

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Part 1370

RIN 0970-AC62

### Family Violence Prevention and Services Programs

**AGENCY:** Family and Youth Services Bureau (FYSB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Final rule.

**SUMMARY:** This rule will better prevent and protect survivors of family violence, domestic violence, and dating violence, by clarifying that all survivors must have access to services and programs funded under the Family Violence Prevention and Services Act. More specifically, the rule enhances accessibility and non-discrimination provisions, clarifies confidentiality rules, promotes coordination among community-based organizations, State Domestic Violence Coalitions, States, and Tribes, as well as incorporates new discretionary grant programs. Furthermore, the rule updates existing regulations to reflect statutory changes made to the Family Violence Prevention and Services Act, and updates procedures for soliciting and awarding grants. The rule also increases clarity and reduces potential confusion over statutory and regulatory standards. The rule codifies standards already used by the program in the Funding Opportunity Announcements and awards, in technical assistance, in reporting requirements, and in sub-regulatory guidance.

**DATES:** This final rule becomes effective January 3, 2017.

**FOR FURTHER INFORMATION CONTACT:** Marylouise Kelley, Ph.D., Division Director, (202) 401-5756 (not a toll-free call), [marylouise.kelley@acf.hhs.gov](mailto:marylouise.kelley@acf.hhs.gov). Individuals who are deaf or hard of hearing may call the Federal Dual Party Relay Service at 1-800-977-8339 between 8 a.m. and 7 p.m. Eastern Time.

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#### I. Statutory Authority

This final rule is being issued under the authority granted to the Secretary of Health and Human Services by the Family Violence Prevention and Services Act (FVPSA), 42 U.S.C. 10404(a)(4), as most recently amended by the Child Abuse Prevention and Treatment (CAPTA) Reauthorization Act of 2010 (Pub. L. 111-320).

#### II. Background

FVPSA grants are administered to: Assist States and Indian Tribes in efforts to increase public awareness about, and primary and secondary prevention of, family violence, domestic violence, and dating violence; assist States and Indian Tribes in efforts to provide immediate shelter and supportive services for victims of family violence, domestic violence, or dating violence, and their dependents; provide for a national domestic violence hotline; provide for technical assistance and training relating to family violence, domestic violence, and dating violence programs to States and Indian Tribes, local public agencies (including law enforcement agencies, courts, and legal, social service, and health care professionals in public agencies), nonprofit private organizations (including faith-based and charitable organizations, community-based organizations, and voluntary associations), Tribal organizations, and other persons seeking such assistance and training. This final rule covers all of these activities.

#### III. Notice of Proposed Rulemaking

ACF published a Notice of Proposed Rulemaking (NPRM) on October 14, 2015 to propose regulations that ensure victims of domestic and dating violence and their dependents are provided shelter and supportive services that meet statutory requirements and incorporate field-based best practices. The NPRM proposed regulatory guidance for all FVPSA-funded formula and discretionary grantees and subgrantees.<sup>1</sup> The NPRM also proposed

<sup>1</sup>The terms “grantee” and “recipient” are interchangeable pursuant to 45 CFR part 75. Although 45 CFR part 75 uses the term “recipient” throughout, its definition section defines “grantee” by citing to the definition for “recipient”. See 45 CFR 75.2. Therefore, for purposes of this rule, ACF will primarily use the terms “grantee” and “subgrantee” to refer to “recipients” and “sub-recipients” to align with the terms used in 45 CFR part 75, except where there are FVPSA references

to incorporate statutory provisions that were not in the existing rule. In addition to general comments, the NPRM sought input from commenters on a number of specific requirements and provisions.

ACF received 41 public comments from individuals and advocacy organizations. We include a detailed summary of comments as well as HHS’ responses to comments in Section IV of this final rule. Public comments on the proposed rule are available for review on [www.regulations.gov](http://www.regulations.gov).

#### IV. General Comments and the Final Rule

Key provisions to this ACF final rule lay out a framework to address reauthorized statutory language within the context of field-based best practices and programmatic guidance. The rule reflects a reorganization of the previous regulations that specifically divide formula grants and discretionary grants into independent sections and add new grants programs; including *Specialized Services for Abused Parents and Their Children* (emphasis added). The rule also provides guidance that addresses accessibility and discrimination by clarifying and reinforcing that anti-discrimination provisions apply to all grantees. In FVPSA Reauthorization 2010, the anti-discrimination language, formerly contained in a separate statutory section applicable to the entire title, was relocated to the formula grants to States section. This led to confusion and was interpreted by some as only applying to State formula grantees. The new regulatory language eliminates this confusion and makes it clear that the anti-discrimination provisions continue to encompass all FVPSA grant programs and apply to all grantees and subgrantees.

The final rule also includes a definition for “personally identifying information (PII) or personal information” to ensure that all grantees and subgrantees have a clear, shared understanding of confidentiality requirements. The statutory voluntary services and no conditions on the receipt of emergency shelter requirements reinforce that services must be voluntary and no conditions can be imposed on receipt of emergency shelter. The regulation incorporates these new requirements, and further specifies the prohibition on imposing “conditions” to prohibit shelters from

to “contractors”, in which case “recipient” and “sub-recipient” will be used where appropriate. For purposes of referring to victims of domestic, dating, and family violence as program or service clients or beneficiaries, the term “beneficiary” will be used where appropriate and to avoid confusion with “recipient.”

applying inappropriate screening mechanisms, such as criminal background checks or sobriety requirements. Similarly, the receipt of shelter should not be conditioned on participation in other services, such as counseling, parenting classes, or life-skills classes. Such requirements not only impede on the basic human need for access to shelter, but could also limit access to lifesaving shelter and services and have the potential of contradicting best practices related to trauma-informed direct service provision.

The final rule also includes guidance about State/Tribal planning and State/Tribal Domestic Violence needs assessments that promote greater coordination of these statutorily required activities to foster inclusion of underserved communities and better identify the needs of all victims of domestic and dating violence. Specialized Services for Abused Parents and Their Children and State resource centers to reduce disparities in domestic violence in States with high proportions of Indian (including Alaska Native) or Native Hawaiian populations (§ 1370.30) are newly authorized programs, also included in the rule.

Below we have summarized the primary changes made after the NPRM was published as a direct result of the comments received. It is important to note that all of the changes are fairly minor and none result in a significant impact on the overall direction of the key provisions listed above.

#### *Section 1370.2 What definitions apply to these programs?*

**Definitions**—Most of the definitions included in the final rule are amended to clarify and specify the terms. The primary-purpose domestic violence service provider definition is clarified through discussion to indicate that the term only applies to the membership requirements of a State Domestic Violence Coalition. In some cases, examples are added to the definitions to paint a clearer picture for the field.

**Confidentiality**—Additional language is added to the confidentiality provisions to clarify that nothing in the rule prohibits disclosure if there is an imminent risk of serious bodily injury or death of the victim or another individual. The final rule also includes two additional subsections that provide guidance to shelters to clarify that consent to a release of information cannot be a condition of service, and to clarify that tribal governments may determine how to maintain the safety and confidentiality of shelter locations. Additional technical changes are made

to this section in response to the comments.

**Non-Discrimination and Accessibility**—Revisions to the text are made to strengthen the non-discrimination requirements related to sexual orientation and gender identity, including specific language related to transgender and gender non-conforming individuals. This final rule also partially incorporates standards outlined by the Department of Justice's Office on Violence Against Women in order to allow sex segregation or sex-specific programming when it is essential to the normal or safe operation of the program. Additionally, changes are also made to this section to better describe the policies related to housing families together.

**Human Trafficking**—Based on comments received, provisions of the rule text are removed that would have allowed FVPSA-funded programs to serve victims of human trafficking if space allowed and if they had not experienced domestic or dating violence. We agree with the commenters who stated that effectively serving human trafficking victims who have not experienced domestic violence or dating violence requires specialized resources, training, and expertise that may be outside the scope of FVPSA-funded programs.

**State and Tribal Grants**—The rule text is slightly revised to clarify the expectation for States and State Domestic Violence Coalitions to work together. The final rule specifies how States should identify underserved populations and work with Tribes and Tribal coalitions. We also allow States to use their own definition of urban and rural in the final rule.

**State Domestic Violence Coalition Grants**—Minor and technical changes are made throughout this section of the rule to more accurately reflect the roles and purposes of State Domestic Violence Coalitions and to ensure newly formed Coalitions can compete for resources should there be newly designated coalitions due to mergers or dissolution.

**Grants for Specialized Services for Abused Parents and their Children**—The final rule includes a stronger emphasis on confidentiality requirements for these grants. We also added a section that prevents professionals working with children and families from inappropriately punishing non-abusive parents for, among other things, cohabiting with an abusive parent. Technical changes are also made to better reflect the statutory language.

**Domestic Violence Hotline Grants**—This section now includes video among

the examples of communication methods in the definition of telephone.

ACF received general comments about this rule. Below, ACF summarizes comments and responds accordingly.

**Comment:** Many commenters supported the NPRM generally, including Tribes and Tribal organizations, national and State organizations, shelters, non-residential service providers, and community members. One commenter said the proposed rule strengthens Family Violence Prevention and Services programs and benefits those affected by domestic violence. Another commenter stated that the regulations seem very helpful and hoped that the NPRM achieves its goals. A commenter agreed with the proposed revisions because they benefit underprivileged populations and would increase the clarity and reduce confusion over statutory and regulatory changes. One other commenter stated that they feel strongly that this proposed rule has merit behind it, that with dating abuse being such a sensitive and important subject, it is clear that the intent of the revisions is to help victims of domestic violence. This commenter also felt that it is beneficial to give clearer definitions of domestic violence so that there is no confusion about eligibility for services. Finally, another commenter commended HHS and the Administration for the work to ensure that domestic violence survivors have appropriate access to domestic violence programs and to safety and confidentiality for victims.

**Response:** ACF appreciates the positive comments and believes that FVPSA-funded programs will benefit from the additional clarity and program guidance. In this final rule, ACF includes provisions that improve Federal oversight, ensure accountability for purposes consistent with FVPSA, and promote increased coordination and collaboration among and between grantees and subgrantees.

**Comment:** One commenter suggested that the NPRM preamble be amended to clarify how this rule furthers the government's efforts to ensure the human right to be free from domestic violence. The commenter suggested that the preamble explicitly capture how the proposed rule fosters human rights and meets basic needs and asked that ACF include revised preamble language to incorporate the "due diligence" standard, representing the internationally accepted standard to guide government efforts to address the

rights of women, specifically the right to be free from domestic violence.<sup>2</sup>

*Response:* Our goal in implementing this rule is to better prevent and protect survivors of family violence, domestic violence, and dating violence, in accordance with the Family Violence Prevention and Services Act (FVPSA) at 42 U.S.C. 10404(a)(4). While we have not revised the language in this preamble to extensively discuss the human rights framework, ACF appreciates the goals of the human rights framework for addressing gender-based violence and the incorporation of human rights into government programs, such as how basic needs like housing are critical for people to live free from violence. Additionally, while we have not revised the language in this preamble to extensively discuss the human rights framework, ACF appreciates the goals of the human rights framework for addressing gender-based violence and the incorporation of human rights into government programs, such as how basic needs like housing are critical for people to live free from violence.

*Comment:* Two commenters suggested that any HHS regulation should mirror the language in FVPSA and not create new requirements beyond what FVPSA requires and which are not legally tenable.

*Response:* The Secretary is delegated specific authority in 42 U.S.C. 10404(a)(4) to prescribe such regulations and guidance as are reasonably necessary in order to carry out the objectives and provisions of FVPSA, including regulations and guidance on implementing new grant conditions established or provisions modified by amendment to FVPSA by the Child Abuse Prevention and Treatment Act (CAPTA) Reauthorization Act of 2010, Public Law 111–320, to ensure accountability and transparency of the actions of grantees and contractors, or as determined by the Secretary to be reasonably necessary to carry out FVPSA. As such, regulatory requirements identified in this rule, including new or revised definitions, are provided to support grantees and

ensure consistency in FVPSA-funded programs and projects. Other non-definitional and programmatic requirements are included to support the effective Federal administration of FVPSA and to promote field-based best practices, which have been longstanding in the program, and communicated through funding opportunity announcements and other guidance to the field.

*Comment:* A few commenters suggested that a complaint process be included in this rule for program beneficiaries and others to use when they believe their civil rights are being violated by ACF/FVPSA-funded programs and subgrantees.

*Response:* Consistent with existing law and regulations, HHS Office of Civil Rights (OCR) will continue to accept, screen and investigate civil rights complaints for all federal health and human services programs, including FVPSA. More specifically, the OCR addresses complaints of discrimination based on race, color, national origin, disability, age, sex (including sex stereotyping and gender identity), or religion in programs or activities that HHS directly operates or to which HHS provides federal financial assistance. Given OCR's expertise, it does not make sense for FVPSA to have its own complaint process. At the same time, the ACF/FVPSA Program may be contacted by grantees, subgrantees, contractors, and individuals to make complaints and identify other concerns, and it will monitor such issues to provide guidance and potentially take corrective action to remedy violations of FVPSA statutory and regulatory requirements. Corrective action is an official process involving multiple HHS/ACF components to help ensure legal and programmatic integrity. However, there is no requirement that ACF be contacted first for alleged civil rights violations and/or ACF may receive a complaint and refer it for investigation rather than address it programmatically; decisions on these matters are addressed case by case. To file a complaint of discrimination regarding a program receiving Federal financial assistance through the U.S. Department of Health and Human Services (HHS), write: HHS Director, Office for Civil Rights (OCR), Room 515–F, 200 Independence Avenue SW., Washington, DC 20201. Persons needing help filing a civil rights complaint may contact OCR at [OCRMail@hhs.gov](mailto:OCRMail@hhs.gov), or call 1–800–368–1019 (voice) or (800) 537–7697 (TTY). Persons may also file complaints using the OCR Complaint Portal at: [https://ocrportal.hhs.gov/ocr/cp/complaint\\_frontpage.jsf](https://ocrportal.hhs.gov/ocr/cp/complaint_frontpage.jsf).

*Comment:* Two commenters suggested that the rule address violence generally, beyond the statutorily required family, domestic, and dating violence.

*Response:* The FVPSA program and this rule focus entirely on family, domestic, and dating violence. Violence, other than family, domestic and dating violence, is not within the scope of the FVPSA statute and therefore cannot be addressed in this rule.

*Comment:* One commenter suggested that more grants be awarded to public entities in contrast to private entities. This commenter acknowledged that private entities tend to have more capacity and abilities when it comes to certain areas versus the public sector. Specifically, the commenter would like to see more colleges and universities funded by ACF with FVPSA funding.

*Response:* ACF did not make any changes in response to this comment. ACF makes funding available to all categories of eligible applicants based on the eligibility requirements outlined in statute for each program identified in FVPSA, which may include institutions of higher education. Discretionary grants are awarded pursuant to independent peer review processes and, in accordance with statutory requirements, formula grants are awarded directly to State grantees, Tribes, Tribal organizations, and State Domestic Violence Coalitions. States may subgrant/subcontract to programs, organizations, and agencies within their jurisdictions using independent grants' awards processes. Tribes or Tribal organizations may subgrant/subcontract to programs or organizations within their jurisdictions. Due to the statutory formula, ACF has limited discretion in determining who receives FVPSA funding.

*Comment:* Multiple commenters supported NPRM language that addressed the need for improving access for underserved populations, including battered immigrants and Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) individuals, to FVPSA-funded programs and services.

*Response:* ACF appreciates the positive comments and believes that FVPSA-funded programs will benefit from the additional clarity and program guidance related to serving these populations. We also provide additional detail throughout the section-by-section public comments and responses, including definitions and other guidance, that help to promote programmatic accessibility for victims and their families regardless of sexual orientation, gender identity, or immigration status. We discuss the comments on the definition of

<sup>2</sup> See e.g., Special Rapporteur on Violence against Women, The Due Diligence Standard as a Tool for the Elimination of Violence Against Women, ¶ 17, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006) (by Yakin Ertürk), available at <http://daccessddsny.un.org/doc/UNDOC/GEN/G06/103/50/PDF/G0610350.pdf?OpenElement>; Special Rapporteur on Violence against Women, Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to the United States, U.N. Doc. A/HRC/17/26/Add.5 (Jun. 6, 2011), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/138/26/PDF/G1113826.pdf?OpenElement>.

“underserved population” and the services that must be provided to FVPSA recipients in more detail later in the rule.

*Comment:* One commenter suggested that the implementation of the rule be delayed to allow grantees (specifically State formula grantees) to close out existing FVPSA sub-recipient awards. This commenter suggested that because it recently competed and awarded contracts to sub-recipients that new requirements imposed prior to the expiration of sub-recipient contracts would potentially require re-competing sub-recipient contracts and create funding delays for shelter and supportive services throughout the State.

*Response:* The NPRM preamble states “all grantees will be expected to comply with standards and other requirements upon the final rule’s effective date.” While ACF understands and acknowledges that some direct grantees will need to make adjustments to both current and future subgrant/recipient award instruments resulting from new regulatory guidance, it is not feasible to delay the effective date to align with the contracting and procurement regulations in all States. ACF expects States to amend subgrant/recipient awards where appropriate to ensure compliance with these regulations. Further, there is no language in the rule which impedes States’ FVPSA funding distribution, granting, or contracting processes. ACF does not intend through this rulemaking for States or Tribes to terminate existing subgrant/recipient awards for the purpose of implementing new regulatory requirements. Finally, for clarification and as indicated above, the final rule becomes effective 60 days after publication in the **Federal Register**. As previously mentioned, many of the provisions in this rule have been longstanding practice in the program, and have been communicated through funding opportunity announcements and other guidance to the field.

## V. Section-by-Section Discussion of Comments and the Final Rule

ACF received comments about changes proposed to specific sections in the regulation. Below, ACF identifies each section, summarizes the comments, and responds accordingly.

### Subpart A—General Provisions

*Section 1370.1 What are the purposes of the Family Violence Prevention and Services Act programs?*

*Comment:* A commenter suggested that one of the purposes of FVPSA-

funded programs, to assist States and Indian Tribes in efforts to provide immediate shelter and supportive services for victims of family, domestic, and dating violence, should also include and support evolving mechanisms to provide safety and stability in, and connected to, shelter for victims. The commenter interpreted the definition of shelter, defined as temporary refuge in the statute and NPRM, as offering victims a place away from danger and to allow the form of refuge to be more flexible than shelter, often interpreted as communal living, especially in reference to immediate or emergency shelter. The commenter suggested that the shelter and supportive services statutory purpose area include housing advocacy and supports that allow for other methods of shelter service delivery.

*Response:* We agree. Therefore, ACF interprets the statutory purpose of assisting States and Indian Tribes in efforts to provide immediate shelter and supportive services to include flexibility in the types of shelter/housing provided for victims of family, domestic, and dating violence. Therefore, we incorporated into the final rule a revised definition of shelter/temporary refuge to include evolving models of shelter/housing and supportive services. ACF has been quite involved with the field and Federal partners as well as the private sector to address family homelessness, including homelessness caused by domestic violence. State and Tribal grantees and subgrantees have reported that flexibility in the methods of shelter provision and supportive services is necessary to meet demand, and more importantly, what victims need and desire to achieve safety and social and emotional well-being. The field reports that many victims would prefer supports connected to temporary refuge while offering non-communal methods of shelter and supportive services. Victims benefit from having access to multiple options for safe housing which could include mobile advocacy connected to temporary housing assistance/shelter, scattered site housing, or support for victims who remain in their homes, in addition to shelter-based options.

*Section 1370.2 What definitions apply to these programs?*

### Dating Violence

*Comment:* A few commenters suggested revisions to the definition of dating violence. Commenters identified that the definition does not include the types of violence that the definition is intended to cover and therefore is more

restrictive than the expanded definition of domestic violence.

*Response:* After careful consideration, ACF agrees that it would be helpful to revise the definition to include examples of the kinds of violence that are intended in the definition. Following additional comments and responses below, the final rule revises the definition of dating violence to include, but not be limited to, the physical, sexual, psychological, or emotional violence within a dating relationship, including stalking.

*Comment:* One of the commenters noted that dating violence does not explicitly include emotional or psychological abuse, unlike the definition of domestic violence. The same commenter suggested for consistency that we define the term by adding the definition used by the Centers for Disease Control and Prevention (CDC). The CDC defines dating violence as the physical, sexual, psychological, or emotional violence within a dating relationship, including stalking. The CDC further explains this can happen in person or electronically and might occur between a current or former dating partner.

*Response:* Per the previous comment, a revised definition is provided to reflect the CDC’s definition of dating violence to include, but not be limited to, the physical, sexual, psychological, or emotional violence within a dating relationship, including stalking. The definition is further revised to read that dating violence can happen in person or electronically. Specifically, the definition of dating violence is revised as follows: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: The length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. This part of the definition reflects the definition also found in Section 40002(a) of VAWA (as amended), 42 U.S.C. 13925(a), as required by FVPSA. Dating violence also includes but is not limited to the physical, sexual, psychological, or emotional violence within a dating relationship, including stalking. It can happen in person or electronically, and may involve financial abuse or other forms of manipulation which may occur between a current or former dating partner regardless of sexual orientation or gender identity.

*Comment:* A commenter suggested that the definition of dating violence

should identify the dating ages covered by the definition and that more information on the frequency of the interaction of the individuals in the relationship be provided.

*Response:* Neither FVPSA nor the Violence Against Women Act (VAWA) address age or frequency of interaction because they are different in every case. Adolescents and adults of all ages engage in dating relationships. Additionally, providing more guidance on the frequency of the interactions of those in such relationships could exclude cases where the frequency of interactions is minimal but the length and types of the relationships are especially critical in determining whether a dating violence relationship exists. Therefore, ACF will use the definition provided below without incorporating these suggestions.

*Comment:* A few commenters suggested that financial abuse be added to the definition of dating violence.

*Response:* Financial abuse is a common abuser tactic which may not always be interpreted to be a form of psychological or emotional abuse. We have clarified the definition of dating violence to explicitly reflect that financial abuse is also within the purview of dating violence.

*Comment:* One commenter suggested that the definition of dating violence (as well as the definitions of domestic and family violence) be revised to combine all three definitions into one section that is split into two parts: (1) Definitions for the types of violence; and (2) the relationships within the purview of the types of violence.

*Response:* We did not make changes based on this comment. FVPSA establishes the framework and organization of these definitions, therefore ACF, for consistency and continuity, will continue to use the definitions as they are fundamentally organized in the statute.

*Comment:* As noted in Section IV. General Comments and the Final Rule, several commenters on many sections of the NPRM, including the definition of dating violence, identified the importance of ensuring programmatic accessibility for victims and their families regardless of sexual orientation or gender identity.

*Response:* To ensure programmatic accessibility for all qualified individuals, ACF revised definitions and other rule guidance in section 1370.5 that makes clear that FVPSA-funded programs must serve victims and their families regardless of actual or perceived sexual orientation, gender identity.

*Comment:* Another commenter stated that the NPRM's definition of dating violence fails to acknowledge that it can happen quickly and briefly, and that there is no amount of time that can justify violence, referring to the definition's focus on the frequency of the interaction between the individuals in the relationship.

*Response:* We have not made any revisions to the rule in response to this comment because the dating violence definition found in the FVPSA statute does not imply that violence can be justified because it only happens once or just a couple of times. Instead, the definition references the frequency of the interaction between those in the relationship rather than the frequency of the violence.

However, given the other comments identified above, we have revised the definition. The definition of dating violence is revised to read as 'violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship'. This part of the definition reflects the definition also found in Section 40002(a) of VAWA (as amended), 42 U.S.C. 13925(a), as required by FVPSA. Dating violence also includes but is not limited to the physical, sexual, psychological, or emotional violence within a dating relationship, including stalking. It can happen in person or electronically, and may involve financial abuse or other forms of manipulation which may occur between a current or former dating partner regardless of actual or perceived sexual orientation, gender identity.

#### Domestic Violence

*Comment:* A commenter stated that the definition of domestic violence is not clear about whether coercive, controlling acts used in the NPRM to further clarify the domestic violence definition, must be criminal. Read in the context of the first sentence of the definition, the commenter said that it appears that domestic violence may not encompass coercive, controlling acts that are not criminal, such as controlling finances or isolating a partner from friends or family members. The commenter suggested that the definition be amended to read, "this definition will also include but will not be limited to criminal and non-criminal acts constituting . . ."

*Response:* We appreciate this comment. Domestic Violence includes a spectrum of coercive and controlling behaviors which include physical, emotional, and psychological behaviors that may be criminal acts in some States and not in others. To avoid confusion and to promote consistency, we revised the definition to include the proposed distinction between criminal and non-criminal coercive, controlling acts. The revised definition is below.

*Comment:* Several commenters suggested that financial abuse be added to the definition of domestic violence.

*Response:* As identified in the comments on the dating violence definition, financial abuse is a common abuser tactic and, therefore, ACF revised the definition accordingly to make clear that financial abuse is within the purview of domestic violence. Additionally, ACF made a technical correction to the domestic violence definition by removing the sentence, "Older individuals and those with disabilities who otherwise meet the criteria herein are also included within this term's definition." The sentence was removed because commenters identified that adding or singling out specific populations while not adding others causes confusion and may be interpreted by some to mean that ACF is promoting one population over another which is not the case.

As a result of all comments on the domestic violence definition, the term is revised to mean felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. This definition also reflects the statutory definition of "domestic violence" found in Section 40002(a) of VAWA (as amended), 42 U.S.C. 13925(a). This definition also includes but is not limited to criminal or non-criminal acts constituting intimidation, control, coercion and coercive control, emotional and psychological abuse and behavior, expressive and psychological aggression, financial abuse, harassment, tormenting behavior, disturbing or alarming behavior, and additional acts recognized in other Federal, Tribal, State, and local laws as well as acts in

other Federal regulatory or sub-regulatory guidance. This definition is not intended to be interpreted more restrictively than FVPSA and VAWA but rather to be inclusive of other, more expansive definitions. The definition applies to individuals and relationships regardless of actual or perceived sexual orientation, gender identity.

#### Family Violence

*Comment:* One commenter indicated that the terms family violence and domestic violence are not used interchangeably in their State and that, in fact, family violence is not commonly used at all (referencing the NPRM preamble language proposing that the terms be used interchangeably). The commenter explained that family violence is broader than domestic violence and that it encompasses many forms of violence with differing circumstances and dynamics, e.g. child maltreatment, elder abuse by an adult child, and sibling to sibling violence. The commenter suggested that more specific terms be used to distinguish between family violence and domestic violence or that family violence be defined to refer to forms of violence which are not included in the domestic violence definition.

*Response:* Both terms are defined in the FVPSA statute which include overlapping and intersecting relationships and forms of violence. However, as explained in the NPRM preamble, both the field and Congress have used the terms interchangeably for decades, notwithstanding that there are also those in the field who may not use one term or the other, such as due to varying States' laws' definitions of the terms. Additionally, legislative history indicates that family violence is the term less commonly relied upon and that Congress has historically appropriated FVPSA funds to address domestic violence. Both terms will continue to be used programmatically, as also explained in the NPRM preamble, with more extensive use of the term domestic violence; however, the regulatory text will not address interchangeability of the terms domestic violence and family violence to avoid potential confusion with statutory definitions.

*Comment:* Another commenter suggested that the family violence definition be expanded to include "in the context of a pattern of coercive control or with the effect of gaining coercive control."

*Response:* Since the domestic violence definition includes coercion and coercive control, ACF has

determined that continued expansion of the family violence term is unnecessary.

*Comment:* One commenter suggested that because the definitions of family, domestic, and dating violence do not impose age limitation on victims, the proposed rule should be clarified to state that younger adolescents do not have to be served in domestic violence shelters without the presence of their legally responsible adults.

*Response:* FVPSA is the legally binding authority regarding eligibility for services for FVPSA-funded programs. Since FVPSA does not limit services' eligibility to adults, ACF cannot restrict services' eligibility in this way. Adolescents' access to domestic violence programs as victims of domestic or dating violence themselves, rather than as child witnesses who usually enter shelter as dependents of abused parents or guardians, is complicated by the variations among States' emancipation and/or child abuse and neglect laws. As a result, shelter provision to adolescents, as primary victims themselves, is not a regulatory issue that will generally be addressed in this rule except to say that for adolescents who are able to access shelter as the primary victim, they must receive welcoming and accessible shelter and supportive services comparable to services provided to other victims. Additionally, adolescents and children who enter shelter as a victim's dependent must be provided welcoming and accessible shelter and supportive services comparable to the services provided to other victims. As a result of this comment, we have not revised the definition of family violence. However, we made a technical correction to the rule text to remove the sentence originally included in the NPRM, "Please note that this guidance is not a change in previous grantee guidance as survivors of intimate partner violence, regardless of marital status have always been eligible for FVPSA-funded services and programming." The sentence ultimately does not change the definition and, therefore, is unnecessary.

#### Personally Identifying Information

*Comment:* Three commenters suggested that the personally identifying information (PII) definition include the term "personal information" as reflected in the statute, and to be interchangeable terms.

*Response:* "Personal information" is not specifically included in FVPSA, except that FVPSA cites the VAWA definition as the FVPSA definition, and VAWA identifies "personal

information" and "personally identifying information" as interchangeable. Therefore, we revised the term as personally identifying information (PII) or personal information in the final rule.

*Comment:* One commenter asked that in the proposed rule text, referencing the proposed definition of PII, we remove the language "note that information remains personally identifying even if physically protected through locked filing cabinets . . ." because the FVPSA/VAWA definition already includes information that is "otherwise protected." The commenter suggested that a definition that mentions locked filing cabinets is confusing in the context of information sharing because grantees typically don't disclose information by transmitting entire filing cabinets. The commenter also stated that the definition may give rise to an implication that it is not allowable for grantees to keep personally identifying information, even in a locked filing cabinet.

*Response:* We agree, therefore, the language is removed in the rule definition. The final rule definition is as follows: Personally identifying information (PII) or personal information is 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, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected, including, (A) a first and last name; (B) a home or other physical address; (C) contact information (including a postal, email or Internet protocol address, or telephone or facsimile number); (D) a social security number, driver license number, passport number, or student identification number; and (E) any other information, including date of birth, racial or ethnic background, or religious affiliation, that would serve to identify any individual.

#### Primary Prevention

*Comment:* Two commenters suggested that a non-exhaustive list of primary prevention examples be used to provide additional guidance for FVPSA-recipients and the field.

*Response:* Since primary prevention is an extremely important mechanism for eradicating domestic and dating violence by modifying the events, conditions, situations, or exposure to influences that result in the initiation of domestic and dating violence and associated injuries, disabilities, and deaths, ACF agrees that a short list of examples in the term's definition would

be helpful. Therefore, primary prevention is defined in the rule as strategies, policies, and programs to stop both first-time perpetration and first-time victimization. Primary prevention is stopping domestic and dating violence before they occur. Primary prevention includes, but is not limited to: School-based violence prevention curricula, programs aimed at mitigating the effects on children of witnessing domestic or dating violence, community campaigns designed to alter norms and values conducive to domestic or dating violence, worksite prevention programs, and training and education in parenting skills and self-esteem enhancement.

#### Primary-Purpose Domestic Violence Service Provider

*Comment:* One commenter indicated that the NPRM's definition of primary-purpose domestic violence provider excludes governmental entities or municipalities and therefore limits States from making subgrant/recipient awards to governmental entities or municipalities for shelter and supportive services pursuant to 42 U.S.C. 10406(b)(2) and 10408(a).

*Response:* The definition of primary-purpose domestic violence provider in § 1370.2 of the proposed rule is provided only to clarify the membership requirement in the definition of State Domestic Violence Coalition (Coalition(s)) in 42 U.S.C. 10402(11) and therefore is limited only to this definition. It is not intended to describe eligible entities under 42 U.S.C. 10408(c) for subgrants awarded by FVPSA-funded State grantees, nor is it intended to define "primary-purpose program or project", "primary-purpose organization," or any other term, phrase, or sentence which uses the term "primary-purpose." FVPSA at 42 U.S.C. 10408 does not use the term primary purpose domestic violence service provider, nor does that term appear in the statute except in the definition of a Coalition.

Moreover, an eligible entity under FVPSA at 42 U.S.C. 10408 may be a local public agency, or a nonprofit private organization (including faith-based and charitable organizations, community-based organizations, Tribal organizations, and voluntary associations), that assists victims of family, domestic, or dating violence, and their dependents (see full description of eligibility including partnerships of agencies at 42 U.S.C. 10408(c)); a city, county, township or any other municipal governmental entity would qualify as a "local public agency" under this section. We also therefore agree with the commenter that

FVPSA at 42 U.S.C. 10407(a)(2)(B)(iii), which provides that in the distribution of funds by a State, the State will give special emphasis to the support of community-based projects of demonstrated effectiveness that are carried out by nonprofit private organizations, does not exclude governmental entities from receiving FVPSA funds. Finally, since the term "service" was inadvertently left out of rule's definition of primary-purpose domestic violence service provider, we made a technical correction to add the term to the rule text.

*Comment:* One commenter stated there is no definition for the word "project" in the definition of "primary-purpose domestic violence service provider" which is "a provider that operates a project of demonstrated effectiveness and carried out by a nonprofit, nongovernmental, private entity, Tribe or Tribal organizations that has as its project's primary-purpose the operation of shelters and supportive services for victims of domestic violence and their dependents . . ." The commenter recommends that the rule be clarified that large social services agencies fit within the definition if they provide distinct services for victims of domestic violence in addition to services to children and families.

*Response:* As indicated above, the definition of primary-purpose domestic violence service provider is intended only to provide additional clarity to support the membership requirement for Coalitions and is not intended to redefine, nor is it relevant to eligible entities for the purposes of receiving subgrants from States pursuant to 42 U.S.C. 10408. Therefore, if a large social services agency otherwise meets the eligibility requirements under FVPSA at 42 U.S.C. 10408(c), *i.e.* is a local public agency or a nonprofit private organization or part of a partnership of two or more organizations, then it may receive FVPSA funds as a subgrantee of a State (or Tribe) in accordance with the State (or Tribal) plan.

*Comment:* Commenters were concerned that the designation of "primary-purpose" project, organization, or entity does not automatically mean that an organization is an eligible entity, nor does the qualification as an eligible entity for the purposes of receiving a State (or Tribal) subgrant award pursuant to FVPSA at 42 U.S.C. 10408(c) mean that an organization, project or entity is necessarily a primary-purpose entity. A commenter also identified that FVPSA-funded projects or programs that operate under a parent or umbrella agency should be required to have a separate

mission statement for the specific domestic violence project/program and its services. The commenter also stated that such a program/project must provide services to domestic violence victims that are central to the project's/program's mission and should not be peripheral or by happenstance.

*Response:* Per the responses to previous comments and to comments that will follow, the NPRM did not define "primary-purpose organization," nor did it define "primary-purpose" in the context of other terms or phrases, except for clarifying the membership requirement espoused in FVPSA defining Coalition. Given the confusion expressed by several commenters, we determined that additional clarity in the definition is needed.

In the Coalition statutory definition, the term primary-purpose domestic violence service provider is used but not defined. Because of the importance of the term in the context of the membership requirements for Coalitions, we defined the term to ensure that Coalitions understand how to meet FVPSA eligibility requirements. The definition of primary purpose domestic violence service provider does not apply to the eligibility requirements for State or Tribal subgrants; FVPSA at 42 U.S.C. 10407 through 10409 read together address the eligible entities and activities for direct State and Tribal grants and their subgrants. The words "primary purpose" are statutory terms used in the context of those statutory sections for identifying the kinds of organizations and activities which may be FVPSA-funded by States and Tribes. However, the NPRM did not propose a definition of "primary purpose" because the statute connects the term to State and Tribal subgrants for entities with a documented history of effective work concerning family, domestic, or dating violence, or for the primary purpose of operating shelters (in the context of grants for those purposes). Primary purpose domestic violence service provider is therefore limited to FVPSA at 42 U.S.C. 10402(11) and 42 U.S.C. 10411, and to this rule in Subpart A, § 1370.2 (definition of primary purpose domestic violence service provider) and Subpart C, § 1370.20.

After consideration of the comments, the definition of primary purpose domestic violence service provider is revised to read: 'Primary-purpose domestic violence service provider, for the term only as it appears in the definition of State Domestic Violence Coalition, means an entity that operates a project of demonstrated effectiveness carried out by a nonprofit, nongovernmental, private entity, Tribe,

or Tribal organization, that has as its project's primary-purpose the operation of shelters and supportive services for victims of domestic violence and their dependents; or has as its project's primary purpose counseling, advocacy, or self-help services to victims of domestic violence. Territorial Domestic Violence Coalitions may include government-operated domestic violence projects as "primary-purpose" providers for complying with the membership requirement, provided that Territorial Coalitions can document providing training, technical assistance, and capacity-building of community-based and privately operated projects to provide shelter and supportive services to victims of family, domestic, or dating violence, with the intention of recruiting such projects as members once they are sustainable as primary-purpose domestic violence service providers.'

Regarding the commenter's request that domestic violence projects, funded via subgrants by States and Tribes, be required to submit mission statements if they operate under the umbrella of a larger organization, we believe it should be left to State and Tribal grantees' discretion to set such requirements. Regarding the commenter's request that such projects' work must be to provide domestic violence services that are central to their missions or purposes, we believe that FVPSA eligibility requirements for activities funded by State and Tribal subgrants already address these issues.

*Comment:* One commenter objected to this definition because Congress did not define the term and suggested that HHS/ACF exceeded its authority by altering requirements for Coalition membership. The commenter stated that in the context of Coalition membership that FVPSA clearly contemplates that member primary-purpose domestic violence service providers will "establish and maintain shelter and supportive services for victims of domestic violence" [FVPSA at 42 U.S.C. 10402(11)]. The commenter further stated that HHS' proposed definition of primary-purpose domestic violence service provider incorrectly includes the provision of "counseling, advocacy, and self-help services to victims of domestic violence," which are prioritized in the State formula grant section pursuant to FVPSA at 42 U.S.C. 10407a)(2)(B)(iii)(I) and (II) but are not included as a primary purpose domestic violence service provider in the statutory Coalition definition at 42 U.S.C. 10402(11). The commenter opined that the proposed definition therefore

conflicts with the statutory Coalition definition at 42 U.S.C. 10402(11).

*Response:* We respectfully disagree. As previously indicated pursuant to FVPSA at 42 U.S.C. 10404(a)(4), the Secretary has the authority to prescribe such regulations and guidance as are reasonably necessary in order to carry out the objectives and provisions of FVPSA, including regulations and guidance on implementing new grant conditions established or provisions modified by amendments made to FVPSA by the CAPTA Reauthorization Act of 2010, Public Law 111-320, to ensure accountability and transparency of the actions of grantees and contractors, *or as determined by the Secretary to be reasonably necessary to carry out this title* (emphasis added).

One essential element of the Coalition definition is that the membership includes a majority of the primary-purpose domestic violence service providers in the State. Given the repeated Coalition requests over the last 5 years to define primary-purpose domestic violence service provider, ACF has determined that considerable confusion exists as to the term's meaning and that the impact of not defining the term potentially means that FVPSA-funded Coalitions may not be including eligible primary-purpose domestic violence service providers in their membership; or they may be including providers in membership and counting them as primary-purpose domestic violence service providers when they are not. Such confusion could lead to potential statutory non-compliance findings (regarding continued eligibility).

The commenter suggests that using the State formula grant requirements, which include funding providers of supportive services that consist of counseling, advocacy, and self-help services, to define primary-purpose domestic violence service provider, contradicts the "primary-purpose" membership requirement.

However, the commenter acknowledges that one of the requirements for Coalitions is to among other requirements, pursuant to FVPSA at 42 U.S.C. 10402(11), "provide education, support, and technical assistance to such service providers to enable providers to establish and maintain shelter and *supportive services* (emphasis added) for victims of domestic violence." Supportive services is defined separately from shelter in FVPSA at 42 U.S.C. 10402(12) as "services for adult and youth victims of family violence, domestic violence, or dating violence, and dependents exposed to family violence, domestic

violence, or dating violence, that are designed to: (a) Meet the needs of such victims of family violence, domestic violence, or dating violence, and their dependents, for short-term, transitional, or long-term safety; and (b) *provide counseling, advocacy, or assistance for victims of family violence, domestic violence, or dating violence, and their dependents*" (emphasis added). Therefore, we interpret the primary-purpose domestic violence service provider membership requirement as including those providers that also primarily focus on supportive services as statutorily defined above (and which is defined later in this rule). The supportive services definition specifically includes counseling, advocacy, or assistance for victims which is complementary to the State formula grant eligibility requirements that organizations providing such services may also be funded independently of shelter services and which are also to be given special emphasis for funding by States (and Tribes).

Finally, while the NPRM included a partial focus on helping to define primary purpose domestic violence service provider to complement the State formula grant priorities for funding programs that provide supportive services independently of shelter, the definition also focuses on shelter programs as part of the primary-purpose domestic violence service provider definition. Both types of programs are contemplated in the Coalition definition by identifying both shelter and supportive services, therefore the primary purpose domestic violence service provider definition is aligned with specific statutory language and intent. Pursuant to the public comments received and responses thereto, for the purpose of clarifying the term as it appears in the definition of State Domestic Violence Coalition, a primary-purpose domestic violence service provider is one that operates a project of demonstrated effectiveness carried out by a nonprofit, nongovernmental, private entity, Tribe, or Tribal organization, that has as its project's primary-purpose the operation of shelters and supportive services for victims of domestic violence and their dependents; or has as its project's primary purpose counseling, advocacy, or self-help services to victims of domestic violence. Territorial Domestic Violence Coalitions may include government-operated domestic violence projects as primary-purpose domestic violence service provider for complying with the membership requirement,

provided that Territorial Coalitions can document providing training, technical assistance, and capacity-building of community-based and privately operated projects to provide shelter and supportive services to victims of family, domestic, or dating violence, with the intention of recruiting such projects as members once they are sustainable as primary-purpose domestic violence service providers.

#### Secondary Prevention

*Comment:* One commenter suggested that NPRM preamble explanatory language be included in the rule definition to reference the kind of service that may be considered a secondary prevention example. Specifically, the commenter suggested that the definition include services for children and youth, home visiting programs for high-risk families, screening programs in health care settings, and self-defense training.

*Response:* We agree. Secondary prevention is defined to mean identifying risk factors or problems that may lead to future family, domestic or dating violence, and taking the necessary actions to eliminate the risk factors and the potential problem. It may include, but is not limited to, healing services for children and youth who have been exposed to domestic or dating violence, home visiting programs for high-risk families, and screening programs in health care settings.

#### Shelter

*Comment:* Three commenters suggested that *shelter* be interpreted flexibly to capture a full range of sheltering and supportive services' provision that meet the evolving housing and support needs of victims and their families. One commenter indicated that a combination of methods could be arrived at through numerous options, including scattered site housing, programs that offer a rental subsidy plus advocacy, or an emergency housing program composed of individual units that do not require individuals or families to live communally.

*Response:* In keeping with the recognition enunciated in § 1370.1 (above) that shelter defined as temporary refuge and supportive services is interpreted flexibly by ACF, we agree with the commenters. In response to the comment, we have included the following revised language: This definition . . . , 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). A complete, revised shelter definition follows after additional public comments on the term are discussed.

*Comment:* One commenter, while supporting that shelter be interpreted flexibly to include a range of housing and supports, cautioned that the mere provision of shelter, without the additional provision of supportive services, should never allow a shelter to be FVPSA-funded, nor should it allow such a project to be considered a "primary purpose" organization. The commenter further explained that the provision of shelter is not simply a warm referral to another entity for shelter; it is using the organization's own resources to provide the shelter and supportive services. Under no circumstances, the commenter indicated, shall referrals alone, to shelter or housing, be considered the provision of shelter and supportive services as required by FVPSA. The commenter expressed concern that programs that offer basic shelter, without providing supportive services, such as hotel vouchers or other minimal housing services, would be able to claim that they are providing FVPSA-defined shelter.

*Response:* ACF's guidance to its grantees and subgrantees has always been that shelter and supportive services must both be provided when providing shelter. This requirement is already clear in the statutory definition of shelter. To be considered the provision of shelter/temporary refuge and supportive services as required by FVPSA, if a provider refers a victim to another resource for shelter, it must also ensure that the victim receives supportive services (which is defined below), either by verifying that the referral resource will provide those supportive services (by providing financial support to the referral resource if needed) or by providing supportive services itself by transporting the victim to its program for supportive services and back to the referral resource providing housing services. In response to this comment, we have revised the definition to include that temporary refuge must also provide comprehensive supportive services. Further, we included in the definition the following: The mere act of making a referral to shelter or housing shall not itself be considered provision of shelter.

*Comment:* The same commenter suggested that if a warm referral is made to another resource without the FVPSA-funded shelter helping to support a victim with its own resources, that it not be considered a "primary-purpose organization."

*Response:* As discussed above, the primary purpose domestic violence service provider definition is limited to clarifying the term in the Coalition definition for the membership composition of Coalitions. To the extent that a program is funded to provide shelter and supportive services but instead makes warm referrals to other resources without ensuring that a victim receives shelter and supportive services, using its own FVPSA resources if needed, such a program would not be included in a Coalition's membership for complying with the FVPSA definition of a Coalition. As indicated above, this response is meant only to apply to those situations where a FVPSA-funded shelter makes a warm referral based upon other circumstances not connected to its own lack of resources or misinterprets the shelter definition as temporary refuge alone without supportive services. If a shelter which also otherwise normally provides supportive services as required by FVPSA but is unable due to a lack of resources, such circumstances would not preclude it from being counted as a primary purpose domestic violence service provider for purposes of determining whether a Coalition is in compliance with FVPSA membership requirements. No revision to the rule text was made resulting from this comment.

*Comment:* A commenter indicated that FVPSA requires priority funding for the "primary purpose" of *operating* (emphasis added) shelters, and authorizes payment for the expenses of *operating* (emphasis added) a shelter. The commenter also said that the NPRM's proposed expanded definition of shelter includes a provider that does not operate a shelter, but may have vouchers for various residences, including hotels/motels that are unregulated and may not be confidential or secure locations to protect the safety of victims and children. The commenter suggested that the expanded definition conflicts with FVPSA requirements because the statute provides that a State give special emphasis to the support of community based projects of demonstrated effectiveness carried out by nonprofit private organizations that have as their "primary purpose" the operation of shelters for victims of family violence, domestic violence, and dating violence and their dependents. The commenter also pointed out that FVPSA defines shelter as temporary refuge and supportive services in compliance with *applicable State law (including regulation)* (emphasis added) governing the provision, on a regular

basis of shelter, safe homes, meals and supportive services to victims of family, domestic, or dating violence, and their dependents.

*Response:* The commenter conflates the FVPSA requirements regarding the priority for the “operation” of shelters and the authorization to use funds for shelter operations to mean that only a limited type of shelter may be funded where a provider must only house victims in a building directly operated by a FVPSA subgrantee; this is not the case. While FVPSA certainly prioritizes the operation of shelter by community-based non-profit organizations of demonstrated effectiveness, temporary refuge is not defined in the FVPSA’s shelter definition. Therefore, ACF is using its authority to promulgate guidance for the effective administration of the program to identify some of the potential variations of shelter, defined as temporary refuge and supportive services that meet the needs of all victims as well as the statute’s intent. Given that shelters are often at capacity throughout the country and that nearly 11,000<sup>3</sup> people are turned away daily from shelters either because the shelters are full or do not have adequate shelter staffing, it is unreasonable to expect that all domestic violence victims seeking shelter in every State, territory, or Tribe/Tribal organization will be housed in one kind of shelter facility operated 24 hours a day, 365 days a year. It is also reported that there are some individuals from underserved populations and culturally- and linguistically-specific populations who cannot or choose not to access domestic violence shelters, either because they fear disparate treatment by the residents themselves, do not feel comfortable living in congregate housing, or because shelters with limited resources do not seem to have the capacity or expertise to provide welcoming and accessible services to every individual at all times. While ACF requires that all individuals have access to FVPSA-funded shelter, the reality is that not all victims want to be served in domestic violence shelters. Therefore, ACF interprets temporary refuge to include shelter options with flexibility. While ACF expects that States and Tribes will fund programs based upon the statutory requirements to prioritize community based projects of demonstrated effectiveness carried out by nonprofit private organizations having as their primary purpose the operation of shelters for victims, it does not expect that one size will fit all in

every community or that every community will have domestic violence shelter capacity to serve everyone seeking shelter and supportive services. However, pursuant to FVPSA, eligible entities must have a documented history of effective work concerning family, domestic, or dating violence. Therefore, regarding shelter, States and Tribes must fund programs that provide shelter and supportive services with the required demonstrated expertise which may house victims using various shelter options as described in this rule’s revised shelter definition.

Additionally, the commenter identified that the FVPSA shelter definition requires that shelter and supportive services be provided on a *regular basis* (emphasis added) in compliance with *applicable State [and Tribal] law and regulations* (emphasis added); the commenter is correct. Therefore, State and Tribal law governing the provision of shelter and supportive services on a *regular basis* (emphasis added) is interpreted by ACF to mean, for example, the laws and regulations applicable to zoning, fire safety, and other regular safety, and operational requirements, including State, Tribal, or local regulatory standards for certifying domestic violence advocates who work in shelter. The rule text is revised to reflect ACF’s interpretation in this regard.

Regarding the commenters concern about shelter location confidentiality, as it applies to using hotels or motels as potential shelter/temporary refuge options, 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 and does not require that shelter locations be confidential, but rather that if they maintain a confidential location the location cannot be made public without written leadership authority. The commenter’s concerns about the potential lack of confidentiality in shelter services provided by motels or hotels connected to a shelter’s referral and placement of a victim there are legitimate. However, FVPSA does not require shelters, and therefore their referral sites or contactors, to be confidential. The safety and security of victims and their dependents are paramount and therefore shelters and other FVPSA-funded programs are prohibited from revealing PII. The

commenter’s additional concern regarding the placement of victims in unregulated hotels or motels is also legitimate. If FVPSA-funded shelters use hotels or motels as a means of sheltering victims, PII cannot be shared unless the victim signs an informed, time-limited release per FVPSA and this rule at § 1370.4. If shelters and hotels/motels enter into contracts to temporarily house victims, PII cannot be shared. Additionally, all FVPSA-funded shelters that use hotels, motels, or other housing options as shelter must also provide supportive services either at the FVPSA-funded primary shelter location by transporting victims from hotels to shelter or by providing supportive services on-site at hotels, motels, etc.

*Comment:* One commenter indicated that the inclusion of “scattered-site housing” in the shelter definition might be interpreted to be limited to housing, owned, operated, or leased by a domestic violence program, when, in fact, as the commenter indicated the goal should be to include any properties or assistance that FVPSA-funded programs use for shelter provision. The commenter suggested striking the term “scattered-site housing” and replacing it with “the provision of housing, temporary refuge or lodging in properties that could be in multiple locations around a State or local jurisdiction; such properties are not required to be owned, operated, leased by the FVPSA-funded program.”

*Response:* We agree. The inclusion of “scattered-site housing” was not intended to be interpreted the way the commenter is concerned it could be. Therefore, the proposed revision is incorporated into the rule definition.

As a result of the comments made regarding the shelter definition, shelter is re-defined as: The provision of temporary refuge in conjunction with supportive services in compliance with applicable State or Tribal law or regulations governing the provision, on a regular basis, of shelter, safe homes, meals, and supportive services to victims of family violence, domestic violence, or dating violence, and their dependents. State and Tribal law governing the provision of shelter and supportive services on a regular basis is interpreted by ACF to mean, for example, the laws and regulations applicable to zoning, fire safety, and other regular safety, and operational requirements, including State, Tribal, or local regulatory standards for certifying domestic violence advocates who work in shelter. This definition also includes emergency shelter and immediate shelter, which may include housing provision, short-term rental assistance,

<sup>3</sup>National Network to End Domestic Violence, Domestic Violence Counts 2014, a 24-Hour Census of Domestic Violence Shelter and Services.

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. The mere act of making a referral to shelter or housing shall not itself be considered provision of shelter. Should other jurisdictional laws conflict with this definition of temporary refuge, the definition which provides more expansive housing accessibility governs.

#### State Domestic Violence Coalition

*Comment:* One commenter suggested for clarity that the purpose of State Domestic Violence Coalition be revised to help support and connect the primary-purpose domestic violence service provider membership requirement to the Coalition definition.

*Response:* We agree. To ensure that the rule definition includes clear statutory purpose requirements which logically connect to membership requirements, we have revised the definition to include language that the State Domestic Violence Coalition “has as its purpose to provide education, support, and technical assistance to such service providers to enable the providers to establish and maintain supportive services and to provide shelter to victims of domestic violence and their children.” We have also made a technical correction to reference “Territory” in the last sentence of the definition.

The revised definition is: State Domestic Violence Coalition means a Statewide, nongovernmental, nonprofit 501(c)(3) organization whose membership includes a majority of the primary-purpose domestic violence service providers in the State; whose board membership is representative of these primary-purpose domestic violence service providers and which may include representatives of the communities in which the services are being provided in the State; that has as its purpose to provide education, support, and technical assistance to such service providers to enable the providers to establish and maintain supportive services and to provide shelter to victims of domestic violence and their children; and that serves as an information clearinghouse, primary

point of contact, and resource center on domestic violence for the State and supports the development of policies, protocols, and procedures to enhance domestic violence intervention and prevention in the State/Territory.

#### Supportive Services

*Comment:* Two commenters suggested changes to the proposed *supportive services* definition to ensure that grantees and subgrantees are clear the allowable uses of grant funds. One of the commenters suggested that by including a list of allowable uses as proposed in the NPRM, and even though the list as articulated is non-exhaustive, it is confusing for grantees and subgrantees by tending to de-emphasize the importance of other allowable funds’ uses. This commenter suggested that the NPRM definition be clarified to include that supportive services specifically reference those services identified as allowable in FVPSA at 42 U.S.C. 10408(b)(1)(A) through (H). Another commenter suggested that by leaving potential allowable uses off the list, some might interpret the rule to mean that HHS does not favor other allowable uses not specifically referenced or that other uses are not allowable. Both commenters suggested that additional allowable uses be added to the list provided in the NPRM definition to focus or emphasize terms not in the statute or for those already in the statute to deemphasize those that are not generally consistent with best practices that center survivor well-being, agency, and autonomy. One of these commenters also suggested that certain terms identified in FVPSA at 42 U.S.C. 10408(b)(1)(A) through (H) be further defined.

*Response:* We agree in part. FVPSA provides for supportive services targeted directly to the needs of victims for safety and assistance in reclaiming their agency, autonomy, and well-being. To help ensure that the rule does not confuse grantees and subgrantees, we have revised the definition to reference FVPSA at 42 U.S.C. 10408(b)(1)(A) through (H), instead of only paragraph (G).

As to the suggestions made to add other allowable funds’ uses or to emphasize or deemphasize other uses, or to add definitions to certain terms listed in FVPSA at 42 U.S.C. 10408(b)(1)(A) through (H), we note Congress’ specific statutory language and intent as well as HHS’ interim final rule, codified at 45 CFR part 75, “*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards*,” which

provides additional grant guidance for determining allowable costs.

*Supportive services* is revised to mean services for adult and youth victims of family violence, domestic violence, or dating violence, and their dependents that are designed to meet the needs of such victims and their dependents for short-term, transitional, or long-term safety and recovery. Supportive services include, but are not limited to: Direct and/or referral-based advocacy on behalf of victims and their dependents, counseling, case management, employment services, referrals, transportation services, legal advocacy or assistance, child care services, health, behavioral health and preventive health services, culturally- and linguistically-appropriate services, and other services that assist victims or their dependents in recovering from the effects of the violence. To the extent not already described in this definition, supportive services also include but are not limited to other services identified in FVPSA at 42 U.S.C. 10408(b)(1)(A) through (H). Supportive services may be directly provided by grantees/subgrantees and/or by providing advocacy or referrals to assist victims in accessing such services. We also made a technical correction to the list of supportive services to include linguistically-appropriate services to ensure access for beneficiaries with limited English proficiency and to help ensure grantee/sub-grantee compliance with Federal civil rights requirements.

#### Underserved Populations

*Comment:* One commenter said that the “underserved populations” definition includes racial and ethnic minority populations which has been included to mean primarily directed toward racial and ethnic minority groups (as defined in section 1707(g) of the Public Health Service Act (42 U.S.C. 300(u–6)(g)). The commenter further identified that (g) includes, “(1) the term “racial and ethnic minority group” means American Indians (including Alaska Natives, Eskimos, and Aleuts); Asian Americans; Native Hawaiians and other Pacific Islanders; Blacks and Hispanics; and (2) the term “Hispanic” means individuals whose origin is Mexican, Puerto Rican, Cuban, Central or South American, or any other Spanish-speaking country.” The commenter said that inclusion of these definitions would underscore the specific needs of survivors from racial and ethnic populations who are often overrepresented in some systems as a result of systemic oppression but remain marginalized and often underserved. The commenter also suggested that since decisions about how to prioritize

funding for underserved populations including racial and ethnic populations are made at the State level, these processes can be subject to prevailing biases about these populations. The commenter identified that States frequently struggle to prioritize some of the most marginalized or maligned communities, such as LGBTQ or immigrant (including undocumented immigrants) communities, or to account for the multiple systemic barriers to safety and autonomy for victims from racial and ethnic populations.

*Response:* Our experience is that not only do States have the challenges identified by the commenter but many other kinds of grantees and subgrantees also experience similar hurdles, often because of population changes that are hard to track, or because underserved populations are sometimes uncomfortable accessing services which may not be welcoming and accessible. We agree with the commenter. As a result, the underserved populations' definition is revised in § 1370.2 to include the definitions of racial and ethnic minority groups as defined by the Public Health Service Act. Additionally, a technical change is made to this definition to substitute the terminology "substance abuse" with "substance use disorders." The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), no longer uses the term "substance abuse" but rather refers to "substance use disorders". In efforts to promote consistent terminology, the language is updated. 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. The reference to racial and ethnic populations is primarily directed toward racial and ethnic minority groups (as defined in section 1707(g) of the Public Health Service Act (42 U.S.C. 300(u-6)(g)), which means American Indians (including Alaska Natives, Eskimos, and Aleuts); Asian Americans; Native Hawaiians and other Pacific Islanders; Blacks and Hispanics. The term "Hispanic" or "Latino" means individuals whose origin is Mexican, Puerto Rican, Cuban, Central or South American, or any other Spanish-

speaking country. This underserved populations' definition also includes other population categories determined by the Secretary or the Secretary's designee to be underserved.<sup>4</sup>

*Section 1370.3 What Government-wide and HHS-wide regulations apply to these programs?*

We received no public comments for this section and therefore, the proposed regulatory text is retained without change.

*Section 1370.4 What confidentiality requirements apply to these programs?*

*Comment:* One commenter suggested that due to requirements in the Affordable Care Act regarding health insurance coverage of health care provider screening for inter-personal violence with no cost sharing (for women of child-bearing age), and since there has been and will continue to be an increase in FVPSA-funded grantees and subgrantees who partner with or may seek funding from health care providers, that this rule cross-reference VAWA at 42 U.S.C. 13925(b)(2)(D)(ii) prohibiting grantees and subgrantees from conditioning the provision of services upon the agreement to share PII. The commenter identified the specific VAWA language as: "(ii) In no circumstances may (I) an adult, youth, or child victim of domestic violence, dating violence, sexual assault, or stalking be required 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 sub grantee; (II) any personally identifying information be shared in order to comply with Federal, Tribal, or State reporting, evaluation, or data collection requirements, whether for this program or any other Federal, Tribal, or State grant program." The commenter also believes that the NPRM preamble language regarding the occasional subgrantee practice to standardize releases conflates "waivers" and "releases" and may add confusion about how to standardize or not standardize releases.

*Response:* We agree in part. There is a trend for FVPSA-funded grantees and subgrantees to partner with or seek

<sup>4</sup> As noted in other places throughout the rule, § 1370.10 for example, "underserved populations" is the terminology used in the rule text to address all populations in the term's definition to avoid confusion by listing different populations or groups in different sections of the rule. For example, in the NPRM preamble and rule text, commenters noted inconsistency throughout which named specific groups in some places and not in others. ACF has decided that consistent use of "underserved populations" eliminates the potential for confusion in this regard.

funding from health care providers to screen for interpersonal violence. As a result, the proposed VAWA reference is added to the rule language in § 1370.4(a) to read: (1) 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; (2) 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 (3) 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.

Finally, we respectfully disagree that the NPRM preamble discussion of standardizing releases conflates waivers and releases. We will not address this issue further in this rule as the NPRM preamble language is not repeated in this rule.

*Comment:* One commenter also indicated that subgrantees are currently working with or may seek funding from health care providers, suggests that § 1370.4(d) of the rule add a fourth section as follows: Personally identifying information may be shared with a health care provider or payer, but only with the informed, written, reasonably time-limited consent of the person about whom such information is sought."

*Response:* We agree. Since subgrantees are currently working with and are anticipated to enter into partnerships with health care providers, the potential for revealing PII is possible, and would be a FVPSA and VAWA violation unless a victim provides the necessary release required by law. As a result a fourth paragraph is added to § 1370.4(d) to read: (d)(4) Personally identifying information may be shared with a health care provider or payer, but only with the informed, written, reasonably time-limited consent of the person about whom such information is sought.

*Comment:* One commenter opposes the inclusion of § 1370.4(d)(1) through (3) because it would prevent them from operating a shelter in the same building as a police department.

*Response:* The proposed language in the NPRM found in § 1370.4(d)(1)

through (3) is a direct restatement of FVPSA statutory requirements at 42 U.S.C. 10406(c)(5)(D). The commenter would be in violation of FVPSA and this rule if PII is shared between the shelter and police department unless such information sharing is done in compliance with specific exceptions enunciated in FVPSA and this rule. We strongly urge this commenter to seek technical assistance from the appropriate Resource Center identified in § 1370.30 of this rule or in FVPSA at 42 U.S.C. 10410.

*Comment:* One commenter said that the requirement in § 1370.4(b) requiring that both the minor and parent consent to disclosures of information will not be feasible if the minor is a very young child. The commenter indicated that it is not clear whether a child in this situation has a “functional limitation” referred to in the last sentence of § 1370.4(b). The commenter suggested that an age reference be included in the sentence. Additionally, the commenter suggested that this provision is problematic in cases where unemancipated teens seek services without a parent or guardian. The commenter suggested that the VAWA provision at 42 U.S.C. 13925(b)(2)(B) be included which reads: “If a minor or a person with a legally appointed guardian is permitted by law to receive services without the parent’s or guardian’s consent, the minor or person with a guardian may release information without additional consent.”

*Response:* We respectfully disagree in part. We interpret the provision in § 1370.4(b) which requires both the consent of the unemancipated minor and parent to indicate that if the child is too young to be emancipated under State law that the State’s law addressing whether a parent may consent for or on behalf of the child will apply in those circumstances. There is no need to include an age requirement because many States’ laws address a child’s right to act on his or her behalf without the consent of a parent or guardian and most notably, parental consent is usually needed on behalf of unemancipated minors and may often be obtained without the consent of the minor. Additionally, § 1370.4(b) includes that “a parent or guardian may not give consent if: He or she is the abuser or suspected abuser of the minor or individual with a guardian; or the abuser or suspected abuser of the other parent of the minor. Therefore, a parent or guardian of a young child may consent for or on behalf of the child pursuant to State law as long as the parent or guardian is not the suspected abuser; or, the abuser or suspected

abuser of the other parent of the minor according to § 1370.4(b). Finally, the commenter’s suggestion to reference the VAWA provision for situations where unemancipated teens seek services without a parent or guardian is persuasive. Therefore, the rule in § 1370.4(b) is revised by adding after the second sentence, the following: If a minor or a person with a legally appointed guardian is permitted by law to receive services without the parent’s or guardian’s consent, the minor or person with a guardian may release information without additional consent.

*Comment:* One commenter recommended that the rule be revised to recognize the right and duty of State licensing agencies to inspect unredacted client identifiable records as part of a State’s statutory and regulatory monitoring responsibilities, including investigating program complaints and child abuse and neglect reports.

*Response:* We did not make changes to the rule in response to this comment. FVPSA at 42 U.S.C. 10406(c)(5)(B) and this rule at § 1370.4(a)(1) and (2) state that grantees and subgrantees shall not disclose any PII collected in connection with services requested through grantees’ and subgrantees’ programs or reveal any PII without informed, written, reasonably time-limited consent, whether for the FVPSA grant program or any other Federal or State grant program. FVPSA and this rule (in the same sections noted above) also require that if the release of PII (in connection with services) is compelled by statutory or court mandate, that grantees and subgrantees shall make reasonable attempts to provide notice to the victims affected by the release and shall take steps necessary to protect the privacy and safety of the persons affected by the release of information. A State or Tribal grantee does not have the authority under FVPSA to view any PII of any victim/survivor of domestic or dating violence that receives services from a FVPSA-funded program to monitor the quality or quantity of services provided, or for any other reason except under very limited circumstances to fulfill other statutory or court mandates. Safety and confidentiality protections for victims pursuant to FVPSA prevent States and Tribes from monitoring subgrantees/ sub-contractors for licensing or any other reasons if monitoring or other reviews include the collection, inspection, or other access to PII. States and Tribes may ensure that quality services are provided and prevent alleged fraud as long as they do not view or collect PII. There are many States and Coalitions that have

developed policies and protocols to monitor local domestic violence programs without requiring PII disclosure. PII must be redacted or the client must provide the appropriate written, time-limited release and such release must not be a condition for receipt of services nor should victims be compelled to sign releases. State or Tribal statutorily required reports of child abuse and neglect made by FVPSA-funded programs are limited to the information necessary to make the report. Subsequent investigations of allegations of child abuse and neglect are limited to viewing only the information related specifically to the investigation and must be either statutorily required or court mandated.

*Comment:* One commenter suggested that rule § 1370.4(e) be revised to read (proposed language changes are bolded), “Nothing in this section prohibits a grantee or subgrantee from reporting abuse and neglect, as those terms are defined by law, or disclosure without the consent of the victim if failure to disclose is likely to result in imminent risk of serious bodily injury or death of the victim or another person, where mandated or expressly permitted by the State or Indian Tribe involved.”

*Response:* We agree with the commenter with the exception of including the language “or disclosure without the consent of the victim” because State and Tribal imminent harm laws may differ and ACF does not want the rule text to create potential conflicts with State or Tribal laws. ACF did not intend for the NPRM to abrogate State or Tribal imminent harm reporting laws (see 42 U.S.C. 10406(c)(5)(G) which addresses Federal, State and Tribal law preemption issues for laws that provide greater protection). Therefore, § 1370.4(e) is revised to read: Nothing in this section prohibits a grantee or subgrantee, where mandated or expressly permitted by the State or Indian Tribe, from reporting abuse and neglect, as those terms are defined by law, or from reporting imminent risk of serious bodily injury or death of the victim or another person.

*Comment:* Two commenters asked that it be reemphasized that shelter locations do not have to be confidential per FVPSA requirements and this rule in § 1370.4(g). They also stated that with the advent of technology, including the proliferation of databases and relatively easy internet searches for people that it is most likely impractical or impossible to keep shelter locations confidential. They also recommended that this rule include guidance, for those shelters that choose to remain confidential, that such shelters may refuse to enter location

information into public databases or databases easily accessible to the public, such as 311 databases. The commenters also suggested that this rule advise programs to develop systems and protocols for keeping locations secure, if they choose to maintain program confidentiality, and for responding to disruptive or inappropriate contact from abusers. One of the commenters suggested that the rule emphasize the importance of continued reliance on the local expertise of individual Tribes to determine how to best maintain the safety and confidentiality of shelter locations.

*Response:* It is not within the purview of this rule to declare whether shelters which choose to remain confidential may refuse to enter location information into databases that may be required by State or local law. FVPSA and this rule, as recognized by both commenters, allow shelters to decide whether or not they want to be confidential locations; as such, ACF has determined that it would be a contradiction to regulate whether shelters enter data into public databases when they may also choose not to be confidential locations.

We agree that shelters which choose to be confidential must develop policies and protocols, if not already in place, to remain secure and must include policies for responding to disruptive or inappropriate contact from abusers. Based on Tribal sovereignty and their unique culture and customs, we also agree that it is appropriate to defer to Tribal governments' local expertise on how best to maintain the confidentiality and safety of shelter locations provided they exercise due diligence to comply with FVPSA requirements in this regard. Therefore, two additional subsections are added to § 1370.4(g) which will read: (1) Shelters which choose to remain confidential pursuant to this rule must develop and maintain systems and protocols to remain secure, which must include policies to respond to disruptive or dangerous contact from abusers and (2) Tribal governments, while exercising due diligence to comply with statutory provisions and this rule, may determine how best to maintain the safety and confidentiality of shelter locations.

*Section 1370.5 What additional non-discrimination and accessibility requirements apply to these programs?*

*Comment:* A number of commenters encouraged ACF to explicitly prohibit discrimination based on sexual orientation and gender identity in FVPSA-funded programs. Two commenters argued that ACF should interpret prohibitions against sex

discrimination in FVPSA, the overarching Civil Rights laws, and other Federal statutes to include prohibitions on the basis of sexual orientation and gender identity.

*Response:* FVPSA prohibits discrimination and the failure to serve survivors based on their actual or perceived sexual orientation or gender identity. We have revised the regulatory text of § 1370.5 to better reflect that position. ACF recognizes that discrimination based on actual or perceived gender identity is sex based discrimination. This is consistent with the way that discrimination based on actual or perceived gender identity is treated under civil rights laws. 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. ACF recognizes sexual orientation discrimination as a programmatic prohibition and will enforce that requirement through all available programmatic means. As such, rule text at § 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.

Additionally, rule text at § 1370.5(f) is changed to read: (f) Nothing in this section shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals under other applicable law. (g) The Secretary shall enforce the provisions of paragraphs (a) and (b) of this section (as also revised below) in accordance with section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1). Section 603 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2) shall apply with respect to any action taken by the Secretary to enforce this section.

*Comment:* Commenters suggested better ways to describe the requirement that families be housed together. Commenters noted that the reference only to survivors' sons was too narrow and made other suggestions for the language in this provision.

*Response:* We agree. As a general matter, families should be housed together, without regard to the sex of the children, as segregating children from their parents compromises' parents ability to supervise their children and can add to the trauma both parents and children have experienced or are experiencing. Additionally, in most cases, if feasible, it is a best practice for

families to have their own bedrooms and bathrooms. For example, unless the factors or considerations identified in § 1370.5(a)(2) require an exception to this general rule, mothers should be housed with their sons to prevent trauma beyond violence-related impacts, unless there are factors which would make such placements inappropriate. Fathers should also be housed with their daughters to avoid continued trauma unless there are factors, (i.e. safety and health of families and residents) that would make such placements inappropriate. Therefore, rule text in § 1370.5 will read: (a) No person shall on the ground of actual or perceived sex, including gender identity 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. (1) FVPSA grantees and subgrantees must provide comparable services to victims regardless of actual or perceived sex, including gender identity. This includes not only providing access to services for male victims of family, domestic, and dating violence, but also making sure not to limit services for victims with adolescent children (up to the age of majority) on the basis of actual or perceived sex, including gender identity. Victims and their minor children must be sheltered or housed together, regardless of actual or perceived sex, including gender identity, unless requested otherwise or unless the factors or considerations identified in § 1370.5(a)(2) require an exception to this general rule.

*Comment:* Commenters noted that the proposed rule regarding sex-segregation was too broad or unclear and suggested that, if all victims/survivors are to be afforded services and protections under FVPSA, the rule text needs to be more narrowly tailored. Two commenters encouraged ACF to adopt the VAWA standard. One commenter said that as currently written, this section potentially leaves a significant portion of LGBTQ populations, namely male identified survivors vulnerable to continued domestic or dating violence by not ensuring access to essential FVPSA-funded services. Other commenters suggested specific language to clarify the rule while recognizing the importance sex segregation can play in the sensitive residential situations and services provision funded under FVPSA. In that vein, another commenter suggested that challenges related to access are connected to the loss of privacy that every resident faces in communal living environments; that

loss of privacy becomes more visible when residents are representative of both sexes, multiple sexual orientations, or multiple gender identities. One other commenter suggested that sex-segregated services should be maintained to foster healing and respect religious beliefs.

*Response:* We agree with the commenters that this section needed to be clarified. We want to stress the importance of promoting environments that are both inclusive and safe. As one of the comments noted, we want to ensure that all men and women, including transgender and gender nonconforming individuals, have access to FVPSA-funded services. We also note in response to one particular commenter that heterosexual and transgender male victims, as well as gender non-binary individuals, who identify with a gender other than male or female, may also be vulnerable to continued domestic or dating violence by not ensuring access to essential FVPSA-funded services. At the same time, we understand that sex-segregated services may need to be maintained under certain circumstances as part of the essential operation of a FVPSA-funded program. When this happens, all individuals must be treated consistent with their gender identity when determining placement in sex-segregated facilities or services. Therefore, we revised the rule text in this section to address the first part of the comment and the revisions to rule text in § 1370.5(c) address the second part of the comment. As a result, the rule text is revised to include part of the language from the Department of Justice, Office on Violence Against Women FAQ (Frequently Asked Questions) document published on April 9, 2014 regarding the Nondiscrimination Grant Condition in VAWA Reauthorization 2013. Additionally, FVPSA State Administrators are often the same State administering agencies for VAWA grant funds. As such, to avoid potential confusion and uncertainty in the field, as well as to ensure accessibility to FVPSA-funded programs for all victims, § 1370.5(b) is re-designated and revised to read: (a)(2) No such program or activity is required to include an individual in such program or activity without taking into consideration that individual's sex in those certain instances where sex is a bona fide occupational qualification or a programmatic factor reasonably necessary to the normal or safe operation of that particular program or activity. If sex segregation or sex-specific programming is essential to the normal or safe operation of the program,

nothing in this paragraph shall prevent any such program or activity from consideration of an individual's sex. In such circumstances, grantees and subgrantees may meet the requirements of this paragraph 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. If a grantee or subgrantee determines that sex-segregated or sex-specific programming is essential for the safe or normal operation of the program, it must support its justification with an assessment of the facts and circumstances surrounding the specific program, including an analysis of factors discussed in paragraph (3) below, and take into account established field-based best practices and research findings, as applicable. The justification cannot rely on unsupported assumptions or overly-broad sex-based generalizations. An individual must be treated consistent with their gender identity in accordance with this section. (a)(3) Factors that may be relevant to a recipient's evaluation of whether sex-segregated or sex-specific programming is essential to the normal or safe operations of the program include, but are not limited to, the following: 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. 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.

*Comment:* Commenters suggested the language regarding accessibility of FVPSA-funded services for transgender survivors be clarified.

*Response:* We agree that additional clarification is needed. It is important that accessibility be consistent with equal access based upon a person's gender identity, whether one identifies as a man or woman, is transgender, or is gender-nonconforming. The gender identity of non-binary individuals who identify with a gender other than male or female must also be considered in programming. It is only in this narrow circumstance that program staff should make case by case decisions with regard

to placement in sex-specific or sex-segregated programs. Therefore, a fourth sub-paragraph added to the rule text at § 1370.5(a)(4) which reads: (4) 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 or subgrantee that makes decisions about eligibility for or placement into single-sex emergency shelters or other facilities must offer every individual an assignment consistent with their gender identity. 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. 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. For instance, if the potential victim/beneficiary requests to be placed based on his or her sex assigned at birth, ACF requires that the provider place the individual in accordance with that request, taking into account the health, safety, and privacy concerns of the individual. ACF 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.

*Comment:* Commenters suggested that, in addition to the provisions requiring religious accommodation in dietary practices, a more general statement regarding religious accommodation should be included.

*Response:* We agree. Therefore, consistent with the HHS-wide regulations found in 45 CFR parts 87, the FVPSA rule text in § 1370.5(d) is re-designated and revised to read: (b) An organization that participates in programs funded through the FVPSA shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a

religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. (1) Dietary practices dictated by particular religious beliefs may require some reasonable accommodation in cooking or feeding arrangements for particular beneficiaries as practicable. Additionally, other forms of religious practice may require reasonable accommodation including, but not limited to, shelters that have cleaning schedules may need to account for a survivor's religion which prohibits him/her from working on religious holidays. All grantees/recipients of funding subject to FVPSA and this rule at § 1370.5(a) and (c), accept the obligation, as a condition of a grant or subgrant/sub-contract, not to discriminate in the delivery of services or benefits supported by covered awards, on the basis of actual or perceived sex, including gender identity or sexual orientation.

*Comment:* A commenter noted the requirement regarding documentation as it related to accessibility for immigrant survivors was confusing and as written could be confused to prohibit collection of information ensuring individuals seeking FVPSA-funded services were victims of family violence, domestic violence, or dating violence. Another commenter suggested that additional language be added to the rule text at § 1370.5(e) to include "grantees and subgrantees shall also comply with Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973." A final commenter suggested that the language in rule text § 1370.30(c)(1) and (2) regarding the addition of the requirements in the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, including the language addressing access for the Limited English Proficient (LEP) using interpretation and translation services and access for individuals with communication-related disabilities, be included in a section that applies to a larger number of grantees beyond technical assistance providers and resource centers (this request and response is cross-referenced in § 1370.30(c)(1) and (2)).

*Response:* We respectfully disagree, in part. FVPSA-funded programs may collect personally identifying information for the purpose of being able to provide services to the victim. However, citizenship documentation is not required to provide services to an individual. Additionally, FVPSA data collection reporting requirements do not include personally identifying information. Personal identity or citizenship documentation is not

collected as part of quantitative data gathering regarding services provided by FVPSA-funded programs. ACF, in the FVPSA Performance Progress Reports, only requires that grantees and subgrantees report aggregate demographic data and include a count of the various FVPSA-funded services provided by grantees and subgrantees; no identity or citizenship documents need to be accessed for this information.

We also added a new section 1370.5(e) to clearly assert that all grantees and subgrantees shall create a plan to ensure effective communication and equal access, including: (1) How to identify and communicate with individuals with Limited English Proficiency, and how to identify and properly use qualified interpretation and translation services, and taglines; and (2) How to take appropriate steps to ensure that communications with applicants, participants, beneficiaries, members of the public, and companions with disabilities are as effective as communications with others; and furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, beneficiaries, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity. Auxiliary aids and services include qualified interpreters and large print materials.

*Comment:* One commenter suggested that the proposed rule text in § 1370.5(d) regarding FVPSA-funded programs serving human trafficking victims be completely stricken because Congress did not authorize it in the legislation. The commenter also stated that nationally, nearly 11,000 victims of domestic violence are turned away daily and it is impossible to prioritize victims of domestic and intimate partner violence over victims of human trafficking when service providers cannot provide services to all victims of family, domestic, and dating violence. The commenter also indicated that even without the proposed rule language, victims of family, domestic, and dating violence who are also human trafficking victims will continue to receive services from FVPSA-funded providers and appropriate referrals for services related to human trafficking. Another commenter identified that many domestic violence programs serve human trafficking victims if their missions encompass such services and/or when other services are simply not available. The commenter suggested that FVPSA-funded programs cannot be seen as the "solution" to sheltering and serving human trafficking victims who

are not also domestic violence victims. The commenter repeated statistics about unserved domestic violence victims on a daily basis and stated that FVPSA-funded programs turn away approximately 160,000 domestic violence victims annually because programs do not have the capacity to meet needs. The commenter suggested a language change to allow provider discretion in serving human trafficking victims who are not domestic violence victims. An additional commenter suggested that requiring domestic violence service providers to serve human trafficking victims is beyond the scope of and inconsistent with FVPSA. They suggested that the expectations are unduly burdensome on staff and that the requirement will create mission drift for many FVPSA-funded organizations. The final commenter suggested that the proposed rule text be moved to § 1370.10 addressing State and Tribal formula grant applications because placing it alongside anti-discrimination provisions is confusing. The commenter made additional suggestions for screening, eligibility and creating case plans to serve human trafficking victims but also emphasized that FVPSA-funded providers can serve human trafficking victims provided domestic violence victims are prioritized and that States and Tribes be required to support programs which have the capacity to do the work.

*Response:* FVPSA does not specifically identify human trafficking victims as a service population; however, there is no statutory language that prevents such service provision in the context of serving family, domestic, or dating violence victims who may also be victims of human trafficking. Human trafficking, as described in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102), often simultaneously occurs in the context of intimate relationships between perpetrators of trafficking/domestic violence or dating violence and those who are victimized by such crimes. In the spirit of the Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013–2017, FVPSA-funded programs are strongly encouraged to safely screen for and identify victims of human trafficking who are also victims or survivors of domestic violence or dating violence and provide services that support their unique needs. Given Administration priorities as enunciated in the *Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013–2017*, the NPRM preamble and

regulatory text provided sub-regulatory guidance that FVPSA services can also support human trafficking victims who are not experiencing domestic or intimate partner violence *as long as victims and survivors of domestic/intimate partner violence are prioritized first by FVPSA grantees/sub-grantees* (emphasis added). However, as a result of the public comments indicating that this language will confuse grantees and subgrantees and that serving human trafficking victims who are not victims of domestic or dating violence goes beyond FVPSA's specific language and intent, ACF has revised its guidance to reflect that FVPSA funds may be used to serve victims who experience co-occurring domestic or dating violence and human trafficking. To clarify, we added a new paragraph (d) to § 1370.10 to read: Given the unique needs of victims of trafficking, FVPSA-funded programs are strongly encouraged to safely screen for and identify victims of human trafficking who are also victims or survivors of domestic violence or dating violence and provide services that support their unique needs. Human trafficking victims who are not also domestic or dating violence victims may be served in shelter and non-residential programs provided other funding mechanisms, such as funds from other federal programs, local programs, or private donors, are used to support those services.

Moreover, to continue to encourage services and supports for human trafficking victims, FVPSA funding opportunity announcements include human trafficking victims who are also victims of co-occurring domestic or dating violence as examples of underserved populations and human trafficking has been and will continue to be an Administration priority that is addressed at FVPSA grantee meetings and by FVPSA-funded technical assistance providers. However, given the numerous challenges identified by commenters about serving human trafficking victims, including the lack of resources, the inability to serve current domestic violence victims who are not human trafficking victims and the potential for confusing programs about FVPSA priorities, ACF has removed the rule text addressing human trafficking from the final rule at § 1370.5(d).

*Comment:* Two commenters requested that ACF reference the non-discrimination enforcement provisions at section 1557 of the Patient Protection and Affordable Care Act in addition to the enforcement provisions of the Civil Rights Act referenced in the NPRM.

*Response:* ACF agrees that section 1557's prohibition on discrimination in

health programs or activities may in some cases apply to FVPSA-funded programs. Accordingly, ACF has added a reference to 45 CFR part 92 to section 1370.3 of this rule.

*Comment:* A number of commenters expressed concern regarding the requirement that no conditions can be imposed on the receipt of emergency shelter and the requirement that all supportive services shall be voluntary. Three commenters suggested that this section's placement in the anti-discrimination provisions is confusing and asked that the requirements be moved either to the section for State and Tribal applications or to § 1370.4 including a new title change suggestion for that section. Another commenter suggested that the section's current language prevents *shelter* operators from complying with the requirements in the Drug-free Workplace Act, to allow them discretion not to serve persons currently using illegal drugs, and to adopt reasonable policies or procedures to ensure that a person is not using illegal drugs. Three commenters also expressed concern that this section conflates the separate concepts of voluntary services and no conditions for the receipt of emergency shelter. They suggested that current rule text indicates that no condition whatsoever can be placed on individuals and families in shelter unless a State imposes a legal requirement to protect the safety and welfare of all shelter residents. Two commenters were uncomfortable with the NPRM language and noted apparent conflicts of laws would be considered on a case-by-case basis. Finally, one other commenter suggested that examples used in the NPRM preamble also be used in the rule text.

*Response:* We partially agree. While the requirements for no conditions on the receipt of emergency shelter and that supportive services shall be voluntary are to some extent considered accessibility challenges, or continued accessibility challenges once in shelter, we agree that including these requirements in the anti-discrimination section (which is also to a great extent about programmatic accessibility) is confusing and that the specific explanation of terms in the section could be clearer. Regarding the comment that terms are conflated to mean that only States may impose conditions based upon legal requirements to protect the safety and welfare of all shelter residents, we disagree. The rule text says that these provisions are not intended to preempt State law, in any case where a State may impose some legal requirement to protect the safety and welfare of all

shelter residents; the intended rule text was meant to ensure that States may impose requirements to protect the safety and welfare of *shelter residents* (emphasis added), which does not conflict with the provision that no requirement may be imposed to receive shelter or that supportive services shall be voluntary.

Regarding the comment about complying with the Drug-free Workplace Act requirements, we disagree. The Drug-free Workplace Act targets the drug use activities of employees and not individuals receiving services (see 41 U.S.C. 8103). The commenter's concerns are therefore unwarranted.

The comments that identified concerns about the handling of conflicts of laws are addressed in the following rule text revision. To address concerns raised by all comments, § 1370.5(g) is re-designated § 1370.10(b)(10) and will read as follows: (10) Such additional agreements, assurances, and information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe. Moreover, additional agreements, assurances, and information required by the Funding Opportunity Announcement and other program guidance will include that no requirement for participating in supportive services offered by FVPSA-funded programs may be imposed by grantees or subgrantees for the receipt of emergency shelter and receipt of all supportive services shall be voluntary. Similarly, the receipt of shelter cannot be conditioned on participation in other services, such as, but not limited to counseling, parenting classes, mental health or substance use disorders treatment, pursuit of specific legal remedies, or life skill classes. Additionally, programs cannot impose conditions for admission to shelter by applying inappropriate screening mechanisms, such as criminal background checks, sobriety requirements, requirements to obtain specific legal remedies, or mental health or substance use screenings. An individual's or family's stay in shelter cannot be conditioned upon accepting or participating in services. Based upon the capacity of a FVPSA-funded service provider, victims and their dependents do not need to reside in shelter to receive supportive services. Nothing is these requirements prohibits a shelter operator from adopting reasonable policies and procedures reflecting field-based best practices, to ensure that persons receiving services are not currently engaging in illegal drug use, if

that drug use presents a danger to the safety of others, creates an undue hardship for the shelter operator, or results in unsafe behavior. In the case of an apparent conflict with State, Federal, or Tribal laws, case-by-case determinations will be made by ACF if they are not resolved at the State or Tribal level. In general, when two or more laws apply, a grantee/subgrantee must meet the highest standard for providing programmatic accessibility to victims and their dependents. These provisions are not intended to deny a shelter the ability to manage its services and secure the safety of all shelter residents should, for example, a client become violent or abusive to other clients.

*Comment:* Two commenters suggested the regulation should provide guidance on sex-segregated education programs, secondary prevention programming, and inclusion of content relevant to LGBTQ populations.

*Response:* ACF has determined that while the commenter raises legitimate issues about other services for LGBTQ populations, these concerns are better left to technical assistance providers who are experts in providing domestic violence services to these populations.

**Section 1370.6** *What requirements for reports and evaluations apply to these programs?*

*Comment:* Two commenters suggested that rule text regarding performance reports' submissions at such time as required by the Secretary be amended to include, "although no more often than annually."

*Response:* The statute and the proposed rule are clear that the Secretary may require performance reports at such time as required. ACF declines to limit the Secretary's discretion in this regard to ensure that necessary grantee and subgrantee performance information, including corrective action performance, are available upon request and in accordance with the requirements of the Paperwork Reduction Act.

*Comment:* One commenter pointed out that pursuant to 48 U.S.C. 1469a and 45 CFR 97.10 and 97.16, Territories that opt to consolidate their FVPSA funds with other HHS funds in a Consolidated Block Grant, are not required to submit a separate performance progress report to ACF. The commenter also identified that if they choose not to consolidate that they must provide an annual performance progress report to ACF, just as State and Tribal formula grantees are required to do.

*Response:* We agree. Therefore, the rule text at § 1370.6 is revised to read:

Each entity receiving a grant or contract under these programs shall submit a performance report to the Secretary at such time as required by the Secretary. Such performance report shall describe the activities that have been carried out, contain an evaluation of the effectiveness of such activities, and provide such additional information as the Secretary may require. Territorial governments which consolidate FVPSA funds with other HHS funds in a Consolidated Block Grant pursuant to 45 CFR 97 are not required to submit annual FVPSA performance progress reports if FVPSA funds are not designated in the consolidation application for FVPSA purposes. If a territorial government either does not consolidate FVPSA funds with other HHS funds or does consolidate but indicates that FVPSA funds will be used for FVPSA purposes, the territorial government must submit an annual FVPSA performance progress report to FYSB.

#### **Subpart B—State and Indian Tribal Grants**

**Section 1370.10** *What additional requirements apply to State and Indian Tribal grants?*

*Comment:* One commenter asked that the rule text in § 1370.10(a) be modified. They noted that each time examples are given for underserved or racial and ethnic populations, that other eligible communities be included. For example, the commenter noted that if older individuals or people with disabilities are included that all eligible groups and communities be listed (*i.e.* Tribes, racial and ethnic communities, survivors impacted by sexual orientation or gender identity, immigration status, etc.). This commenter applied the request not only to how States and Tribes include such communities and populations in their funding but to include the expertise of people from historically marginalized communities in State planning. Additionally, the commenter identified that the word "Tribes" be removed from § 1370.10(a) in the third sentence because Indian Tribes include populations that are themselves underserved and lack many of the basic services assumed for other communities in the United States.

*Response:* We respectfully disagree in part. In this and other rule sections similar comments were received. To clarify and provide consistency throughout this rule, we will use underserved populations and culturally- and linguistically-specific populations rather than inconsistently identifying different communities in different

sections of the rule, unless specifically required by statutory language. "Tribes", in deference to Tribal sovereignty, is removed from the sentence as suggested by the commenter. Therefore, § 1370.10(a) is revised to include the following sentence: States must involve community-based organizations that primarily serve underserved populations, including culturally- and linguistically-specific populations, to determine how such populations can assist the States in serving the unmet needs of the underserved populations.

*Comment:* A commenter suggested that involving the State Domestic Violence Coalitions in State-planning, and having States consult with them on statewide needs, is a conflict because many States also fund the Coalitions. This funding relationship, and the fact that Coalition membership includes FVPSA-funded programs, would create possible conflicts of interest if Coalitions were to participate in specific award decisions and program monitoring. The commenter said that State's purchasing rules would preclude Coalitions in monitoring and in any award-related decisions. The commenters indicated that § 1370.10(a) is overreaching and needs to be amended to allow States more autonomy by deleting the reference, and multiple additional references throughout the document, to award making and monitoring.

*Response:* We respectfully disagree but we have revised the regulatory text to ensure clarity. Section 1370.10(a), while identifying that State Domestic Violence Coalitions must be involved in the planning and monitoring of the distribution of grants to eligible entities and the administration of grant programs and projects (per FVPSA requirements at 42 U.S.C. 10407(a)(2)(D)), does not create potential conflicts of interest. The language cited by the commenter is found in the NPRM preamble and is not reflected in the rule text. However, the NPRM preamble also provides examples of what is meant by the proposed language. It states that "at a minimum to further FVPSA requirements, we expect that States and Coalitions will work together to determine grant priorities based upon jointly identified needs; to identify strategies to address needs; to define mutual expectations regarding programmatic performance and monitoring; and to implement an annual collaboration plan that incorporates concrete steps for accomplishing these tasks. All of these requirements are either found in the Funding Opportunity Announcements

dating back to FVPSA reauthorization in 2010 or have been discussed in grantee meetings and other informal communications via FYSB listservs.” As such, no conflict is potentially set up by these minimum requirements unless States’ conflate the requirements to mean that Coalitions, who compete for State funding, must be involved in making actual award decisions. There is nothing in this rule that suggests this. As a result of this comment, § 1370.10(a) is revised to include the following sentence: At a minimum to further FVPSA requirements, we expect that States and State Domestic Violence Coalitions will work together to determine grant priorities based upon jointly identified needs; to identify strategies to address needs; to define mutual expectations regarding programmatic performance and monitoring; and to implement an annual collaboration plan that incorporates concrete steps for accomplishing these tasks. If States also fund State Domestic Violence Coalitions to provide training, technical assistance, or other programming, nothing in this rule is intended to conflict with State contracting requirements regarding conflicts of interest but rather that this rule’s requirements should be interpreted to complement States’ contracting and procurement laws and regulations.

*Comment:* A commenter suggested that examples of successful collaborations and partnerships between States, Coalitions, and Tribes be included in this rule section and that the rule promote examples of how States are meeting application requirements related to these issues.

*Response:* We respectfully disagree. These topics are more suited for grantee meetings and technical assistance which may also be provided by FVPSA-funded Coalitions and Resource Centers working with States in this regard. Additionally, ACF may issue policy guidance with examples in order to highlight best practices related to successful collaborations.

*Comment:* A commenter suggested that rule text § 1370.10(b) is an unfunded mandate to fund new programs.

*Response:* We respectfully disagree. There are no requirements in this section that require funding new programs. The rule text requires at § 1370.10(b)(2)(iii) that the States provide in their applications “A description of the specific services to be provided or enhanced, such as new shelters or services, improved access to shelters or services, or new services for underserved populations such as

victims from communities of color, immigrant victims, victims with disabilities, or older individuals.” This language does not require newly funded programs, but rather requires examples by using “such as” language to identify potential new shelters or enhanced services. If there are no new or enhanced services to describe then a State’s application should say so.

*Comment:* One commenter suggested that the States be required to describe how they will ensure that at least 10% of the State FVPSA funds are distributed to culturally-specific organizations whose primary-purpose is serving racial and ethnic populations. They suggest this would mirror provisions in VAWA and bring FVPSA and VAWA provisions in line with each other to ensure greater coordination and more equitable distribution of grant funding across these two critical programs.

*Response:* The requirements for FVPSA Formula Grants to States are very clear and they do not include a State set-aside of 10% for culturally-specific organizations. Therefore ACF cannot change the formula even if other Federal statutes, namely VAWA, have different formulas.

*Comment:* One commenter had several recommendations for revising § 1370.10(b)(2) to add new requirements addressing: (1) States’ (and Tribes) requirements to involve community-based organizations serving culturally-specific, underserved communities and determine how such organizations can assist States and Tribes in serving the unmet needs of the underserved community; (2) that States should include information on the existence and availability of services, whether or not FVPSA-funded; and (3) that States’ outreach plans include the process for obtaining and integrating input from the community.

*Response:* We respectfully disagree. The State’s application at § 1370.10(b)(2) reflects statutory language and already adds guidance to support services for underserved populations and culturally- and linguistically-specific populations. While the commenter’s ideas are good, they do not significantly enhance or help to further explain current statutory or proposed rule text requirements.

*Comment:* One commenter suggested that LGBTQ communities be added as underserved populations for purposes of the State application requirements found in rule text § 1370.10(b)(2).

*Response:* LGBTQ communities are included in underserved populations for the purposes of State application requirements; section 1370.2 defines underserved populations to include

actual or perceived sexual orientation and gender identity. As mentioned in previous responses to similar comments in other sections asking that all eligible organizations representing multiple potential communities be added to clarify underserved populations, it is the intent of this rule to, for consistency, use the term underserved populations which includes actual or perceived sexual orientation and gender identity, unless otherwise required by FVPSA.

*Comment:* Three commenters suggested that it would be useful for this rule and FVPSA funding procedures to clarify that while Census Bureau data may be important in helping a program to establish its relevance to the population in its service area, Census data also has significant limits. The commenters suggested amending § 1370.10(b)(2)(i) to include that other demographic information may be used to identify needs. In particular, the commenters identified that Census Bureau data undercounts LGBTQ individuals and immigrants and refugees. The commenters identified that while victims from racial and ethnic populations may appear to be overrepresented in services as compared to the Census Bureau population data, other relevant data may provide critical information about the vital need for culturally relevant and linguistically appropriate programming to those communities.

*Response:* We agree that there may be other sources of relevant data to consult for developing service and programming plans, therefore rule text at § 1370.10(b)(2)(i) is revised to read: Identification of which populations in the State are underserved, a description of those that are being targeted for outreach and services, and a brief explanation of why those populations were selected to receive outreach and services, including how often the State revisits the identification and selection of the populations to be served with FVPSA funding. States must review their State demographics and other relevant metrics at least every three years or explain why this process is unnecessary.

*Comment:* A commenter stated that § 1370.10(b)(2)(ii) requires that States use new State dollars to provide training to FVPSA-funded grantees. The commenter indicated: (1) The paragraph is unclear whether the State is expected to provide training and technical assistance to new culturally specific organizations or to existing mainstream organizations; and (2) the paragraph is overreaching in the expectation that States will be able to provide new training and technical assistance

without any new dollars added to the State award. Additionally, the commenter said that due to the potential for conflicts of interest, it is not feasible to include representatives of service providers for underserved populations in a leadership role in many aspects of FVPSA-funding including award making and monitoring. The commenter suggested that this section should be amended to permit, but not require, training and technical assistance, and to clarify that representatives from underserved populations be consulted in FVPSA planning.

*Response:* We respectfully disagree. Section 1370.10(b)(2)(ii) does not require States to involve representatives from underserved populations in award-making decisions. It is reasonable to expect that States will provide training and technical assistance to those reached by States' outreach plans (which is the subject of paragraph (2)) and there is nothing in this section that requires States to use new or additional funding to meet requirements. Since the section specifically addresses underserved populations, who should receive technical assistance pursuant to the requirement is already identified.

*Comment:* A commenter acknowledged the rule's intent for Tribes to participate meaningfully in State planning processes and needs assessments, while simultaneously not imposing additional burdensome requirements on Tribes or infringing on Tribal sovereignty. The commenter suggested that by adding additional language in § 1370.10(b)(3) to include Tribal Coalitions, ACF's intent will be more fully realized.

*Response:* We agree. Therefore § 1370.10(b)(3) is revised to read: A description of the process and procedures used to involve the State Domestic Violence Coalition and Tribal Coalition where one exists, knowledgeable individuals, and interested organizations, including those serving or representing underserved populations in the State planning process.

*Comment:* The commenter above suggested for the same reasons that § 1370.10(b)(4) be amended to include Tribal Coalitions.

*Response:* We agree. Therefore, § 1370.10(b)(4) is revised to read: Documentation of planning, consultation with, and participation of the State Domestic Violence Coalition and Tribal Coalition where one exists, in the administration and distribution of FVPSA programs, projects, and grant funds awarded to the State.

*Comment:* A commenter suggested revising § 1370.10(b)(4) to track the

statute specifically and that (b)(4) be stricken and revised for this purpose.

*Response:* The regulations are intended to provide clarity on statutory and programmatic requirements. We believe § (b)(4) and (b)(10) provide the guidance needed to meet statutory guidelines. Therefore, we did not change the rule in response to this comment.

*Comment:* A commenter urged ACF to delete the language in § 1370.10(b)(4) and replace with "the State's overall FVPSA Plan" based on the potential for conflicts of interest described in previous comments regarding the State requirement to involve the Coalition in the planning and monitoring of the distribution of grant funds, etc.

*Response:* The current rule text closely tracks specific statutory language because we believe the statute provides the necessary clarity. Therefore, we respectfully decline to adopt the suggested revision.

*Comment:* One commenter suggested that § 1370.10(b)(5) align specifically with statutory language.

*Response:* The regulations are intended to provide clarity on statutory and programmatic requirements. We believe the current rule text at § 1370.10(b)(5) provides the guidance needed to meet statutory guidelines. We did not make any changes to the rule.

*Comment:* A commenter suggested that § 1370.10(b)(5) be amended to expand the number of populations to be addressed in States' planning on how funding processes and allocations will address the needs of various populations. Another commenter stated that the definitions for urban and rural based on the U.S. census may conflict with a State's definition as specified in State regulations. The commenter suggested that the State should be able to use its own definition.

*Response:* We respectfully disagree in part. While adding populations to those identified in the rule text may seem more inclusive, given previous comments and our responses, we have determined that using the term underserved populations as defined by, but not limited to, multiple populations (see § 1370.2) serves the commenter's purpose. Using terminology that is redundant only adds to interpretive confusion and inconsistency throughout the rule. Additionally, by using the terms underserved populations and culturally- and linguistically-specific populations unless otherwise required by FVPSA, help to provide clarity and consistency throughout the rule.

We agree with the comments concerning allowing States to use their own definition of urban and rural. In

revised § 1370.10(b)(5), we allow states to use their own definition unless the definition does not achieve the equitable distribution of funds within the State and between urban and rural areas. Section 1370.10(b)(5) is revised to read: A description of the procedures used to assure an equitable distribution of grants and grant funds within the State and between urban and rural areas. States may use one of the Census definitions of rural or non-metro areas or another State-determined definition. A State-determined definition must be supported by data and be available for public input prior to its adoption. The State must show that the definition selected achieves an equitable distribution of funds within the State and between urban and rural areas. The plan should describe how funding processes and allocations will address the needs of underserved populations as defined in § 1370.2, including Tribal populations, with an emphasis on funding organizations that can meet unique needs including culturally- and linguistically-specific populations. Other Federal, State, local, and private funds may be considered in determining compliance.

*Comment:* A commenter suggested § 1370.10(b)(6) be amended to comport with the clarified and more flexible definition of shelter.

*Response:* We agree with the commenter and have revised the rule. We have also made edits to § 1370.10(b)(6) to remove "and culturally specific communities." Therefore, § 1370.10(b)(6) is revised to read: A description of: (1) How the State plans to use the grant funds including a State plan developed in consultation with State and Tribal Domestic Violence Coalitions and representatives of underserved populations; (2) the target populations; (3) the number of shelters and programs providing shelter to be funded; (4) the number of non-residential programs to be funded; the services the State will provide; and (5) the expected results from the use of the grant funds. To fulfill these requirements, it is critically important that States work with State Domestic Violence Coalitions and Tribes to solicit their feedback on program effectiveness which may include recommendations such as establishing program standards and participating in program monitoring.

*Comment:* Two commenters suggested that the language in §§ 1370.10(b)(7) and (c)(5) be changed to track the statute specifically; they believed the language confuses statutory requirements and may impose legal impediments not intended by the statute.

*Response:* After careful consideration, we agree the language should be revised to reflect the statutory provision. It was not ACF's intent to change statutory requirements or to potentially complicate matters which may impose undue burdens on victims or conflict with States' eviction laws. Therefore, § 1370.10(b)(7) is revised to read: An assurance that the State has a law or procedure to bar an abuser from a shared household or a household of the abused person, which may include eviction laws or procedures, where appropriate. Section 1370.10(c)(7) is revised to read: An assurance that the Indian Tribe has a law or procedure to bar an abuser from a shared household or a household of the abused person, which may include eviction laws or procedures, where appropriate.

*Comment:* A commenter suggested that § 1370.10(b)(8) be amended to more clearly track statutory language to ensure that States give special funding-emphasis to community-based projects of demonstrated effectiveness carried out by primary-purpose projects.

*Response:* We agree. Therefore, § 1370.10(b)(8) is revised to add the following sentence: In the distribution of funds, States will give special emphasis to the support of community-based projects of demonstrated effectiveness that are carried out by primary-purpose projects.

*Comment:* One commenter noted that the FVPSA requirement at 42 U.S.C. 10409(a) for Federal consultation with Tribal governments in the planning of grants for Indian Tribes is not referenced in this rule. The commenter indicated that this consultation, which should take place annually, would greatly strengthen development and provision of domestic violence shelter and supportive services for American Indian and Alaska Native Tribes.

*Response:* ACF is committed to ensuring that FYSB/FVPSA staff representatives participate meaningfully in ACF consultations.

*Comment:* One commenter, while acknowledging that ACF has been cautious to avoid overly burdensome requirements on Tribes identifies that § 1370.10(c)(1) requires for consortia applicants that "a representative from each Tribe sign the application" as well as submit Tribal resolutions supporting or approving a consortia. The commenter notes that if Tribal resolutions are the vehicles to support applications it is in fact duplicative of requiring Tribal resolutions themselves. The commenter suggested that signed resolutions from each Tribe applying as part of a consortium should suffice as documentation.

*Response:* We respectfully believe that specific and current information with respect to the roles, responsibilities, and specific commitments of consortia members is necessary for the effective administration of the grant program and requires documentation separate from that indicating approval for application submittal. As such, ACF revised the regulatory text in response to this comment to more clearly describe the purposes of the documentation requirements. Section 1370.10(c) is revised to read: An application from a Tribe or Tribal Organization must include documentation demonstrating that the governing body of the organization on whose behalf the applications is submitted approves the application's submission to ACF for the current FVPSA grant period. Each application must contain the following information or documentation: (1) Written Tribal resolutions, meeting minutes from the governing body, and/or letters from the authorizing official reflecting approval of the application's submittal, depending on what is appropriate for the applicant's governance structure. Such documentation must reflect the applicant's authority to submit the application on behalf of members of the Tribes and administer programs and activities pursuant to FVPSA; (2) The resolution or equivalent documentation must specify the name(s) of the Tribe(s) on whose behalf the application is submitted and the service area for the intended grant services; (3) Applications from consortia must provide letters of commitment, memoranda of understanding, or their equivalent identifying the primary applicant that is responsible for administering the grant, documenting commitments made by partnering eligible applicants, and describing their roles and responsibilities as partners in the consortia or collaboration. The remaining rule text in this section is renumbered to comport with the revisions above.

### **Subpart C—State Domestic Violence Coalition Grants**

#### *§ 1370.20 What additional requirements apply to State Domestic Violence Coalitions?*

*Comment:* Two commenters referencing § 1370.20(a) suggested revising the language because urging States, localities, cities, and the private sector to become involved in State and local planning towards an integrated service delivery approach misinterprets the role of various stakeholders. The

commenters suggested that striking "become involved" and insert "improve responses to. . ." would more accurately reflect the roles of stakeholders.

*Response:* We agree that the commenters' suggested language provides clarity. Therefore § 1370.20(a) is revised as follows: State Domestic Violence Coalitions reflect a Federal commitment to reducing domestic violence; to urge States, localities, cities, and the private sector to improve the responses to and the prevention of domestic violence and encourage stakeholders and service providers to plan toward an integrated service delivery approach that meets the needs of all victims, including those in underserved populations; to provide for technical assistance and training relating to domestic violence programs; and to increase public awareness about and prevention of domestic violence and increase the quality and availability of shelter and supportive services for victims of domestic violence and their dependents.

*Comment:* One commenter suggested that LGBTQ communities be named as an underserved population in the planning identified in § 1370.20(a).

*Response:* For the reasons previously identified in responses to other comments we will not revise the rule. Underserved populations and culturally- and linguistically-specific populations are terms used throughout the rule for consistency and to avoid confusion, except where required by statute. In the definitions section of the rule, the term underserved populations includes actual or perceived sexual orientation and gender identity.

*Comment:* One commenter, referencing § 1370.20(b)(2), strongly objected to the non-statutory language "though not exclusively composed of" and strongly urged that the rule strike this language. The commenter also said that the proposed language could be read as a mandate not contemplated in the statute or the NPRM preamble which states, "that Boards of Directors composed of member representatives and community members are highly encouraged." Another commenter suggested that this section be revised to read, "As authorized by applicable law and regulations, contains such agreements, assurances, and information, in such forms, and submitted in such matter as the Funding Opportunity Announcement and related program guidance prescribe."

*Response:* We disagree in part. The second half of the commenter's proposed language is already included in § 1370.20(c)(2) for application

submissions. As such, their request to include it in the eligibility/designation purpose of the rule is not relevant to that section. Regarding the first commenter's concern, we agree and § 1370.20(b)(2) is revised to read: The Board membership of the Coalition must be representative of such programs, and may include representatives of communities in which the services are being provided in the State.

*Comment:* One commenter suggested that § 1370.20(b)(3) be revised to remove unnecessary detail, specifically that Coalitions as independent, autonomous nonprofit organizations, need to be financially sustained by their boards of directors and their membership bodies.

*Response:* We respectfully disagree. Our experience through conducting site visits and monitoring of grantees has revealed that coalition members often do not acknowledge or understand that coalitions as independent non-profit organizations need to financially sustain the organizations independent of the work they do to financially sustain member programs. Therefore, the rule language is unchanged.

*Comment:* Three commenters identified that § 1370.20(b)(4) does not fully or accurately reflect the full statutory purposes of Coalitions. They recommended that the rule explicitly follow the statute and clarify that there are additional Coalition purposes named in the statute.

*Response:* We agree the statutory language would be helpful in this section. As such § 1370.20(b)(4) is revised to read: The purpose of a State Domestic Violence Coalition is to provide education, support, and technical assistance to such service providers to enable the providers to establish and maintain shelter and supportive services for victims of domestic violence and their dependents; and to serve as an information clearinghouse, primary point of contact, and resource center on domestic violence for the State; and support the development of policies, protocols, and procedures to enhance domestic violence intervention and prevention in the State.

*Comment:* Two commenter's suggested that the language in § 1370.20(c)(1) is too specific, beyond the reach of the statute, and misaligned with coalitions' work. They stated that the rule should not include additional required abilities or capacities not directly tied to the statute and that additional mandates not be imposed without changes to the law. The commenters strongly recommended that the rule strike the following language in § 1370.20(c)(1): "Demonstrated ability or

capacity may include but is not limited to: identifying successful efforts that support child welfare agencies' identification and support of victims during intake processes; creation of membership standards that enhance victim safety and fully require training and technical assistance for compliance with Federal housing, disability, and sex discrimination laws and regulations; and, training judicial personnel on trauma-informed courtroom practice." The commenters also suggested that the requirement in the last sentence of § 1370.20(c)(1) be changed from "must also have documented experience in" to "should reflect the subject areas and activities described in:"

*Response:* We disagree in part. The requirements in the last sentence of § 1370.20(c)(1) are statutory in that Coalitions must/shall have documented experience in the statutory areas identified in that section, therefore, there is no discretion to change the requirements to "should (emphasis added) reflect the subject areas. . .". Otherwise, we agree that the language should more closely track the statute to avoid confusion. The language in § 1370.20(c)(1) is revised to read: Includes a complete description of the applicant's plan for the operation of a State Domestic Violence Coalition, including documentation that the Coalition's work will demonstrate the capacity to support state-wide efforts to improve system responses to domestic and dating violence as outlined in (iii) through (viii) below. Coalitions must also have documented experience in administering Federal grants to conduct the activities of a Coalition or a documented history of active participation in . . .

*Comment:* In reference to § 1370.20(c)(1)(iii), one commenter suggested each time examples are offered for underserved and/or racial and ethnic populations that if one example is given, that all eligible communities be listed in the section.

*Response:* As identified in previous responses to comments, providing examples throughout the rule of different populations promotes inconsistency and confusion. Therefore, for the purposes of identifying such communities, the terms underserved populations and culturally- and linguistically-specific populations are used throughout the rule unless otherwise statutorily required. As such, § 1370.20(c)(1)(iii) is revised to read: Working in collaboration with service providers and community-based organizations to address the needs of family violence, domestic violence, and dating violence victims, and their

dependents, who are members of underserved populations and culturally- and linguistically-specific populations.

*Comment:* Two commenters asked that § 1370.20(c)(1)(iv) be amended to add the phrase "to support" and it be placed in between the terms "mental health" and "the development" as well as include the statutory phrases of "social welfare and businesses."

*Response:* We respectfully disagree because the rule text tracks statutory language and the proposed changes do not provide additional clarity to improve a reader's understanding of the statutory language.

*Comment:* One commenter asked that § 1370.20(c)(1)(vi) be changed while acknowledging that it tracks the statute. The commenter specifically recommended a clarification that the referenced child abuse is present as a co-occurrence with the domestic, dating or family violence by inserting "and there is a co-occurrence of child abuse" and striking "and child abuse is present." Additionally, the commenter recommended striking "family law" and "criminal court judges" and only refer to "judges," so as to not limit the types of judges with whom the Coalitions may work.

*Response:* We respectfully disagree because, as the commenter notes, the language tracks the statute. To change the language would specifically change the statute rather than help clarify it. Additionally, the statutory language does not limit the types of judges with whom the Coalitions may work; it only provides examples of the kinds of judges envisioned by the statute.

*Comment:* Two commenters identified that § 1370.20(c)(1)(vii) is not required by statute and that if the section is meant to be allowable rather than mandatory that it be amended to say so.

*Response:* We agree. Since current sub-section (vii) is not mandated when the rest of § 1370.20(c)(1) is mandated, the entire section is revised to re-designate current subsection (ix) as (viii); current subsection (viii) will be re-designated as (vii) and the current subsection (vii) will be removed.

*Comment:* A commenter suggested § 1370.20(e) be revised to include that HHS should work in close consultation with a nationwide organization of Coalitions that has a demonstrated history of providing technical assistance to Coalitions. They also requested that language be added that a Coalition should have the reach throughout the State that reflects its depth and breadth of connections.

*Response:* We respectfully disagree. HHS will determine the technical

resources it needs, if any, to determine the designation or re-designation of a Coalition because Federal staff are experts in the field with the relationships needed to make such determinations. Additionally, the statute and this rule require that Coalitions be statewide entities so the commenter's requested language change is not necessary. A technical correction is made to rule text at § 1370.20(d) to correct the FVPSA citation that originally referenced section 311(e) to 42 U.S.C. 10411(e). Technical corrections are also made to the regulatory text at § 1370.20(e) to: (1) Replace "primary-purpose domestic violence programs" with "primary-purpose domestic violence service provider" to avoid confusion previously identified about Coalition membership requirements and (2) remove the term "racial and ethnic populations" because the term is already included in the underserved populations' definition.

*Comment:* A commenter suggested, in reference to § 1370.20(f) (regarding situations where an HHS-designated Coalition financially or otherwise dissolves), that HHS work in close consultation with a national organization of Coalitions to designate a new coalition. The commenter also recommended the HHS consider limiting the stakeholders to the identified service providers and referencing statutory criteria without further explication. The commenter encouraged that the rule include reference to coalitions that are newly formed or merged.

*Response:* We respectfully disagree in part. The designation of a new Coalition is within the exclusive discretion of HHS which will determine the technical resources it needs, if any, to determine the designation or re-designation of a Coalition. In response to the commenter's suggestion that HHS' designation or re-designation of Coalition limit the inclusion of stakeholders, HHS reserves the right to include all appropriate stakeholders as it determines appropriate. As to the commenter's last suggestion, we agree. Therefore, § 1370.20(f) is revised to read: Regarding FVPSA funding, in cases where a Coalition financially or otherwise dissolves, is newly formed, or merges with another entity, the designation of a new Coalition is within the exclusive discretion of HHS. HHS will seek individual feedback from domestic violence service providers, community stakeholders, State leaders, and representatives of underserved and culturally- and linguistically-specific populations to identify an existing organization that can serve as the

Coalition or to develop a new organization. The new Coalition must reapply for designation and funding following steps determined by the Secretary. HHS will determine whether the applicant fits the statutory criteria, with particular attention paid to the applicant's documented history of effective work, support of primary-purpose domestic violence service providers and programs that serve underserved populations and culturally- and linguistically-specific populations, coordination and collaboration with the State government, and capacity to accomplish the FVPSA mandated role of a Coalition.

#### **Subpart D—Discretionary Grants and Contracts**

*Section 1370.30 What national resource center and training and technical assistance grant programs are available and what additional requirements apply?*

*Comment:* One commenter suggested that § 1370.30(a)(1)(i) be removed because it adds requirements related to programs and research for older individuals and those with disabilities which were not contemplated by Congress in FVPSA.

*Response:* We agree because underserved populations and culturally- and linguistically-specific populations will be used rather than identifying a list of other populations inconsistently, specifically older individuals and those with disabilities in this particular instance. Therefore, older individuals and those with disabilities are removed from the rule text because they are included in the underserved populations and culturally- and linguistically-specific populations definitions. As a result, § 1370.30(a)(1)(i) is revised to read, (i) offer a comprehensive array of technical assistance and training resources to Federal, State, and local governmental agencies, domestic violence service providers, community-based organizations, and other professionals and interested parties, related to domestic violence service programs and research, including programs and research related to victims and their children who are exposed to domestic violence.

*Comment:* One commenter suggested that § 1370.30(a)(5)(iv), which they acknowledge reflects specific statutory language, is not FVPSA's intent. The specific language they object to is: "Additionally, eligible entities shall offer training and technical assistance and capacity-building resources in States where the population of Indians

(including Alaska Natives) and Native Hawaiians exceeds 2.5 percent of the total population of the State." The commenter indicated that technical assistance and capacity building is particularly needed in Alaska, where 40% of the nation's Tribes are located and where the incidence of *domestic violence* is morally unconscionable. They also noted that the original 10% formula of total FVPSA appropriations for Tribes was established in the 1980's which did not account for Alaska's 229 Tribal governments whose Federal recognition was not clarified by the Department of the Interior until January, 1993. The commenter stated that they believe the intent of the State-based Tribal resource centers is to provide focused and targeted technical assistance and capacity-building to the State in which they are located; requiring them to also serve additional States would impose significant capacity and resource challenges.

*Response:* ACF acknowledges the high rates of domestic violence impacting Tribal nations throughout the United States. However, FVPSA is very clear that eligible entities shall provide training and technical assistance and capacity-building resources in States where the populations of Indians exceeds 2.5%. Additionally, FVPSA was reauthorized by Congress in 2010 where presumably Alaska's 229 Federally-recognized Tribal nations were taken into account when the statute was drafted. As a result, ACF cannot agree that FVPSA is limited to eligible entities (which must be located in States where the population exceeds 10% of the State) which only focus on the State in which they are located. To provide clarity, ACF moved the requirement that state resource centers offer technical assistance and training resources in States in which the population of Indians (including Alaska Natives) or Native Hawaiians exceeds 2.5 percent of the total population of the State to § 1370.30(a)(5)(i). Section 1370.30(a)(5)(iv) is amended to reference the FVPSA statute at 42 U.S.C. 10410(c)(4).

*Comment:* One commenter suggested § 1370.30(c)(1) and (2) (addressing the requirements in the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, including language addressing access for the Limited English Proficient (LEP) using interpretation and translation services and access for individuals with communication-related disabilities) be included in a section that applies to a larger number of grantees beyond technical assistance providers and resource centers (this request and

response is cross-referenced in § 1370.5(e)).

*Response:* We agree. The language in rule text §§ 1370.30(c)(1) and (2) has been moved to § 1370.5(d) so that it applies to all FVPSA-funded services.

*Section 1370.31 What additional requirements apply to grants for specialized services for abused parents and their children?*

*Comment:* A commenter suggested that a fourth section be added to rule text § 1370.31(b)(1) that addresses preventing professionals working with children and families from inappropriately punishing non-abusive parents for, among other things, cohabiting with an abusive parent.

*Response:* We agree because it has been reported throughout the field that the non-abusing parent is often penalized for continuing contact or having a relationship with a domestic violence perpetrator even if the non-abusive parent determines that the best way to keep children safe is to continue contact in some form with an abusive partner until the abuser is held accountable or demonstrates changed behavior that will keep the family safe. Therefore, § 1370.31(b)(1) is revised to add a subsection (iv) to read: How, in the case of victims who choose to or by virtue of their circumstances must remain in contact with an abusive partner/parent, the entity will: Consider the victim's decision-making for keeping children safe within the continuum of domestic violence (see the definition of domestic violence in the regulatory text at § 1370.2 which describes the potential range of behaviors constituting domestic violence); not place burdens or demands on the non-abusive parent that the parent cannot comply with due to the coercive control of the offender; and take precautions to avoid actions that discourage victims from help-seeking, such as making unnecessary referrals to child protective services when survivors go to community-based organizations for assistance in safety planning to protect children.

*Comment:* One commenter suggested language changes to § 1370.31(b)(1)(i) to strengthen confidentiality requirements for these grants.

*Response:* We agree. Therefore the rule text at § 1370.31(b)(1)(i) is revised specifically in response to the commenter's suggestion to read: how the entity will prioritize the safety of, and confidentiality of, information about victims of family violence, victims of domestic violence, and victims of dating violence and their children, and will comply with the

confidentiality requirements of FVPSA at 42 U.S.C. 10406(c)(5) and this rule at § 1370.4.

*Comment:* One commenter suggested that § 1370.31(b)(2) be revised to allow for partnering organizations to provide the activities in this section and to add examples of other coordinating entities in addition to coordinating with the child welfare system.

*Response:* The proposed changes, which add language that is not in FVPSA, provide additional ways within the intent of the statutory framework to help address the needs of children exposed to domestic violence and foster strong, healthy relationships between children and their non-abusing parent. The commenter's proposed language reflects the realities of the multiple systems which support children and their non-abusing parent to promote healing and social and emotional well-being and the need to work within those systems to achieve comprehensive successes on behalf of families experiencing domestic violence. We agree with these suggested changes and therefore, § 1370.31(b)(2) is revised to read: Demonstrates that the applicant has the ability to effectively provide, or partner with an organization that provides, direct counseling, appropriate services, and advocacy on behalf of victims of family violence, domestic violence, or dating violence, and their children, including coordination with services provided by the child welfare system, schools, health care providers, home visitors, family court systems, and any other child or youth serving system.

*Comment:* One commenter suggested language changes to rule text § 1370.31(c)(1) through (3) because it does not mirror the discretionary uses of grant funds and mistakenly includes an application requirement. They also suggested re-designating the NPRM proposed rule text in § 1370.31(c)(4) as § 1370.31(b)(4) in the application section because the language is mistakenly placed in the discretionary uses section.

*Response:* We agree with the commenter's assessment of this section. Therefore § 1370.31(c)(1) through (3) is revised to read: (c) Eligible applicants may use funds under a grant pursuant to this section: (1) To provide early childhood development and mental health services; (2) To coordinate activities with and provide technical assistance to community-based organizations serving victims of family violence, domestic violence, or dating violence or children exposed to family violence, domestic violence, or dating violence; and (3) To provide additional services and referrals to services for

children, including child care, transportation, educational support, respite care, supervised visitation, or other necessary services. Section 1370.31(c)(4) is re-designated as § 1370.31(b)(4).

*Section 1370.32 What additional requirements apply to National Domestic Violence Hotline grants?*

*Comment:* Two commenters suggested that language be added to § 1370.32(c)(1)(vi) to codify a requirement for a 24/7 operation of a hotline that is directly accessible to deaf and hard of hearing survivors of domestic violence, which will close the significant gap in access that currently exists, and provide the deaf and hard of hearing community with equal access to a valuable community resource.

*Response:* We agree that survivors of domestic violence who are deaf or hard of hearing should be able to receive hotline services 24/7 through methods that are accessible to them. FVPSA at 42 U.S.C. 10413(d)(2)(F) states that 'an eligible awardee for a national *domestic violence* hotline grant shall include a plan for facilitating access to the hotline by persons with hearing impairments'. As noted by the commenter, we have already included this language in our regulatory text. We interpret this to mean that the plan shall include methods for providing services for survivors who are deaf and hard of hearing on a 24/7 basis. Furthermore, as outlined in the comment and response below, we included video to the definition of "telephone" in order to increase access to the hotline for our survivors who are deaf or hard of hearing.

*Comment:* Two commenters suggested that "video" be added to the definition of telephone in § 1370.32(b), particularly as face to face communications can be very helpful for certain users, such as victims who are deaf or hard of hearing.

*Response:* We agree that "video" is another example of a method of communication that fits within the proposed definition of "telephone". The last part of the proposed definition which states ". . . or other technological means which connects callers or users together" specifically allows for any current or future devices and/or methods to be included. However, we have revised the language to include video as another example of a method of communication.

*Comment:* A commenter suggested that the grant eligibility requirements in § 1370.32(c)(iv) through (vi) be revised to include: The use of social media and other emerging technologies to publicize

the hotline; that the plan for providing service to Limited English Proficient callers include advocacy or supportive services in the native languages of Limited English Proficient individuals who contact the hotline; and that the plan for facilitating access to the hotline by persons with disabilities include other mechanisms, such as face to face video, where possible, for persons who are Deaf or hard of hearing.

*Response:* Section 1370.32(c)(1)(iv) through (vi) relates specifically to what must be included in an applicant's plan, and does not prescribe the methods that an applicant will use to conduct its plan. The merits of each application (plan) are evaluated based on many factors including statutory requirements and the extent to which the applicant proposes comprehensive service provision, especially to underserved populations. Additionally, in terms of social media, while we encourage creativity and use of new technology, we do not prescribe methods for an applicant as they conduct their plan. As such, we respectfully decline to include these additional requirements as this section closely tracks statutory requirements. However, we did include additional language in section 1370.32(c)(1) to clarify that the term "service" includes advocacy and supportive services.

*Comment:* A commenter suggested that the word "teen" be stricken from "national teen dating violence hotline" in § 1370.32(c)(1)(vii) because many of those who contact the National Domestic Violence Hotline's youth helpline, *Loveisrespect.org*, are not in fact teenagers; most range in age from 12–24 years old.

*Response:* While we recognize that many of those who contact the youth helpline may not in fact be teens, we respectfully disagree with the recommendation that "teen" be stricken in 1370.32(c)(1)(vii) because 42 U.S.C. 10413(e)(2)(F) specifically identifies "a national teen dating violence hotline" and the rule tracks the statutory language. Further, the statute states that the hotline "shall provide assistance and referrals for youth victims of domestic violence and for victims of dating violence who are minors, which may be carried out through a national teen dating violence hotline." However, we would note that it does not state that a national teen dating violence hotline may not serve adults.

## VIII. Impact Analysis

### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, minimizes

government imposed burden on the public. In keeping with the notion that government information is a valuable asset, it also is intended to improve the practical utility, quality, and clarity of information collected, maintained, and disclosed. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains no new information collection requirements. There is an existing requirement for grantees to provide performance progress reports under OMB Control Number 0970–0280. Grantees are also required to submit an application and annual financial status report. State domestic violence coalitions are also required to provide certain information to the public. These existing requirements are also approved under the OMB Control Number 0970–0280. Nothing in this rule requires changes in the current requirements, all of which have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act.

### *Regulatory Flexibility Act*

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant economic impact on a substantial number of small entities. We have not proposed any new requirements that would have such an effect. These standards would almost entirely conform to the existing statutory requirements and existing practices in the program. In particular, we have proposed imposing only a few new processes, procedural, or documentation requirements that are not encompassed within the existing rule, existing Funding Opportunity Announcements, or existing information collection requirements. None of these would impose consequential burdens on grantees. Accordingly, a Regulatory Flexibility Analysis is not required.

### *Regulatory Impact Analysis*

Executive Order 12866 and 13563 require that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in these Executive Orders, including imposing the least burden on society, written in plain language and easy to understand, and seeking to improve the actual results of regulatory requirements. The Department has

determined that this rule is consistent with these priorities and principles. The Executive Orders require a Regulatory Impact Analysis for proposed or final rules with an annual economic impact of \$100 million or more. Nothing in this rule approaches effects of this magnitude. Nor does this rule meet any of the other criteria for significance under these Executive Orders. This rule has been reviewed by the Office of Management and Budget.

### *Congressional Review*

This rule is not a major rule (economic effects of \$100 million or more) as defined in the Congressional Review Act.

### *Federalism Review*

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with Federalism implications. This rule will not have substantial direct impact on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with the Executive Order we have determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact Statement.

### *Family Impact Review*

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any new or adverse impact on the autonomy or integrity of the family as an institution. Like the existing rule and existing program practices, it directly supports family well-being. Since we propose no changes that would affect this policy priority, we have concluded that it is not necessary to prepare a Family Policymaking Assessment.

### **List of Subjects in 45 CFR Part 1370**

Administrative practice and procedure, Domestic Violence, Grant Programs—Social Programs, Reporting and recordkeeping requirements, Technical assistance.

(Catalog of Federal Domestic Assistance Program Numbers: 93.671 Family Violence Prevention and Services/Grants for Domestic Violence Shelters and Supportive Services/ Grants to States and Native American Tribes and Tribal Organizations; 93.591 Family Violence Prevention and Services/Grants to

State Domestic Violence Coalitions; and 93.592 Family Violence Prevention and Services/Discretionary Grants)

Dated: July 26, 2016.

**Mark H. Greenberg,**

*Acting Assistant Secretary for Children and Families.*

Approved: July 29, 2016.

**Sylvia M. Burwell,**

*Secretary.*

**Note:** This document was received by the Office of the Federal Register on October 25, 2016.

For the reasons set forth in the preamble, title 45 CFR part 1370 is revised to read as follows:

■ 1. Revise part 1370 to read as follows:

**PART 1370—FAMILY VIOLENCE PREVENTION AND SERVICES PROGRAMS**

**Subpart A—General Provisions**

Sec.

1370.1 What are the purposes of the Family Violence Prevention and Services Act Programs?

1370.2 What definitions apply to these programs?

1370.3 What Government-wide and HHS-wide regulations apply to these programs?

1370.4 What confidentiality requirements apply to these programs?

1370.5 What additional non-discrimination requirements apply to these programs?

1370.6 What requirements for reports and evaluations apply to these programs?

**Subpart B—State and Indian Tribal Grants**

1370.10 What additional requirements apply to State and Indian Tribal grants?

**Subpart C—State Domestic Violence Coalition Grants**

1370.20 What additional requirements apply to State Domestic Violence Coalitions?

**Subpart D—Discretionary Grants and Contracts**

1370.30 What National Resource Center and Training and Technical Assistance grant programs are available and what additional requirements apply?

1370.31 What additional requirements apply to grants for specialized services for abused parents and their children?

1370.32 What additional requirements apply to National Domestic Violence Hotline grants?

**Authority:** 42 U.S.C. 10401 *et seq.*

**Subpart A—General Provisions**

**§ 1370.1 What are the purposes of the Family Violence Prevention and Services Act Programs?**

This part addresses sections 301 through 313 of the Family Violence Prevention and Services Act (FVPSA), as amended, and codified at 42 U.S.C.

10401 *et seq.* FVPSA authorizes the Secretary to implement programs for the purposes of increasing public awareness about and preventing family violence, domestic violence, and dating violence; providing immediate shelter and supportive services for victims of family violence, domestic violence, and dating violence and their dependents; providing for technical assistance and training relating to family violence, domestic violence, and dating violence programs; providing for State Domestic Violence Coalitions; providing specialized services for abused parents and their children; and operating a national *domestic violence* hotline. FVPSA emphasizes both primary, and secondary, prevention of violence.

**§ 1370.2 What definitions apply to these programs?**

For the purposes of this part: *Dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: The length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. This part of the definition reflects the definition also found in Section 40002(a) of VAWA (as amended), 42 U.S.C. 13925(a), as required by FVPSA. Dating violence also includes but is not limited to the physical, sexual, psychological, or emotional violence within a dating relationship, including stalking. It can happen in person or electronically, and may involve financial abuse or other forms of manipulation which may occur between a current or former dating partner regardless of actual or perceived sexual orientation or gender identity.

*Domestic violence* means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. This definition also reflects the statutory definition of "domestic violence" found in Section 40002(a) of VAWA (as amended), 42

U.S.C. 13925(a). This definition also includes but is not limited to criminal or non-criminal acts constituting intimidation, control, coercion and coercive control, emotional and psychological abuse and behavior, expressive and psychological aggression, financial abuse, harassment, tormenting behavior, disturbing or alarming behavior, and additional acts recognized in other Federal, Tribal State, and local laws as well as acts in other Federal regulatory or sub-regulatory guidance. This definition is not intended to be interpreted more restrictively than FVPSA and VAWA but rather to be inclusive of other, more expansive definitions. The definition applies to individuals and relationships regardless of actual or perceived sexual orientation or gender identity.

*Family violence* means any act or threatened act of violence, including any forceful detention of an individual, that results or threatens to result in physical injury and is committed by a person against another individual, to or with whom such person is related by blood or marriage, or is or was otherwise legally related, or is or was lawfully residing.

*Personally identifying information (PII) or personal information* is 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, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected, including, a first and last name; a home or other physical address; contact information (including a postal, email or Internet protocol address, or telephone or facsimile number); a social security number, driver license number, passport number, or student identification number; and any other information, including date of birth, racial or ethnic background, or religious affiliation, that would serve to identify any individual.

*Primary prevention* means strategies, policies, and programs to stop both first-time perpetration and first-time victimization. Primary prevention is stopping domestic and dating violence before they occur. Primary prevention includes, but is not limited to: School-based violence prevention curricula, programs aimed at mitigating the effects on children of witnessing domestic or dating violence, community campaigns designed to alter norms and values conducive to domestic or dating violence, worksite prevention programs, and training and education in parenting skills and self-esteem enhancement.

*Primary-purpose domestic violence service provider*, for the term only as it appears in the definition of State Domestic Violence Coalition, means an entity that operates a project of demonstrated effectiveness carried out by a nonprofit, nongovernmental, private entity, Tribe, or Tribal organization, that has as its project's primary-purpose the operation of shelters and supportive services for victims of domestic violence and their dependents; or has as its project's primary purpose counseling, advocacy, or self-help services to victims of domestic violence. Territorial Domestic Violence Coalitions may include government-operated domestic violence projects as primary-purpose domestic violence service providers for complying with the membership requirement, provided that Territorial Coalitions can document providing training, technical assistance, and capacity-building of community-based and privately operated projects to provide shelter and supportive services to victims of family, domestic, or dating violence, with the intention of recruiting such projects as members once they are sustainable as primary-purpose domestic violence service providers.

*Secondary prevention* is identifying risk factors or problems that may lead to future family, domestic, or dating violence, and taking the necessary actions to eliminate the risk factors and the potential problem, and may include, but are not limited to, healing services for children and youth who have been exposed to domestic or dating violence, home visiting programs for high-risk families, and screening programs in health care settings.

*Shelter* means the provision of temporary refuge in conjunction with supportive services in compliance with applicable State or Tribal law or regulations governing the provision, on a regular basis, of shelter, safe homes, meals, and supportive services to victims of family violence, domestic violence, or dating violence, and their dependents. State and Tribal law governing the provision of shelter and supportive services on a regular basis is interpreted by ACF to mean, for example, the laws and regulations applicable to zoning, fire safety, and other regular safety, and operational requirements, including State, Tribal, or local regulatory standards for certifying domestic violence advocates who work in shelter. 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. The mere act of making a referral to shelter or housing shall not itself be considered provision of shelter. Should other jurisdictional laws conflict with this definition of temporary refuge, the definition which provides more expansive housing accessibility governs.

*State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and, except as otherwise provided in statute, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

*State Domestic Violence Coalition* means a Statewide, nongovernmental, nonprofit 501(c)(3) organization whose membership includes a majority of the primary-purpose domestic violence service providers in the State; whose board membership is representative of these primary-purpose domestic violence service providers and which may include representatives of the communities in which the services are being provided in the State; that has as its purpose to provide education, support, and technical assistance to such service providers to enable the providers to establish and maintain supportive services and to provide shelter to victims of domestic violence and their children; and that serves as an information clearinghouse, primary point of contact, and resource center on domestic violence for the State and supports the development of policies, protocols and procedures to enhance domestic violence intervention and prevention in the State/Territory.

*Supportive services* means services for adult and youth victims of family violence, domestic violence, or dating violence, and their dependents that are designed to meet the needs of such victims and their dependents for short-term, transitional, or long-term safety and recovery. Supportive services include, but are not limited to: Direct and/or referral-based advocacy on behalf of victims and their dependents, counseling, case management, employment services, referrals, transportation services, legal advocacy or assistance, child care services, health,

behavioral health and preventive health services, culturally and linguistically appropriate services, and other services that assist victims or their dependents in recovering from the effects of the violence. To the extent not already described in this definition, supportive services also include but are not limited to other services identified in FVPSA at 42 U.S.C. 10408(b)(1)(A)–(H). Supportive services may be directly provided by grantees and/or by providing advocacy or referrals to assist victims in accessing such services.

*Underserved populations* means 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, and populations underserved because of special needs including 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. The reference to racial and ethnic populations is primarily directed toward racial and ethnic minority groups (as defined in section 1707(g) of the Public Health Service Act (42 U.S.C. 300(u–6)(g)), which means American Indians (including Alaska Natives, Eskimos, and Aleuts); Asian American; Native Hawaiians and other Pacific Islanders; Blacks and Hispanics. The term “Hispanic” or “Latino” means individuals whose origin is Mexican, Puerto Rican, Cuban, Central or South American, or any other Spanish-speaking country. This underserved populations’ definition also includes other population categories determined by the Secretary or the Secretary’s designee to be underserved.

### § 1370.3 What Government-wide and HHS-wide regulations apply to these programs?

(a) A number of government-wide and HHS regulations apply or potentially apply to all grantees. These include but are not limited to:

- (1) 2 CFR part 182—Government-wide Requirements for Drug Free Workplaces;
- (2) 2 CFR part 376—Nonprocurement Debarment and Suspension;
- (3) 45 CFR part 16—Procedures of the Departmental Grant Appeals Board;
- (4) 45 CFR part 30—Claims Collection;
- (5) 45 CFR part 46—Protection of Human Subjects;
- (6) 45 CFR part 75—Uniform Administrative Requirements, Cost Principles and Audit Requirements for HHS Awards

(7) 45 CFR part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964;

(8) 45 CFR part 81—Practice and Procedure for Hearings under part 80;

(9) 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance;

(10) 45 CFR part 86—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance;

(11) 45 CFR part 87—Equal Treatment for Faith-Based Organizations;

(12) 45 CFR part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance for HHS;

(13) 45 CFR part 92—Nondiscrimination in Health Programs and Activities; and

(14) 45 CFR part 93—New Restrictions on Lobbying.

(b) A number of government-wide and HHS regulations apply to all contractors. These include but are not limited to:

(15) 48 CFR Chapter 1—Federal Acquisition Regulations; and

(16) 48 CFR Chapter 3—Federal Acquisition Regulations—Department of Health and Human Services.

#### **§ 1370.4 What confidentiality requirements apply to these programs?**

(a) In order to ensure the safety of adult, youth, and child victims of family violence, domestic violence, or dating violence, and their families, grantees and subgrantees under FVPSA shall protect the confidentiality and privacy of such victims and their families. Subject to paragraphs (c), (d), and (e) of this section, grantees and subgrantees shall not—

(1) 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;

(2) 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

(3) 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.

(b) Consent shall be given by the person, except in the case of an unemancipated minor it shall be given by both the minor and the minor's parent or guardian; or in the case of an individual with a guardian it shall be given by the individual's guardian. A parent or guardian may not give consent if: he or she is the abuser or suspected abuser of the minor or individual with a guardian; or, the abuser or suspected abuser of the other parent of the minor. If a minor or a person with a legally appointed guardian is permitted by law to receive services without the parent's or guardian's consent, the minor or person with a guardian may release information without additional consent. Reasonable accommodations shall also be made for those who may be unable, due to disability or other functional limitation, to provide consent in writing.

(c) If the release of information described in paragraphs (a) and (b) of this section is compelled by statutory or court mandate:

(1) Grantees and sub-grantees shall make reasonable attempts to provide notice to victims affected by the release of the information; and

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

(d) Grantees and subgrantees may share:

(1) Non-personally identifying information, in the aggregate, regarding services to their clients and demographic non-personally identifying information in order to comply with Federal, State, or Tribal reporting, evaluation, or data collection requirements;

(2) Court-generated information and law enforcement-generated information contained in secure, governmental registries for protective order enforcement purposes; and

(3) Law enforcement- and prosecution-generated information necessary for law enforcement and prosecution purposes.

(4) Personally identifying information may be shared with a health care provider or payer, but only with the informed, written, reasonably time-limited consent of the person about whom such information is sought.

(e) Nothing in this section prohibits a grantee or subgrantee, where mandated or expressly permitted by the State or Indian Tribe, from reporting abuse and neglect, as those terms are defined by

law, or from reporting imminent risk of serious bodily injury or death of the victim or another person.

(f) Nothing in this section shall be construed to supersede any provision of any Federal, State, Tribal, or local law that provides greater protection than this section for victims of family violence, domestic violence, or dating violence.

(g) The address or location of any shelter facility assisted that maintains a confidential location shall, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public.

(1) Shelters which choose to remain confidential pursuant to this rule must develop and maintain systems and protocols to remain secure, which must include policies to respond to disruptive or dangerous contact from abusers, and

(2) Tribal governments, while exercising due diligence to comply with statutory provisions and this rule, may determine how best to maintain the safety and confidentiality of shelter locations.

#### **§ 1370.5 What additional non-discrimination requirements apply to these programs?**

(a) No person shall on the ground of actual or perceived sex, including gender identity, 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.

(1) FVPSA grantees and subgrantees must provide comparable services to victims regardless of actual or perceived sex, including gender identity. This includes not only providing access to services for all victims, including male victims, of family, domestic, and dating violence regardless of actual or perceived sex, including gender identity, but also making sure not to limit services for victims with adolescent children (under the age of 18) on the basis of the actual or perceived sex, including gender identity, of the children. Victims and their minor children must be sheltered or housed together, regardless of actual or perceived sex, including gender identity, unless requested otherwise or unless the factors or considerations identified in § 1370.5(a)(2) require an exception to this general rule.

(2) No such program or activity is required to include an individual in such program or activity without taking into consideration that individual's sex in those certain instances where sex is a bona fide occupational qualification or a programmatic factor reasonably

necessary to the essential operation of that particular program or activity. If sex segregation or sex-specific programming is essential to the normal or safe operation of the program, nothing in this paragraph shall prevent any such program or activity from consideration of an individual's sex. In such circumstances, grantees and subgrantees may meet the requirements of this paragraph 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. If a grantee or subgrantee determines that sex-segregated or sex-specific programming is essential to the normal or safe operation of the program, it must support its justification with an assessment of the facts and circumstances surrounding the specific program, including an analysis of factors discussed in paragraph (a)(3) of this section, and take into account established field-based best practices and research findings, as applicable. The justification cannot rely on unsupported assumptions or overly-broad sex-based generalizations. An individual must be treated consistent with their gender identity in accordance with this section.

(3) Factors that may be relevant to a grantee's or subgrantee's evaluation of whether sex-segregated or sex-specific programming is essential to the normal or safe operations of the program include, but are not limited to, the following: 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. 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.

(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. ACF

requires that a FVPSA grantee or subgrantee that makes decisions about eligibility for or placement into single-sex emergency shelters or other facilities offer every individual an assignment consistent with their gender identity. 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. 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. For instance, if the potential victim/beneficiary requests to be placed based on his or her sex assigned at birth, ACF requires that the provider will place the individual in accordance with that request, consistent with health, safety, and privacy concerns of the individual. ACF 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 sex, including gender identity.

(b) An organization that participates in programs funded through the FVPSA shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(1) Dietary practices dictated by particular religious beliefs may require reasonable accommodation in cooking or feeding arrangements for particular beneficiaries as practicable. Additionally, other forms of religious practice may require reasonable accommodation including, but not limited to, shelters that have cleaning schedules may need to account for a survivor's religion which prohibits him/her from working on religious holidays.

(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.

(1) All programs must take into account participants' needs and be

inclusive and not stigmatize participants based on actual or perceived sexual orientation.

(d) All FVPSA-funded services must be provided without requiring documentation of immigration status because HHS has determined that FVPSA-funded services do not fall within the definition of federal public benefit that would require verification of immigration status.

(e) Grantees and subgrantees should create a plan to ensure effective communication and equal access, including:

(1) How to identify and communicate with individuals with Limited English Proficiency, and how to identify and properly use qualified interpretation and translation services, and taglines; and

(2) How to take appropriate steps to ensure that communications with applicants, participants, beneficiaries, members of the public, and companions with disabilities are as effective as communications with others; and furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, beneficiaries, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity. Auxiliary aids and services include qualified interpreters and large print materials.

(f) Nothing in this section shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals under other applicable law.

(g) The Secretary shall enforce the provisions of paragraphs (a) and (b) of this section in accordance with section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1). Section 603 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2) shall apply with respect to any action taken by the Secretary to enforce this section.

#### **§ 1370.6 What requirements for reports and evaluations apply to these programs?**

Each entity receiving a grant or contract under these programs shall submit a performance report to the Secretary at such time as required by the Secretary. Such performance report shall describe the activities that have been carried out, contain an evaluation of the effectiveness of such activities, and provide such additional information as the Secretary may require. Territorial governments which consolidate FVPSA funds with other HHS funds in a Consolidated Block Grant pursuant to 45 CFR part 97 are not required to submit annual FVPSA

performance progress reports and programmatic assurances if FVPSA funds are not designated in the consolidation application for FVPSA purposes. If a territorial government either does not consolidate FVPSA funds with other HHS funds or does consolidate but indicates that FVPSA funds will be used for FVPSA purposes, the territorial government must submit an annual FVPSA performance progress report and programmatic assurances to FYSB.

### Subpart B—State and Indian Tribal Grants

#### § 1370.10 What additional requirements apply to State and Indian Tribal grants?

(a) These grants assist States and Tribes to support the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence, domestic violence, and dating violence; to provide immediate shelter, supportive services, and access to community-based programs for victims of family violence, domestic violence, or dating violence, and their dependents; and to provide specialized services for children exposed to family violence, domestic violence, or dating violence, including victims who are members of underserved populations. States must consult with and provide for the participation of State Domestic Violence Coalitions and Tribal Coalitions in the planning and monitoring of the distribution and administration of subgrant programs and projects. At a minimum to further FVPSA requirements, States and State Domestic Violence Coalitions will work together to determine grant priorities based upon jointly identified needs; to identify strategies to address needs; to define mutual expectations regarding programmatic performance and monitoring; and to implement an annual collaboration plan that incorporates concrete steps for accomplishing these tasks. If States also fund State Domestic Violence Coalitions to provide training, technical assistance, or other programming, nothing in this rule is intended to conflict with State contracting requirements regarding conflicts of interest but rather that this rule's requirements should be interpreted to complement States' contracting and procurement laws and regulations. States must involve community-based organizations that primarily serve underserved populations, including culturally- and linguistically-specific populations, to determine how such populations can assist the States in serving the unmet

needs of underserved populations and culturally- and linguistically-specific populations. Tribes should be involved in these processes where appropriate, but this rule is not intended to encroach upon Tribal sovereignty. States also must consult with and provide for the participation of State Domestic Violence Coalitions and Tribal Coalitions in State planning and coordinate such planning with needs assessments to identify service gaps or problems and develop appropriate responsive plans and programs. Similar coordination and collaboration processes for Tribes and State Domestic Violence Coalitions are expected when feasible and appropriate with deference to Tribal sovereignty as previously indicated.

(b) A State application must be submitted by the Chief Executive of the State and signed by the Chief Executive Officer or the Chief Program Official designated as responsible for the administration of FVPSA. Each application must contain the following information or documentation:

(1) The name of the State agency, the name and contact information for the Chief Program Official designated as responsible for the administration of funds under FVPSA and coordination of related programs within the State, and the name and contact information for a contact person if different from the Chief Program Official;

(2) A plan describing in detail how the needs of underserved populations will be met, including:

(i) Identification of which populations in the State are underserved, a description of those that are being targeted for outreach and services, and a brief explanation of why those populations were selected to receive outreach and services, including how often the State revisits the identification and selection of the populations to be served with FVPSA funding. States must review their State demographics and other relevant metrics at least every three years or explain why this process is unnecessary;

(ii) A description of the outreach plan, including the domestic violence training to be provided, the means for providing technical assistance and support, and the leadership role played by those representing and serving the underserved populations in question;

(iii) A description of the specific services to be provided or enhanced, such as new shelters or services, improved access to shelters or services, or new services for underserved populations; and

(iv) A description of the public information component of the State's outreach program, including the

elements of the program that are used to explain domestic violence, the most effective and safe ways to seek help, and tools to identify available resources; and

(v) A description of the means by which the program will provide meaningful access for limited English proficient individuals and effective communication for individuals with disabilities.

(3) A description of the process and procedures used to involve the State Domestic Violence Coalition and Tribal Coalition where one exists, knowledgeable individuals, and interested organizations, including those serving or representing underserved populations in the State planning process;

(4) Documentation of planning, consultation with and participation of the State Domestic Violence Coalition and Tribal Coalition where one exists, in the administration and distribution of FVPSA programs, projects, and grant funds awarded to the State;

(5) A description of the procedures used to assure an equitable distribution of grants and grant funds within the State and between urban and rural areas. States may use one of the Census definitions of rural or non-metro areas or another State-determined definition. A State-determined definition must be supported by data and be available for public input prior to its adoption. The State must show that the definition selected achieves an equitable distribution of funds within the State and between urban and rural areas. The plan should describe how funding processes and allocations will address the needs of underserved populations as defined in § 1370.2, including Tribal populations, with an emphasis on funding organizations that can meet unique needs including culturally- and linguistically-specific populations. Other Federal, State, local, and private funds may be considered in determining compliance;

(6) A description of:

(i) how the State plans to use the grant funds including a State plan developed in consultation with State and Tribal Domestic Violence Coalitions and representatives of underserved populations;

(ii) the target populations;

(iii) the number of shelters and programs providing shelter to be funded;

(iv) the number of non-residential programs to be funded; the services the State will provide; and

(v) the expected results from the use of the grant funds. To fulfill these requirements, it is critically important that States work with State Domestic

Violence Coalitions and Tribes to solicit their feedback on program effectiveness which may include recommendations such as establishing program standards and participating in program monitoring;

(7) An assurance that the State has a law or procedure to bar an abuser from a shared household or a household of the abused person, which may include eviction laws or procedures, where appropriate;

(8) An assurance that not less than 70 percent of the funds distributed by a State to sub-recipients shall be distributed to entities for the primary purpose of providing immediate shelter and supportive services to adult and youth victims of family violence, domestic violence, or dating violence, and their dependents, and that not less than 25 percent of the funds distributed by a State to subgrantees/recipients shall be distributed to entities for the purpose of providing supportive services and prevention services (these percentages may overlap with respect to supportive services but are not included in the 5 percent cap applicable to State administrative costs). In the distribution of funds, States will give special emphasis to the support of community-based projects of demonstrated effectiveness that are carried out by primary-purpose domestic violence providers. No grant shall be made under this section to an entity other than a State unless the entity agrees that, with respect to the costs to be incurred by the entity in carrying out the program or project for which the grant is awarded, the entity will make available (directly or through donations from public or private entities) non-Federal contributions in an amount that is not less than \$1 for every \$5 of Federal funds provided under the grant. The non-Federal contributions required under this paragraph may be in cash or in kind;

(9) Documentation of policies, procedures and protocols that ensure individual identifiers of client records will not be used when providing statistical data on program activities and program services or in the course of grant monitoring, that the confidentiality of records pertaining to any individual provided family violence, domestic violence, or dating violence prevention or intervention services by any program or entity supported under the FVPSA will be strictly maintained, and the address or location of any shelter supported under the FVPSA will not be made public without the written authorization of the person or persons responsible for the operation of such shelter;

(10) Such additional agreements, assurances, and information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe. Moreover, additional agreements, assurances, and information required by the Funding Opportunity Announcement and other program guidance will include that no requirement for participating in supportive services offered by FVPSA-funded programs may be imposed by grantees or subgrantees for the receipt of emergency shelter and receipt of all supportive services shall be voluntary. Similarly, the receipt of shelter cannot be conditioned on participation in other services, such as, but not limited to counseling, parenting classes, mental health or substance use disorders treatment, pursuit of specific legal remedies, or life skill classes. Additionally, programs cannot impose conditions for admission to shelter by applying inappropriate screening mechanisms, such as criminal background checks, sobriety requirements, requirements to obtain specific legal remedies, or mental health or substance use disorder screenings. An individual's or family's stay in shelter cannot be conditioned upon accepting or participating in services. Based upon the capacity of a FVPSA-funded service provider, victims and their dependents do not need to reside in shelter to receive supportive services. Nothing is these requirements prohibits a shelter operator from adopting reasonable policies and procedures reflecting field-based best practices, to ensure that persons receiving services are not currently engaging in illegal drug use, if that drug use presents a danger to the safety of others, creates an undue hardship for the shelter operator, or causes a fundamental alteration to the operator's services. In the case of an apparent conflict with State, Federal, or Tribal laws, case-by-case determinations will be made by ACF if they are not resolved at the State or Tribal level. In general, when two or more laws apply, a grantee/subgrantee must meet the highest standard for providing programmatic accessibility to victims and their dependents. These provisions are not intended to deny a shelter the ability to manage its services and secure the safety of all shelter residents should, for example, a client become violent or abusive to other clients.

(c) An application from a Tribe or Tribal Organization must include documentation demonstrating that the governing body of the organization on whose behalf the application is

submitted approves the application's submission to ACF for the current FVPSA grant period. Each application must contain the following information or documentation:

(1) Written Tribal resolutions, meeting minutes from the governing body, and/or letters from the authorizing official reflecting approval of the application's submittal, depending on what is appropriate for the applicant's governance structure. Such documentation must reflect the applicant's authority to submit the application on behalf of members of the Tribes and administer programs and activities pursuant to FVPSA;

(2) The resolution or equivalent documentation must specify the name(s) of the Tribe(s) on whose behalf the application is submitted and the service areas for the intended grant services;

(3) Applications from consortia must provide letters of commitment, memoranda of understanding, or their equivalent identifying the primary applicant that is responsible for administering the grant, documenting commitments made by partnering eligible applicants, and describing their roles and responsibilities as partners in the consortia or collaboration;

(4) A description of the procedures designed to involve knowledgeable individuals and interested organizations in providing services under the FVPSA. For example, knowledgeable individuals and interested organizations may include Tribal officials or social services staff involved in child abuse or family violence prevention, Tribal law enforcement officials, representatives of Tribal or State Domestic Violence Coalitions, and operators of domestic violence shelters and service programs;

(5) A description of the applicant's operation of and/or capacity to carry out a family violence prevention and services program. This might be demonstrated in ways such as:

(i) The current operation of a shelter, safe house, or domestic violence prevention program;

(ii) The establishment of joint or collaborative service agreements with a local public agency or a private, non-profit agency for the operation of family violence prevention and intervention activities or services; or

(iii) The operation of social services programs as evidenced by receipt of grants or contracts awarded under Indian Child Welfare grants from the Bureau of Indian Affairs; Child Welfare Services grants under Title IV-B of the Social Security Act; or Family Preservation and Family Support grants under Title IV-B of the Social Security Act.

(6) A description of the services to be provided, how the applicant organization plans to use the grant funds to provide the direct services, to whom the services will be provided, and the expected results of the services;

(7) An assurance that the Indian Tribe has a law or procedure to bar an abuser from a shared household or a household of the abused person, which may include eviction laws or procedures, where appropriate;

(8) Documentation of the policies and procedures developed and implemented, including copies of the policies and procedures, to ensure that individual identifiers of client records will not be used when providing statistical data on program activities and program services or in the course of grant monitoring and that the confidentiality of records pertaining to any individual provided domestic violence prevention or intervention services by any FVPSA-supported program will be strictly maintained; and

(9) Such agreements, assurances, and information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe.

(d) Given the unique needs of victims of trafficking, FVPSA-funded programs are strongly encouraged to safely screen for and identify victims of human trafficking who are also victims or survivors of domestic violence or dating violence and provide services that support their unique needs.

### Subpart C—State Domestic Violence Coalition Grants

#### § 1370.20 What additional requirements apply to State Domestic Violence Coalitions?

(a) State Domestic Violence Coalitions reflect a Federal commitment to reducing domestic violence; to urge States, localities, cities, and the private sector to improve the responses to and the prevention of domestic violence and encourage stakeholders and service providers to plan toward an integrated service delivery approach that meets the needs of all victims, including those in underserved communities; to provide for technical assistance and training relating to domestic violence programs; and to increase public awareness about and prevention of domestic violence and increase the quality and availability of shelter and supportive services for victims of domestic violence and their dependents.

(b) To be eligible to receive a grant under this section, an organization shall be a Statewide, non-governmental, non-profit 501(c)(3) domestic violence

coalition, designated as such by the Department. To obtain this designation the organization must meet the following criteria:

(1) The membership must include representatives from a majority of the primary-purpose domestic violence service providers operating within the State (a Coalition also may include representatives of Indian Tribes and Tribal organizations as defined in the Indian Self-Determination and Education Assistance Act);

(2) The Board membership of the Coalition must be representative of such programs, and may include representatives of communities in which the services are being provided in the State;

(3) Financial sustainability of State Domestic Violence Coalitions, as independent, autonomous non-profit organizations, also must be supported by their membership, including those member representatives on the Coalitions' Boards of Directors;

(4) The purpose of a State Domestic Violence Coalition is to provide education, support, and technical assistance to such service providers to enable the providers to establish and maintain shelter and supportive services for victims of domestic violence and their dependents; and to serve as an information clearinghouse, primary point of contact, and resource center on domestic violence for the State; and support the development of policies, protocols, and procedures to enhance domestic violence intervention and prevention in the State.

(c) To apply for a grant under this section, an organization shall submit an annual application that:

(1) Includes a complete description of the applicant's plan for the operation of a State Domestic Violence Coalition, including documentation that the Coalition's work will demonstrate the capacity to support state-wide efforts to improve system responses to domestic and dating violence as outlined in (c)(1)(i) through (vii) of this section. Coalitions must also have documented experience in administering Federal grants to conduct the activities of a Coalition or a documented history of active participation in:

(i) Working with local family violence, domestic violence, and dating violence service programs and providers of direct services to encourage appropriate and comprehensive responses to family violence, domestic violence, and dating violence against adults or youth within the State involved, including providing training and technical assistance and conducting State needs assessments and participate

in planning and monitoring of the distribution of subgrants within the States and in the administration of grant programs and projects;

(ii) In conducting needs assessments, Coalitions and States must work in partnership on the statutorily required FVPSA State planning process to involve representatives from underserved populations and culturally- and linguistically-specific populations to plan, assess and voice the needs of the communities they represent. Coalitions will assist States in identifying underserved populations and culturally- and linguistically-specific community based organizations in State planning and to work with States to unify planning and needs assessment efforts so that comprehensive and culturally-specific services are provided. The inclusion of the populations targeted will emphasize building the capacity of culturally- and linguistically-specific services and programs.

(iii) Working in collaboration with service providers and community-based organizations to address the needs of family violence, domestic violence, and dating violence victims, and their dependents, who are members of underserved populations and culturally- and linguistically-specific populations;

(iv) Collaborating with and providing information to entities in such fields as housing, health care, mental health, social welfare, or business to support the development and implementation of effective policies, protocols, and programs that address the safety and support needs of adult and youth victims of family violence, domestic violence, or dating violence;

(v) Encouraging appropriate responses to cases of family violence, domestic violence, or dating violence against adults or youth, including by working with judicial and law enforcement agencies;

(vi) Working with family law judges, criminal court judges, child protective service agencies, and children's advocates to develop appropriate responses to child custody and visitation issues in cases of child exposure to family violence, domestic violence, or dating violence and in cases in which family violence, domestic violence, or dating violence is present and child abuse is present;

(vii) Providing information to the public about prevention of family violence, domestic violence, and dating violence, including information targeted to underserved populations, including limited English proficient individuals; and

(viii) Collaborating with Indian Tribes and Tribal organizations (and corresponding Native Hawaiian groups or communities) to address the needs of Indian (including Alaska Native) and Native Hawaiian victims of family violence, domestic violence, or dating violence, as applicable in the State;

(2) Contains such agreements, assurances, and information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe.

(d) Nothing in this section limits the ability of a Coalition to use non-Federal or other Federal funding sources to conduct required functions, provided that if the Coalition uses funds received under section 2001(c)(1) of the Omnibus Crime Control and Safe Streets Act of 1968 to perform the functions described in FVPSA at 42 U.S.C. 10411(e) in lieu of funds provided under the FVPSA, it shall provide an annual assurance to the Secretary that it is using such funds, and that it is coordinating the activities conducted under this section with those of the State's activities under Part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968.

(e) In cases in which two or more organizations seek designation, the designation of each State's individual Coalition is within the exclusive discretion of HHS. HHS will determine which applicant best fits statutory criteria, with particular attention paid to the applicant's documented history of effective work, support of primary-purpose domestic violence service providers and programs that serve underserved populations, coordination and collaboration with the State government, and capacity to accomplish the FVPSA-mandated role of a Coalition.

(f) Regarding FVPSA funding, in cases where a Coalition financially or otherwise dissolves, is newly formed, or merges with another entity, the designation of a new Coalition is within the exclusive discretion of HHS. HHS will seek individual feedback from domestic violence service providers, community stakeholders, State leaders, and representatives of underserved populations and culturally- and linguistically-specific populations to identify an existing organization that can serve as the Coalition or to develop a new organization. The new Coalition must reapply for designation and funding following steps determined by the Secretary. HHS will determine whether the applicant fits the statutory criteria, with particular attention paid to the applicant's documented history of effective work, support of primary-

purpose domestic violence programs and programs that serve underserved populations, coordination and collaboration with the State government, and capacity to accomplish the FVPSA mandated role of a Coalition.

#### **Subpart D—Discretionary Grants and Contracts**

##### **§ 1370.30 What National Resource Center and Training and Technical Assistance grant programs are available and what additional requirements apply?**

(a) These grants are to provide resource information, training, and technical assistance to improve the capacity of individuals, organizations, governmental entities, and communities to prevent family violence, domestic violence, and dating violence and to provide effective intervention services. They fund national, special issue, and culturally-specific resource centers addressing key areas of domestic violence intervention and prevention, and may include State resource centers to reduce disparities in domestic violence in States with high proportions of Native American (including Alaska Native or Native Hawaiian) populations and to support training and technical assistance that address emerging issues related to family violence, domestic violence, or dating violence, to entities demonstrating expertise in these areas. Grants may be made for:

(1) A National Resource Center on Domestic Violence which will conduct the following activities:

(i) offer a comprehensive array of technical assistance and training resources to Federal, State, and local governmental agencies, domestic violence service providers, community-based organizations, and other professionals and interested parties, related to domestic violence service programs and research, including programs and research related to victims and their children who are exposed to domestic violence; and

(ii) Maintain a central resource library in order to collect, prepare, analyze, and disseminate information and statistics related to the incidence and prevention of family violence and domestic violence; and the provision of shelter, supportive services, and prevention services to adult and youth victims of domestic violence (including services to prevent repeated incidents of violence).

(2) A National Indian Resource Center Addressing Domestic Violence and Safety for Indian Women which will conduct the following activities:

(i) Offer a comprehensive array of technical assistance and training resources to Indian Tribes and Tribal

organizations, specifically designed to enhance the capacity of the Tribes and Tribal organizations to respond to domestic violence and increase the safety of Indian women; and

(ii) Enhance the intervention and prevention efforts of Indian Tribes and Tribal organizations to respond to domestic violence and increase the safety of Indian women, and

(iii) To coordinate activities with other Federal agencies, offices, and grantees that address the needs of Indians (including Alaska Natives) and Native Hawaiians that experience domestic violence.

(3) Special issue resource centers to provide national information, training, and technical assistance to State and local domestic violence service providers. Each special issue resource center shall focus on enhancing domestic violence intervention and prevention efforts in at least one of the following areas:

(i) Response of the criminal and civil justice systems to domestic violence victims, which may include the response to the use of the self-defense plea by domestic violence victims and the issuance and use of protective orders;

(ii) Response of child protective service agencies to victims of domestic violence and their dependents and child custody issues in domestic violence cases;

(iii) Response of the interdisciplinary health care system to victims of domestic violence and access to health care resources for victims of domestic violence; and

(iv) Response of mental health systems, domestic violence service programs, and other related systems and programs to victims of domestic violence and to their children who are exposed to domestic violence.

(4) Culturally-Specific Special Issue Resource Centers enhance domestic violence intervention and prevention efforts for victims of domestic violence who are members of racial and ethnic minority groups, to enhance the cultural and linguistic relevancy of service delivery, resource utilization, policy, research, technical assistance, community education, and prevention initiatives.

(5) State resource centers to provide Statewide information, training, and technical assistance to Indian Tribes, Tribal organizations, and local domestic violence service organizations serving Native Americans (including Alaska Natives and Native Hawaiians) in a culturally sensitive and relevant manner. These centers shall:

(j) Offer a comprehensive array of technical assistance and training resources to Indian Tribes, Tribal organizations, and providers of services to Native Americans (including Alaska Natives and Native Hawaiians) specifically designed to enhance the capacity of the Tribes, organizations, and providers to respond to domestic violence, including offering the resources in States in which the population of Indians (including Alaska Natives) or Native Hawaiians exceeds 2.5 percent of the total population of the State;

(ii) Coordinate all projects and activities with the National Indian Resource Center Addressing Domestic Violence and Safety for Indian Women, including projects and activities that involve working with State and local governments to enhance their capacity to understand the unique needs of Native Americans (including Alaska Natives and Native Hawaiians); and

(iii) Provide comprehensive community education and domestic violence prevention initiatives in a culturally sensitive and relevant manner; and

(iv) Otherwise meet certain eligibility requirements for state resource centers to reduce tribal disparities, pursuant to 42 U.S.C. 10410(c)(4).

(6) Other discretionary purposes to support training and technical assistance that address emerging issues related to family violence, domestic violence, or dating violence, to entities demonstrating related experience.

(b) To receive a grant under any part of this section, an entity shall submit an application that shall meet such eligibility standards as are prescribed in the FVPSA and contains such agreements, assurances, and information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe.

**§ 1370.31 What additional requirements apply to grants for specialized services for abused parents and their children?**

(a) These grants serve to expand the capacity of family violence, domestic violence, and dating violence service programs and community-based programs to prevent future domestic violence by addressing, in an appropriate manner, the needs of children exposed to family violence, domestic violence, or dating violence. To be eligible an entity must be a local agency, a nonprofit private organization (including faith-based and charitable organizations, community-based organizations, and voluntary associations), or a Tribal organization,

with a demonstrated record of serving victims of family violence, domestic violence, or dating violence and their children.

(b) To be eligible to receive a grant under this section, an entity shall submit an application that:

(1) Includes a complete description of the applicant's plan for providing specialized services for abused parents and their children, including descriptions of:

(i) How the entity will prioritize the safety of, and confidentiality of, information about victims of family violence, victims of domestic violence, and victims of dating violence and their children, and will comply with the confidentiality requirements of FVPSA, 42 U.S.C. 10406(c)(5) and this rule at § 1370.4;

(ii) How the entity will provide developmentally appropriate and age-appropriate services, and culturally and linguistically appropriate services, to the victims and children;

(iii) How the entity will ensure that professionals working with the children receive the training and technical assistance appropriate and relevant to the unique needs of children exposed to family violence, domestic violence, or dating violence; and

(iv) How, in the case of victims who choose to or by virtue of their circumstances must remain in contact with an abusive partner/parent, the entity will: consider the victim's decision-making for keeping children safe within the continuum of domestic violence (see the definition of domestic violence in the regulatory text at § 1370.2 which describes the potential range of behaviors constituting domestic violence); not place burdens or demands on the non-abusive parent that the parent cannot comply with due to the coercive control of the offender; and take precautions to avoid actions that discourage victims from help-seeking, such as making unnecessary referrals to child protective services when survivors go to community-based organizations for assistance in safety planning to protect children.

(2) Demonstrates that the applicant has the ability to effectively provide, or partner with an organization that provides, direct counseling, appropriate services, and advocacy on behalf of victims of family violence, domestic violence, or dating violence, and their children, including coordination with services provided by the child welfare system, schools, health care providers, home visitors, family court systems, and any other child or youth serving system;

(3) Demonstrates that the applicant can effectively provide services for non-

abusing parents to support those parents' roles as caregivers and their roles in responding to the social, emotional, and developmental needs of their children; and

(4) Contains such agreements, assurances, and information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe.

(c) Eligible applicants may use funds under a grant pursuant to this section:

(1) To provide early childhood development and mental health services;

(2) To coordinate activities with and provide technical assistance to community-based organizations serving victims of family violence, domestic violence, or dating violence or children exposed to family violence, domestic violence, or dating violence; and

(3) To provide additional services and referrals to services for children, including child care, transportation, educational support, respite care, supervised visitation, or other necessary services.

(d) If Congressional appropriations in any fiscal year for the entirety of programs covered in this part (exclusive of the National Domestic Violence Hotline which receives a separate appropriation) exceed \$130 million, not less than 25 percent of such excess funds shall be made available to carry out this grant program. If appropriations reach this threshold, HHS will specify funding levels in future Funding Opportunity Announcements.

**§ 1370.32 What additional requirements apply to National Domestic Violence Hotline grants?**

(a) These grants are for one or more private entities to provide for the ongoing operation of a 24-hour, national, toll-free telephone hotline to provide information and assistance to adult and youth victims of family violence, domestic violence, or dating violence, family and household members of such victims, and persons affected by the victimization.

(b) Telephone is defined as a communications device that permits two or more callers or users to engage in transmitted analog, digital, short message service (SMS), cellular/wireless, laser, cable/broadband, internet, voice-over internet protocol (IP), video, or other communications, including telephone, smartphone, chat, text, voice recognition, or other technological means which connects callers or users together.

(c) To be eligible to receive a grant under this section, an entity shall submit an application that:

(1) Includes a complete description of the applicant's plan for the operation of a national domestic violence telephone hotline, including descriptions of:

(i) The training program for hotline personnel, including technology training to ensure that all persons affiliated with the hotline are able to effectively operate any technological systems used by the hotline, and are familiar with effective communication and equal access requirements, to ensure access for all, including people who are Limited English Proficient and people with disabilities;

(ii) The hiring criteria and qualifications for hotline personnel;

(iii) The methods for the creation, maintenance, and updating of a resource database;

(iv) A plan for publicizing the availability of the hotline;

(v) A plan for providing service such as advocacy and supportive services to Limited English Proficient callers, including service through hotline personnel who are qualified to interpret in non-English languages;

(vi) A plan for facilitating access to the hotline by persons with disabilities, including persons who are deaf or have hearing impairments; and

(vii) A plan for providing assistance and referrals to youth victims of domestic violence and for victims of dating violence who are minors, which may be carried out through a national teen dating violence hotline.

(2) Demonstrates that the applicant has recognized expertise in the area of family violence, domestic violence, or dating violence and a record of high quality service to victims of family violence, domestic violence, or dating violence, including a demonstration of support from advocacy groups and State Domestic violence Coalitions;

(3) Demonstrates that the applicant has the capacity and the expertise to maintain a domestic violence hotline and a comprehensive database of service providers;

(4) Demonstrates the ability to provide information and referrals for callers, directly connect callers to service providers, and employ crisis interventions meeting the standards of family violence, domestic violence, and dating violence providers;

(5) Demonstrates that the applicant has a commitment to diversity and to the provision of services to underserved populations, including to ethnic, racial, and Limited English Proficient individuals, in addition to older individuals and individuals with disabilities;

(6) Demonstrates that the applicant follows comprehensive quality assurance practices; and

(7) Contains such agreements, information, and assurances, including nondisclosure of confidential or private information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe.

(d) The entity receiving a grant under this section shall submit a performance report to the Secretary at such time as reasonably required by the Secretary that shall describe the activities that have been carried out with grant funds, contain an evaluation of the effectiveness of such activities, and provide additional information as the Secretary may reasonably require.

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