



Highlights from the Revised FVPSA Regulations for Advocates and Programs Serving LGBTQ Survivors



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Introduction:

Revised rules and regulations regarding the FVPSA program have taken effect.

The Family Violence Prevention and Services Act program provides federal funds to states for distribution to DV and SA programs. Most DV programs receiving state funds also receive FVPSA funds. The FVPSA regulations set forth important parameters, limits and requirements for FVPSA funded programs. These regulations impact survivors on a day to day level.

FVPSA program office undertook a careful and collaborative process of updating regulations to reflect what the field has learned about the needs and realities of DV survivors as well as the DV movement's and Federal Government's commitment to meaningful and accessible services for DV survivors and their children.

Changes include improvements and clarifications related to access to DV advocacy and shelter for LGBTQ survivors.

The Notice of Proposed Rulemaking (a document outlining areas of the regulation under scrutiny, and asking for input from the public) was published in October 2015. The revised final rules were published in November 2016 in the Federal Register, and went into effect January 3rd, 2017.

The release of the new federal regulations includes a thorough discussion of the intent of the regulations as well as the public input received, and how that input was integrated or why it was not integrated. It also includes the entire revised set of regulations. In this document you will find hyperlinks to both the FVPSA program office responses to public input and the formal regulations. The entire release document can be found [here](#).

TOP 10 Things to Know about FVPSA Regs re: LGBTQ IPV

(please note all italics are added for emphasis)

1. The *non-discrimination requirements* related to sexual orientation and gender identity, transgender and gender non-conforming individuals are strengthened and clarified throughout the regulation.
2. § 1370.5(c) is revised to read: (c) *No person shall on the ground of actual or perceived sexual orientation be excluded* from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part through FVPSA.
3. The definition of *Underserved Populations includes LGBTQ survivors*.
4. *Survivors must be housed according to their gender identity or preference*. Programs may not ask about medical histories or demand documentation with proof of gender.
5. *The definition of shelter is clarified to allow for more flexibility* in the form shelter takes. “Shelter” does not have to be in a building owned or leased by the DV program. “Shelter” can include short term rental subsidies and other forms of material assistance to survivors to ensure their safe refuge is acceptable.
6. *Sex segregated programming may be offered in certain circumstances*, but the rationale for it must be justified.
7. When programs offer sex segregated services, and a survivor otherwise eligible for services cannot access those services because they are sex segregated, then they must offer *comparable services* to that survivor.
8. Services must be *voluntary*.
9. Programs must *guard personally identifying information* carefully; they *do not need to ask about citizenship* status.
10. Programs may not screen potential recipients of shelter based *on substance use, past arrest history*, or other inappropriate screens.

Highlights from the new FVPSA Regulations

(please note all italics in quotes from the rule are added for emphasis)

Non-Discrimination and Accessibility

The non-discrimination requirements related to sexual orientation and gender identity, transgender and gender non-conforming individuals are strengthened and clarified throughout the regulation.

The regulation makes clear that failure to serve individuals based on their actual or perceived sexual orientation is a violation of FVPSA because all victims of family violence, domestic violence, and dating violence should have access to FVPSA-funded programs.

Consistent with the idea that FVPSA funding exists to provide services to all survivors of domestic violence, [the rule states](#):

1370.5 (a) No person shall on the ground of actual or perceived sexual orientation be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part through FVPSA.

1370.5(a)(4)As with all individuals served, transgender and gender nonconforming individuals must have equal access to FVPSA-funded shelter and nonresidential programs. Programmatic accessibility for transgender and gender nonconforming survivors and minor children must be afforded to meet individual needs consistent with the individual's gender identity.

1370.5(c)(1) All programs must take into account participants' needs and be inclusive and not stigmatize participants based on actual or perceived sexual orientation.

Definitions have been clarified and improved:

Underserved Populations includes LGBTQ survivors

The definition is clarified to include actual or perceived sexual orientation and gender identity.

“[Underserved populations](#) is revised to mean populations who face barriers in accessing and using victim services, and includes populations underserved because of geographic location, religion, *sexual orientation, gender identity*, underserved racial and ethnic populations, language barriers, disabilities, immigration status, and age. Individuals with criminal histories due to victimization and individuals with substance use disorders and mental health issues are also included in this definition.”

Shelter:

The definition of shelter and temporary refuge is clarified to make clear that the meanings are broader than the dominant model of shelter (which is a congregate shelter operated in a single building by the dv program.)

The new regulations are responsive to the reality that some individuals from underserved populations and culturally – and linguistically – specific populations may not feel comfortable in congregate shelters because they fear disparate treatment by the residents themselves, do not feel comfortable living in congregate housing, or because some shelters do not have the capacity or expertise to provide welcoming and meaningful services to every individual.

Shelter Definition:

“Shelter means the provision of temporary refuge in conjunction with supportive services...”

...“This definition also includes emergency shelter and immediate shelter, which may include housing provision, rental subsidies, temporary refuge, or lodging in properties that could be individual units for families and individuals (such as apartments) in multiple locations around a local jurisdiction, Tribe/reservation, or State; such properties are not required to be owned, operated, or leased by the program.”

...“Temporary refuge includes a residential service, including shelter and off-site services such as hotel or motel vouchers or individual dwellings, which is not transitional or permanent housing, but must also provide comprehensive supportive services.”

In other words, programs may find multiple ways to help survivors obtain or maintain safe housing. The important thing is that resources are used to help the survivor be safe AND the program provides advocacy and supportive services.

Domestic violence and Dating Violence:

Definitions of Domestic Violence and Dating Violence were revised for clarity, are gender neutral, and include financial abuse, abuse that happens electronically or in person, and stalking. The regulations note that the definitions apply “to individuals and relationships regardless of actual or perceived sexual orientation or gender identity.”

Personally Identifying Information and Confidentiality

The clarified definition makes clear that “personally identifying information” is interchangeable with “personal information” And means any information likely to disclose the location of a victim. It clarifies that even when data is “protected” by encryption, encoding or any other protective process”, it is still considered *personally identifying*, and thus should not be shared. The definition of personally identifying info lies in the *kind* of information collected regardless of the *protections* given to that information. Thus the claim “no one could ever hack this data including personal information that I am sharing with my funder” is no better than “I gave my funder a file cabinet full of files but not the key, so the info is safe.” Neither scenario is acceptable.

Advocacy Note:

This clarification and revision will make it easier for states to fund “DV Housing First” programs, which are essentially DV advocacy + meaningful and targeted material resources meant to help people keep, obtain or increase the safety of housing. The clarification on the multiple ways a program may offer “safe refuge” or shelter should encourage programs to evolve and tailor services more fully to the needs of individuals.

FVPSA funded programs should not ever share personally identifiable information without full, informed and time limited consent, ever, even if services take place under a different funding source.

[1370.4 \(1-3\)](#) makes clear that Grantees and subgrantees SHALL NOT:

- A. Disclose any personally identifying information (as defined in § 1370.2) collected in connection with services requested (including services utilized or denied) through grantees' and subgrantees' programs;
- B. Reveal any personally identifying information without informed, written, reasonably time-limited consent by the person about whom information is sought, whether for this program or any other Federal, Tribal or State grant program, including but not limited to whether to comply with Federal, Tribal, or State reporting, evaluation, or data collection requirements; or
- C. Require an adult, youth, or child victim of family violence, domestic violence, and dating violence to provide a consent to release his or her personally identifying information as a condition of eligibility for the services provided by the grantee or subgrantee.

Requirements for program practices are both affirmed and clarified

Voluntary Services

FVPSA continues to affirm its longstanding commitment to [voluntary services](#):

The receipt of shelter cannot be conditioned upon participation in other services. This includes pursuing specific legal remedies. ([1370.10 \(b\)\(10\)](#))

Shelters may not require counseling, parenting, mental health or substance use disorders treatment, or life skill classes as a condition of receiving shelter.

Sex segregated services:

With regard to gender identification, the regulations affirm the importance of promoting environments that are both inclusive and safe: values familiar to the domestic violence movement.

Advocacy Note:

LGBTQ people may not feel comfortable with or supported by other residents in a shelter. Providing the option to sit out groups allows LGBTQ survivors to avoid other resident's homophobia or transphobia.

Advocacy Note:

This rule makes clear that FVPSA funded programs must refuse requests from other funders to enter personally identifying data into shared data banks like HMIS. Entering data into shared databanks is not consistent with FVPSA requirements. Survivors must give informed consent before info is entered into shared data systems. Informed consent must be time limited (ie, the survivor consents to sharing information for a set period of time). Because HMIS data, in particular, is kept indefinitely, it is not possible to obtain time limited consent, as required by FVPSA. Thus no FVPSA funded program should enter data into HMIS databases.

The Regulations continue to affirm that in some circumstances, sex segregated services may be necessary to [essential operation](#) of programs. This rule incorporates language consistent with the Department of Justice's Office on Violence Against Women regulations allowing sex-segregation or sex-specific programming when it is “essential to the normal or safe operation of the program.”

The regulation clarifies

- How sex-segregated services may be justified
- Policy regarding survivor’s children of both sexes in context of sex-segregated services (including teens)
- How trans people should be treated, and
- Program obligations to provide comparable services.

Overall, the regulations allow for flexibility in serving diverse populations while affirming the importance of access and providing comparable services to people of all genders.

Advocacy Note:

Increasing privacy increases access. Programs offering shelter should make changing physical spaces to make it easier to provide services to people of all genders into their mid and long term strategic planning. For ideas and resources, look to Building Dignity, DV Housing First models and emerging innovations in the fields: .

a) How would a program justify sex segregated services?

Sex segregated programming is not taken as a given; instead programs must evaluate if they are necessary and justify them. Programs must offer reasoned justification of sex segregation, and [“The justification cannot rely on unsupported assumptions or overly-broad sex-based generalizations.”](#) Further, “a grantee or subgrantee may not provide sex-segregated or sex-specific services for [reasons](#) that are trivial or based on the grantee's or subgrantee's convenience.”

Advocacy note:

It is more important than ever to understand how to assess for who is surviving abuse accurately instead of relying primarily on gender as a sorting mechanism.

FVPSA funded programs are directed to consider the following when deciding whether or not to make their services sex-segregated:

- the nature of the service
- the anticipated positive and negative consequences to all eligible beneficiaries of not providing the program in a sex-segregated or sex-specific manner,
- the literature on the efficacy of the service being sex-segregated or sex-specific, and
- whether similarly-situated grantees and subgrantees providing the same services have been successful in providing services effectively in a manner that is *not* sex-segregated or sex-specific.

b) Sex Segregated Services and children of survivors:

[1370.5 \(a\)\(1\)](#) notes that families should be housed together, without regard to the sex of the children; and that minor children of survivors should be housed with their parents regardless of actual or perceived sex, including gender identity, unless they request otherwise. This means,

for example, adolescent sons should reside with their mothers. Shelter programs may not refuse to house an adolescent son or daughter along with a victim because that program offers sex segregated services.

c) Sex segregated services and access for trans, non-binary and gender non-conforming survivors:

[§ 1370.5\(a\)\(4\)](#) explains: “Transgender and gender nonconforming individuals must have equal access to FVPSA-funded shelter and nonresidential programs. Programmatic accessibility for transgender and gender nonconforming survivors must be afforded to meet individual needs to the same extent as those provided to all other survivors. ACF requires that a FVPSA grantee ... must offer every individual an assignment consistent with their gender identity.”

In other words, if a program has decided sex segregated services are essential, and serves “only women” in some part of its program, then that program must treat every person who identifies as a women equally.

However, a program may not require a person they are serving to reveal information about their anatomy or medical history to establish which sex segregated service a person should be assigned to.

“For the purpose of assigning a service beneficiary to sex-segregated or sex-specific services, the grantee/subgrantee may ask a beneficiary which group or services the beneficiary wishes to join. The grantee/subgrantee may not, however, ask questions about the beneficiary's anatomy or medical history or make demands for identity documents or other documentation of gender.”

Consistent with survivor-centered advocacy, “A victim's/beneficiary's or potential victim's/beneficiary's request for an alternative or additional accommodation for purposes of personal health, privacy, or safety must be given serious consideration in making the placement.”

[§ 1370.5\(a\)\(4\)](#) also requires that a “provider will not make an assignment or re-assignment of the transgender or gender nonconforming individual based on complaints of another person when the sole stated basis of the complaint is a victim/client or potential victim/client's non-conformance with gender stereotypes or gender identity”

In sum:

- Thus transgender women should have access to services which are sex segregated for women
- When programs have sex segregated services, they should ask individuals which group or services they wish to join, based on their gender identity
- Programs may not ask trans people to “prove” their sex/gender identity by prying into their medical history or demanding ID documents consistent with gender identity

Advocacy Note:

Be ready to quote this regulation when advocating for trans women seeking shelter.

Need help figuring out how to serve and shelter trans women?

Resources exist to help.

www.lgbtqipv.org

- Programs should not reassign or exit trans or gender nonconforming people based on other participant complaints regarding that person’s gender presentation

d) Comparable Services for people who cannot use sex segregated services:

When a program chooses to provide sex segregated services, they must provide comparable services victims who are otherwise eligible for services but cannot access them because of gender identity. The regulation makes clear that when sex segregated services exist, programs “may meet the requirements ... by providing [comparable](#) services to individuals who cannot be provided with the sex-segregated or sex-specific programming, including access to a comparable length of stay, supportive services, and transportation as needed to access services.”

This means, for example, if a dv victim who identifies as male cannot be housed in a communal shelter because it is sex segregated, then that person must be given comparable services -- for example, a motel stay for a similar length of time, along with advocacy and supportive services.

Privacy in shelter:

As advocates, we know privacy is critical to all survivors, including LGBTQ survivors. The revised regulations do not require privacy, but the FVPSA response/explanation of the regulations does note that [“it is a best practice for families to have their own bedrooms and bathrooms.”](#)

This is progress, and resonates with the National LGBTQ Institute on IPV’s recommendations regarding [improving privacy in order to improve access](#).

Conditions for admission to shelter (aka “screening”):

Programs cannot impose conditions for admission to shelter by applying inappropriate screening mechanisms: sobriety, criminal background checks, requirement to obtain specific legal remedies. ([1370.10 \(b\)\(10\)](#))

For example, the fact that a survivor went out drinking the night before calling for help must not disqualify that person from being admitted into shelter. Nor can programs require shelter residents to file for a Protective Order as a condition of obtaining temporary refuge or shelter.

Personally Identifying Information and Confidentiality

Programs under pressure to enter personally identifying information in shared databases should take special note of this section.

FVPSA continues to require stringent confidentiality protections for recipients of services.

The definition of Personally Identifying Information makes clear that this term is interchangeable with ‘personal information.’

Advocacy Note:

Because of over-policing of trans, LGBTQ and people of color communities, queer people of color in particular may have criminal records. These should not pose a barrier to being sheltered. Advocacy should include help with resolving outstanding fines and warrants.

Programs shall not reveal [any personally identifying information](#) without [informed, written, reasonably time-limited](#) consent by the person about whom information is sought, whether for this program or any other Federal, Tribal or State grant program, including but not limited to whether to comply with Federal, Tribal, or State reporting, evaluation, or data collection requirements.

Clarification regarding data, personally identifying information and citizenship status:

Programs do not need to collect data on citizenship status.

The regulations make clear that programs should provide services without requiring information on [documentation of immigrants](#). Programs should not routinely ask about citizenship status, nor do they need to collect data on citizenship status for reporting related to FVPSA.

- Citizenship documentation is not required to provide services to an individual.
- FVPSA does not collect personal identity or citizenship documentation as part of quantitative data gathering.
- Demographic data reported by programs to FVPSA does not need to identify citizenship status.

Shelter and program location confidentiality

Several points in the regulations make clear that program locations do not need to be secret/confidential, but if they are, the location should not be made public except by written permission from the program.

The regulations also [emphasize](#) that if programs [do choose](#) to keep a confidential location, that they must have policies to keep the shelter secure and respond to disruptive and dangerous contact from abusers. ([1370.4 \(g\)\(1\)](#))

The point is that “secret” locations are tenuous, and thus security measures separate from secrecy are necessary to ensure safety.

Note that FVPSA at [42 U.S.C. 10406\(c\)\(5\)\(H\)](#), does not require that all shelters be confidential. The statute reads, “the address or location of any shelter facility assisted under this title that otherwise maintains a confidential location, except with written authorization of the person or persons responsible for operation of such shelter, not be made public.”

The statutory language is unambiguous. It does not require that shelter locations be confidential, but rather that *if* they maintain a confidential location, that location cannot be made public without written permission from the program's leadership.

Advocacy note:

DV programs may want to explore [security vs. secrecy](#) strategies to keep shelter safe. This rule clarification increases flexibility for programs. Known but secure locations make it easier for survivors to stay connected to community and for advocates to bring outside resources in. This can be helpful for all survivors, but especially LGBTQ, POC and LEP survivors

This clarification could make it easier for DV programs to give up onerous rules regarding secrecy of location, and instead focus on instituting realistic security protocols and facilitating survivors reconnecting with supportive community.

Services to minors:

Supportive services is defined to include services for adult and youth victims of family violence.

[Regarding a minor's ability to consent to services](#): generally, minors must both give consent themselves and have a parent or guardian provide consent, unless it is legally possible for the minor to consent to services without a parent under state law. State law determines the age of consent for services, and this rule defers to state law. When state law allows a minor to consent to services without a parent or guardian, the FVPSA regulations clarify that a minor can also consent to a release of information without a parent or guardian's consent.

Caution regarding reporting to CPS

In discussing discretionary grants designed to prevent DV meet and meet the needs of children exposed to family violence, domestic violence, or dating violence, the regulations have been revised to clarify programs' obligations in responding to DV and suspected child abuse. Consistent with [§ 1370.31\(b\)\(1\)](#) programs receiving FVPSA funds under discretionary grants focused on children, youth and parents must:

- “consider the victim’s decision making regarding children’s safety” in context of DV,
- “not place burdens or demands on the victim that the victim cannot comply with because of the offender’s control.”

And perhaps, most importantly:

- “avoid actions that discourage victims from help seeking, such as making unnecessary referrals to child protective services”

In other words, if a survivor is seeking assistance to make themselves and their children safer, the program providing that help should be cautious about making a report to CPS based on exposure to DV, or victim contact with their abuser. Programs should use discernment to distinguish between necessary and unnecessary reporting to CPS, and avoid unnecessary reporting practices which are likely to discourage victims' help seeking.

Advocacy Note:

Over-reporting to CPS discourages teens impacted by DV and survivors with children from seeking help. Read our [report on this](#), [increase advocacy skills](#) for survivors in contact with abusers, and refer to our [recommendations](#) regarding mandated reporting and youth.

Communication with individuals who have Limited English Proficiency and communication with people with disabilities:

Consistent with Federal Civil Rights requirements, the definition of “[supportive services](#)” now includes linguistically appropriate services. Programs must have plans to ensure effective communication and equal access ([1370.5\(e\)](#)).

National LGBTQ Institute on IPV

www.lgbtqIPV.org



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