



## AN UPDATE ON THE VIOLENCE AGAINST WOMEN ACT (VAWA) & CONFIDENTIALITY *Congress agrees that Domestic Violence Programs should continue to put confidentiality first*

*NOTE: VAWA 2005 was passed in the US Senate on 12/16/05 and in the US House on 12/17/05. VAWA 2005 will go into effect as soon as the President signs the bill.*

### 1) HOW WILL NEW VAWA PROVISIONS PROTECT VICTIM INFORMATION?

Congress has clarified and reaffirmed the importance of victim confidentiality in two sections of VAWA: **Section 3** "Universal Grant Conditions: Nondisclosure of Confidential or Private Information," and **Section 605** "Amendment to the McKinney-Vento Homeless Assistance Act".

### 2) HOW WILL THE VAWA SECTION 3 CONFIDENTIALITY PROVISION MORE BROADLY PROTECT VICTIM INFORMATION?

In VAWA 2005, Congress amends VAWA and FVPSA funded programs to provide more protections for victim information in multiple arenas, including in public records and databases. With this provision, Congress clarifies and affirms existing confidentiality practices that protect the safety and privacy of victims of domestic violence, dating violence, sexual assault, and stalking.

Section 3 prohibits sharing personally identifying information about victims without "reasonably time-limited," written and informed consent. Given this new provision, VAWA and FVPSA funded programs are prohibited from disclosing personally identifying victim information to any third party database, including an HMIS system. This provision allows a survivor to choose to temporarily waive her confidentiality for a meeting or conversation or other limited period of time, through informed, written consent and a specific short-term release.

#### **VAWA SECTION 3: CONFIDENTIALITY PROVISION (see page 3 for full text)**

*"(B) NONDISCLOSURE.—Subject to subparagraphs (C) and (D), grantees and subgrantees shall not — (i) disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs; or (ii) reveal individual client information without the informed, written, reasonably time-limited consent of the person*

*...(D) INFORMATION SHARING.—Grantees and subgrantees may share— (i) 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;"*

### 3) WHAT HMIS RELATED PROVISIONS ARE INCLUDED IN VAWA?

In Section 605, Congress has amended the McKinney-Vento Homeless Assistance Program in VAWA to protect personally identifying information of victims.

- **Domestic Violence Programs shall not provide identifying information about victims.** VAWA 2005 prevents local victim service programs from providing personally identifying information about victims. It is Congress' clear intent that encoding or scrambling personally identifying information does not make it subject to disclosure.

*"...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."*

- **New Rule Making.** If HUD wants to mandate that victim services programs provide *non-identifying* information, such as aggregate data, 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.”

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

- **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. As mentioned above, VAWA 2005 has strengthened the federal confidentiality laws for VAWA and FVSPA funded programs, which further prohibits the sharing of any identifying victim information.

*“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.”*

4) **WHEN DO THESE VAWA PROVISIONS TAKE EFFECT?** Section 605, the amendment to the McKinney-Vento program will go into effect as soon as the President signs VAWA 2005 into law. Federal agencies will be providing more information to grantees about the confidentiality provision in Section 3 of VAWA, including when it goes into effect. In collaboration with federal agencies, NNEDV will continue to provide guidance to the field.

5) **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 and the Continuums of Care to which they belong 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. Your state domestic violence coalition can help you determine if you receive VAWA or FVPSA funding.

6) **IN 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 transitional 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 program 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.

7) **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.” NNEDV will continue to work with Congress and with other national homeless organizations to protect all victims who use HUD-funded services.

**VAWA SEC. 3. NONDISCLOSURE OF CONFIDENTIAL OR PRIVATE INFORMATION.—**

“(A) IN GENERAL.—In order to ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families, grantees and subgrantees under this title shall protect the confidentiality and privacy of persons receiving services.

“(B) NONDISCLOSURE.—Subject to subparagraphs (C) and (D), grantees and subgrantees shall not —

“(i) disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees’ and subgrantees’ programs; or

“(ii) reveal individual client information without the informed, written, reasonably time-limited consent of the person (or in the case of an unemancipated minor, the minor and the parent or guardian or in the case of persons with disabilities, the guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, person with disabilities, or the abuser of the other parent of the minor.

“(C) RELEASE.—If release of information described in subparagraph (B) is compelled by statutory or court mandate—

“(i) grantees and subgrantees shall make reasonable attempts to provide notice to victims affected by the disclosure of information; &

“(ii) grantees and subgrantees shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

“(D) INFORMATION SHARING.—Grantees and subgrantees may share—

“(i) 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;

“(ii) court-generated information and law-enforcement generated information contained in secure, governmental registries for protection order enforcement purposes; and “(iii) law enforcement- and prosecution-generated information necessary for law enforcement and prosecution purposes.

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**VAWA SEC. 605. AMENDMENT TO THE MCKINNEY-VENTO HOMELESS ASSISTANCE ACT.**

Section 423 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383) is amended—

(1) by adding at the end of subsection (a) the following:

“(8) CONFIDENTIALITY.—

(A) VICTIM SERVICE PROVIDERS.—In the course of awarding grants or implementing programs under this subsection, 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. The Secretary may, after public notice and comment, require or ask such recipients and subgrantees to disclose for purposes of a Homeless Management Information System non-personally identifying data that has been 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.

“(B) DEFINITIONS.—

“(i) PERSONALLY IDENTIFYING INFORMATION OR PERSONAL INFORMATION.—The term ‘personally identifying information’ or ‘personal information’ means individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, including—

“(I) a first and last name;

“(II) a home or other physical address;

“(III) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);

“(IV) a social security number; and

“(V) any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any other non-personally identifying information would serve to identify any individual.

“(ii) VICTIM SERVICE PROVIDER.— The term ‘victim service provider’ or ‘victim service providers’ means a nonprofit, nongovernmental organization including rape crisis centers, battered women’s shelters, domestic violence transitional housing programs, and other programs whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking.”