

# **APPENDIX M**

## **STOP VAWA Confidentiality Requirements**

# Confidentiality After VAWA 2005

This presentation was an interpretation offered by Rob Valente and Cindy Southworth of NNEDV. Ultimately the statute will be interpreted and implemented by relevant federal agencies—they will have the official work on the meaning of what's in VAWA 2005.

## Confidentiality in VAWA 2005

- ❑ Confidentiality only applies to the VAWA grant programs – a global condition (not law)
- ❑ The confidentiality condition applies to all four crimes: domestic violence, dating violence, sexual assault, and stalking

### New Grant Condition: Confidentiality

- ❑ Protects safety of adult, youth and child victims and their families
- ❑ Requires grantees and subgrantees to provide confidentiality protections
- ❑ Applies to all entities receiving grant funds, including States receiving STOP funding, and Tribal and Territorial grantees

### New Grant Condition: Nondisclosure of Personally Identifying Information

- ❑ No personally identifying information “*collected in connection with services requested, utilized, or denied*” to be revealed
- ❑ **UNLESS**
- ❑ “*informed, written, reasonably time-limited consent of the person*” is obtained
- ❑ (or consent if guardian for minors and person lacking capacity to provide consent)
- ❑ **CONSENT MAY NOT BE GIVEN BY AN ABUSER**

### “Personally Identifying Information”

- ❑ “*information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, including . . .*”
- ❑ Name or address
- ❑ Contact information (postal or e-mail, internet protocol address, telephone, or facsimile)
- ❑ Social Security number or date of birth
- ❑ Racial, ethnic or religious identity
- ❑ Any other combined information that “*would serve to identify an individual*”

### New Grant Condition: When Release of Information is Compelled

- ❑ Statutory mandates may supersede this condition (e.g., mandatory child abuse reporting laws)
- ❑ Court orders may supersede this condition (e.g., subpoenas)
- ❑ If such release of information is compelled, grantees/subgrantees must:

- *“make reasonable attempts to provide notice to victims affected by the disclosure. . .”*
- *“take steps necessary to protect the privacy and safety of persons affected by the release. . .”*

### **New Grant Condition: Confidentiality and Information Sharing**

- ❑ *Grantees and subgrantees may share “nonpersonally identifying data in the aggregate regarding services to their clients and nonpersonally identifying demographic information in order to comply with Federal, State, tribal, or territorial reporting, evaluation, or data collection requirements. . .”*
- ❑ *Grantees and subgrantees may share –*
- ❑ *“court-generated information and law enforcement generated information contained in secure, governmental registries for protection order enforcement purposes. . .”*
- ❑ *“law enforcement and prosecution – generated information necessary for law enforcement and prosecution purposes. . .”*

### **New Grant Condition: Approved Activities**

- ❑ *“ . . . grantees and subgrantees may collaborate with and provide information to Federal, State, local tribal, and territorial public officials and agencies to develop and implement policies to reduce or eliminate domestic violence, dating violence, sexual assault, and stalking”*
- ❑ *Permits working on policy and protocols with public officials to carry out grant-funded work*

### **Homeless Management Information Systems (HMIS)**

*“...the Secretary shall instruct any victim service provider that is a recipient or subgrantee not to disclose for purposes of a Homeless Management Information System personally identifying information about any client.”*

- ❑ *In VAWA Section 605, Congress has amended the McKinney-Vento Homeless Assistance Program to protect personally identifying information of victims in Homeless Management Information Systems (HMIS).*
- ❑ *Domestic Violence Programs shall not provide identifying information about victims. This law change prohibits local victim service programs from providing personally identifying information about victims.*

*“The Secretary may, after public notice and comment, require or ask such recipients and subgrantees to disclose for purposes of a Homeless Management Information non-personally identifying data that has been de-identified, encrypted, or otherwise encoded.”*

- **New Rule Making.** If HUD wants to mandate that victim services programs provide *non-identifying* client level information, HUD must first create a new public notice and comment period.
- **Non-Identifying Data.** After notice and comment, HUD may request that victim service providers enter into HMIS non-identifying information such as aggregate totals, or other demographics that do not identify a victim. Since it is possible to identify many victims in rural states and small communities by nothing more than ethnicity or age + zip code, the information that victim service providers can share must be carefully scrutinized and limited. In addition, non-personally identifying information must be further protected by being “de-identified, encrypted, or otherwise encoded.”

*“Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this paragraph for victims of domestic violence, dating violence, sexual assault, or stalking.”*

- **Stronger Confidentiality Laws.** Over 30 states have advocate confidentiality laws that prevent local programs from disclosing any identifying information about victims, encrypted or otherwise, and if those protections are stronger than the Section 605 protection, the stronger protection will prevail.
- **VAWA has strengthened the federal confidentiality laws for VAWA and FVPSA funded programs, which further prohibits the sharing of any identifying victim information.**

Which of these VAWA Provisions will apply to my program?

- **Section 605 amends the McKinney-Vento Homeless Assistance Act** to prohibit all victim service providers from entering personally-identifying information into an HMIS database. Consistent with this federal law, victim services providers should not be providing personal, identifying information about victims, nor should they be punished by having their funds withheld or application incentives removed for complying with this law or State law.
- **The Confidentiality Provisions in Section 3 apply to programs funded by the Violence Against Women Act or the Family Violence Prevention and Services Act (FVPSA).** Many local domestic violence programs receive VAWA and FVPSA funding through their state VAWA and FVPSA Administrators.

**In VAWA section 605, who are “victim service providers”?**

Victim service providers include nonprofit organizations whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or

stalking, such as rape crisis centers, battered women's shelters, and domestic violence transition housing programs.

This also includes faith-based programs and homeless shelters which have specific victim services programs or umbrella organizations that have a specific victim services programs as part of their organization. In those cases, confidentiality protections would only extend to the specific program in question, unless the larger organization receives VAWA or FVPSA funding and falls under the Section 3 protection.

### **How can we help protect victims who use other services such as homeless shelters?**

Victims are not automatically exempt from having their information entered into HMIS when they use other HUD-funded services. It is critical that advocates educate victims about their right to decline any information about them being entered into an HMIS system and also educate other HUD funded agencies to provide full notice and consent (not "inferred consent," a concept used by some HMIS programs). All clients should have the opportunity to decline any or all electronic HMIS entry – whether the information is "scrambled," "hidden," or "open."

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"The Violence Against women and Department of Justice Authorization Act of 2005"

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