeds every provision of every Standard. A facility found to be out of compliance means there was a finding of "Does Not Meet Standard" with one or more Standards.
 - k. *Final report location.* Standard 115.403(f) provides that, "The agency shall ensure that the auditor's final report is published on the agency's website if it has one, or is otherwise made readily available to the public." Where PREA audit reports are posted to the agency website, provide the link for each facility audit report. If the agency does not have a website, provide information on how the audit report is made available to the public.

¹ In this document, "state" refers to states, U.S. territories, and the District of Columbia.

**PREA Certification and Assurance Submission
WORKSHEET**

Governor's Certification/Assurance for Audit Year 3 of Cycle 1

Facility Audit Activity Example

PREA Audits of Facilities Under the Operational Control of the Executive Branch in [STATE NAME]											
Facility Name	Facility Type	Agency	Audit Status	Audit Year	Audit Cycle	Audit Completion Date	Onsite Audit Date(s)	Corrective Action Required? (Y/N)	Final Report Date	Final Compliance Determination	Link to Final Report
EXAMPLE 1	Prison	Agency A	Completed	Year 2	Cycle 1	10/4/2014	9/1/2014 – 9/4/2014	Yes	1/22/2015	Full Compliance	exampleagencyA/PREAreports.gov
EXAMPLE 2	Juvenile Facility	Agency B	Completed	Year 2	Cycle 1	12/16/2014	11/8/2014 – 11/11/2014	Yes	2/11/2015	Full Compliance	exampleagencyB/PREAreports.gov
EXAMPLE 3	Community Confinement	Agency A	Completed	Year 3	Cycle 1	11/6/2015	10/5/2015 – 10/7/2015	Yes	2/18/2016	Full Compliance	exampleagencyA/PREAreports.gov

CONSIDERATIONS FOR SUBMITTING A CERTIFICATION

The following information request applies only to governors who submit a certification of full compliance with the Standards to DOJ.

1. **PREA Compliance of External State Investigative Agencies.** For all governors who submit a certification of full compliance to DOJ, we ask that you indicate whether any confinement facilities considered to be under the operational control of the state's executive branch, including private facilities operated on behalf of the executive branch, rely on external state investigative agencies to perform sexual abuse and sexual harassment investigations. Where such arrangements exist, DOJ requests that governors identify these external state investigative agencies and provide information regarding these agencies' compliance with the Standards. For additional information, please refer to the formal guidance issued by the DOJ PREA Working Group (<http://www.prearesourcecenter.org/node/3278>) and to the PREA Compliance Checklist for External State Investigative Agencies: Prisons and Jails attached to the correspondence issued by DOJ to all state and territorial governors on September 9, 2016.

CONSIDERATIONS FOR SUBMITTING AN ASSURANCE

The following considerations apply only to governors who submit an assurance to DOJ. When completing the Assurance Form, governors should note that legal restrictions on the uses of the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Juvenile Justice and Delinquency Prevention Act Formula Grant Program and the Office on Violence Against Women: the Services, Training, Officers, and Prosecutors (STOP) Violence Against Women Formula Grant Program may make them unavailable to the state for addressing certain areas of noncompliance with the PREA Standards.

- **OJJDP Formula Grant Funds.** If a state is in full compliance with the Standards as they apply to the juvenile facilities, and out of compliance only with regard to adult facilities, it could not lawfully spend OJJDP Formula Grant funds to come into compliance. Because it would be impossible to use this money to come into compliance, the state would not be subject to the 5 percent reduction in OJJDP Formula Grant funding.
- **STOP Grant Funds.** STOP Grant funds are limited in that they cannot be used for new construction, even if that is necessary to bring a state into full compliance with the Standards. If a state is in full compliance except for a deficiency that requires new construction, it could not lawfully spend STOP Grant funding to come into compliance, and the state, therefore, would not be subject to the 5 percent reduction in STOP Grant funds.

The PREA Assurance Form allows governors to indicate whether either or both of these circumstances apply to the state.