

**FREQUENTLY ASKED QUESTIONS**  
**APRIL 9, 2014**

**Nondiscrimination Grant Condition in the  
Violence Against Women Reauthorization Act of 2013**

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The Violence Against Women Reauthorization Act of 2013, which President Obama signed on March 7, 2013, amends the Violence Against Women Act (VAWA) of 1994 by adding a grant condition that prohibits discrimination by recipients of certain Department of Justice (DOJ or Department) funds:

No person in the United States shall, on the basis of actual or perceived race, color, religion, national origin, sex, gender identity (as defined in paragraph 249(c)(4) of title 18, United States Code), sexual orientation, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under [VAWA], and any other program or activity funded in whole or in part with funds appropriated for grants, cooperative agreements, and other assistance administered by the Office on Violence Against Women.

The VAWA nondiscrimination grant condition provides an exception to the prohibition on sex discrimination in certain instances:

If sex segregation or sex-specific programming is necessary to the essential operation of a program, nothing in this paragraph shall prevent any such program or activity from consideration of an individual's sex. In such circumstances, grantees 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.

The following are some frequently asked questions (FAQs) about VAWA's nondiscrimination grant condition, including the obligations of VAWA recipients and what people may do if they believe they have experienced discrimination barred by this new nondiscrimination grant condition.

These initial FAQs are intended to provide general guidance as to questions DOJ believes may arise at this time regarding the new nondiscrimination grant condition. The Department will update and supplement them as appropriate. Please note that these FAQs are not intended to address all questions that may arise about the new nondiscrimination grant condition. Neither do they provide definitive guidance that applies in all cases, regardless of the circumstances. In the event that anything in these FAQs conflicts with an applicable federal statute or regulation, the statute or regulation will control. Nothing in this document is intended to address or affect in any way the meaning or applicability of other provisions of federal statutes and regulations that

deal with nondiscrimination and DOJ grants, or of related conditions on DOJ grants that are based on those laws.

1. What grants will be subject to the VAWA nondiscrimination grant condition?

The VAWA nondiscrimination grant condition applies to all grant programs currently administered by the Office on Violence Against Women (OVW). Subject to the appropriation of funds, the Department anticipates that, in Fiscal Year 2014, OVW-covered grants<sup>1</sup> will include the following:

- Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program
- Grants to Reduce Domestic Violence, Dating Violence, Sexual Assault, and Stalking on Campuses Program
- Culturally Specific Services for Victims Program
- Education, Training, and Enhanced Services to End Violence Against and Abuse of Women with Disabilities Program
- Enhanced Training and Services to End Violence and Abuse of Women Later in Life Program
- Grants to Support Families in the Justice System
- Legal Assistance for Victims Grant Program
- Rural Domestic Violence, Dating Violence, Sexual Assault, and Stalking Assistance Program
- Sexual Assault Services Formula Program
- Sexual Assault Services Program – Culturally Specific
- Grants to State Sexual Assault and Domestic Violence Coalitions Program
- STOP Violence Against Women Formula Grant Program
- Transitional Housing Assistance for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Program
- Grants to Tribal Domestic Violence and Sexual Assault Coalitions Program
- Tribal Sexual Assault Services Program
- Grants to Indian Tribal Governments Program
- Consolidated Program to Address Children and Youth Exposed to Domestic and Sexual Violence and Engage Men and Boys as Allies
- Grants for Outreach and Services to Underserved Populations
- Technical Assistance Program.

The nondiscrimination grant condition also applies to grants made beginning in FY 2014 under any OVW-administered special initiative or demonstration project related to the programs listed above.

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<sup>1</sup> Throughout the *Frequently Asked Questions*, the term “covered grants” refers to federal financial assistance subject to the new nondiscrimination grant condition.

Additionally, the new nondiscrimination grant condition may apply to new or supplemental grants made on or after October 1, 2013, under one or more grant programs administered by the Office of Justice Programs (OJP). This will depend upon several factors, including the nature of the appropriations for OJP. OJP will advise applicants to and recipients under any implicated grant program administered by OJP that the new or supplemental grants will include the new nondiscrimination grant condition through the grant-making process, which may include a notice in the grant solicitation or a new provision in the terms of the grant award.

2. When does VAWA's nondiscrimination grant condition go into effect?

The Violence Against Women Reauthorization Act of 2013 took effect on October 1, 2013. The new VAWA nondiscrimination grant condition applies to all awards made under covered grants on or after October 1, 2013. For example, if a recipient is working on a project under an open award made under an OVW grant prior to October 1, 2013, the new nondiscrimination grant condition does not apply. If a recipient of federal financial assistance under a covered grant receives additional funding on or after October 1, 2013, to support a previously funded project, the new nondiscrimination grant condition will apply to the new or supplemental award. Please note, however, that all OVW grantees are subject to a contractual award condition prohibiting activities that may compromise victim safety, which would include excluding a victim from services or benefits based on one of the protected categories in the VAWA nondiscrimination grant condition.

3. What does it mean that a recipient cannot discriminate in any "program or activity funded in whole or in part" with VAWA funds?

The new nondiscrimination grant condition prohibits recipients of federal financial assistance under covered grants from discriminating in any "program or activity," irrespective of the amount of federal financial assistance the recipient receives. The term "program or activity" refers to all of the operations of a recipient, even if non-covered funds support a particular operation. For example, if a law enforcement agency receives an award under a covered grant to fund a victim witness coordinator, then that law enforcement agency must not discriminate against a person on the basis of actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation, or disability in all of its operations. Thus, a recipient that operates a program funded partially by a covered grant and partially by other sources may not discriminate in any of its operations.

4. How does this grant condition apply to the beneficiaries of services supported by covered grants where the service is provided by faith-based organizations?

Faith-based organizations, like all other recipients of funding subject to the VAWA nondiscrimination grant condition, accept the obligation, as a condition of the grant award, not to discriminate in the delivery of services or benefits supported by covered

grants, on the basis of actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation, or disability.

5. Does the VAWA nondiscrimination grant condition prohibit employment discrimination by recipients under covered grants?

Yes. Recipients of federal financial assistance under covered grants may not discriminate on the basis of actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation, or disability in employment practices. The VAWA nondiscrimination grant condition prohibits those employment practices made unlawful by the Omnibus Crime Control and Safe Streets Act of 1968, Title VII of the Civil Rights Act of 1964, and their implementing regulations.

6. How does this grant condition apply to job positions in programs administered by faith-based organizations, where the program is funded by a covered grant?

In accordance with DOJ's interpretation of the Religious Freedom Restoration Act as set forth in a June 29, 2007 Memorandum Opinion issued by the Department of Justice, Office of Legal Counsel, funded faith-based organizations subject to the new nondiscrimination grant condition may prefer co-religionists for employees in programs funded by covered grants if they can meet each of the following criteria:

- a. The faith-based organization demonstrates that the program for which it seeks federal funding is an exercise of religion; and
- b. The faith-based organization demonstrates that requiring it to either forgo its religious preference in hiring or forgo the federal funding would substantially burden its exercise of religion; and
- c. The funding entity is unable to demonstrate that applying the nondiscrimination grant condition to the faith-based organization would both further a compelling government interest and be the least restrictive means of furthering this interest.

OVW, other DOJ grant-making offices, and State Administering Agencies will grant exemptions to this prohibition against hiring discrimination on the basis of religion on a case-by-case basis if a funded faith-based organization can certify to each of the following:

- a. The faith-based organization will offer all federally-funded services and benefits to all qualified beneficiaries without regard for the religious or non-religious beliefs of those individuals; and
- b. Any activities of the faith-based organization that contain explicitly religious content will be kept separate in time or location from any services and benefits supported by direct federal funding, and if provided under such conditions, will be offered only on a voluntary basis; and

- c. The faith-based organization sincerely believes that providing the services and benefits in question is an expression of its religious beliefs, that employing individuals of particular religious belief is important to its religious exercise, and that having to abandon its religious hiring practice to receive federal funding would substantially burden its religious exercise.

Funded faith-based organizations subject to the VAWA nondiscrimination grant condition that seek an exemption to the prohibition against religious discrimination in employment must complete and retain an original, signed document for their records ([see Certificate of Exemption for Hiring Practices on the Basis of Religion](#)), certifying to the three provisions set forth above. They must then submit a copy of the signed Certificate of Exemption to DOJ through the Grants Management System after receipt of an award.

7. How does the nondiscrimination grant condition apply to State Administering Agencies that receive formula grants under VAWA and subaward those funds to subrecipients throughout their states? (Examples of formula grants include the STOP Violence Against Women and Sexual Assault Services Formula Grant Programs.)

State Administering Agencies (SAAs) that receive covered formula grants to award to subrecipients throughout their states must comply with the VAWA nondiscrimination grant condition, which prohibits them from discriminating on the basis of actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation, or disability in all of their operations. This obligation extends to all of the operations of the SAA and will extend to the operations of other units of state government if those units also receive federal financial assistance under VAWA or are subawarded VAWA funds from the SAA. SAAs must also ensure that subrecipients comply with all applicable civil rights obligations. SAAs should provide training for subrecipients about their civil rights obligations, and they should monitor their subrecipients' compliance with the VAWA nondiscrimination grant condition.

8. What constitutes discrimination based on “actual or perceived” race, color, religion, national origin, sex, gender identity, sexual orientation, or disability?

The new nondiscrimination grant condition prohibits discrimination against an individual based on the individual's real or perceived race, color, religion, national origin, sex, gender identity, sexual orientation, or disability. Discrimination against an individual based on a perception of the individual's race, color, religion, national origin, sex, gender identity, sexual orientation, or disability violates the VAWA nondiscrimination grant condition even if the perception is wrong. Taking an adverse action against an individual because of a *mistaken* belief that the individual belongs to a particular protected class violates the VAWA nondiscrimination grant condition.

9. What does “gender identity” mean?

The VAWA nondiscrimination grant condition borrows the definition of “gender identity” from the Matthew Shepard-James Byrd Jr. Hate Crimes Prevention Act at 18 U.S.C. § 249(c)(4). “Gender identity” means “actual or perceived gender-related characteristics.” Gender identity is a person’s internal view of the individual’s gender. Transgender can be used to describe a person whose gender identity is different from the individual’s assigned sex at birth. Male, female, and transgender are all examples of gender identities for purposes of the nondiscrimination grant condition.

10. What does “sexual orientation” mean?

The VAWA nondiscrimination grant condition does not define the term “sexual orientation.” Heterosexual, homosexual, and bisexual are all sexual orientations.

11. What is “sex-segregated” or “sex-specific programming”?

Programming is “sex-segregated” when males and females receive services in separate settings. Programming is “sex-specific” when a recipient designs it differently for males and females. Both “sex-segregated” and “sex-specific” programming places individuals in a position to “choose” to identify with a particular sex.

Emergency shelter for domestic violence victims is an example of a service that victim service providers historically have segregated by sex. An example of sex-specific programming is the bystander intervention component of some educational programs on college campuses. Often, these campus educational programs teach different violence-prevention skills to male and female students.

12. How does a recipient determine whether sex-specific or sex-segregated programming is “necessary to the essential operation of the program?”

The VAWA nondiscrimination grant condition provides that a recipient may offer sex-segregated or sex-specific programming when it is “necessary to the essential operation of a program.” If the Department receives a complaint of sex discrimination based upon a recipient’s sex-segregated or sex-specific services, the onus will be on the recipient to articulate clearly why sex-segregation or sex-specific programming was necessary to the essential operations of the program. DOJ expects the recipient to support its justification with an assessment of the facts and circumstances surrounding the specific program, and to take into account established best practices and research findings, as applicable. The justification cannot rely on unsupported assumptions or overly broad sex-based generalizations.

Some factors that may be relevant to a recipient’s evaluation of whether sex-segregated or sex-specific programming is necessary to the essential operations of the program include 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, the impact on transgender individuals seeking services, and

whether similarly situated recipients providing the same services have been successful in providing services effectively in a manner that is not sex-segregated or sex-specific. A recipient may not provide sex-segregated or sex-specific services for reasons that are trivial or based solely on the recipient's convenience.

For example, a recipient considering whether to sex-segregate its housing should assess the type and layout of the property where the housing is provided. Where victims must share bedrooms and bathrooms, that fact may be a significant consideration supporting a determination that it "is necessary to the essential operation of the program" to segregate beneficiaries of the opposite sex by bedroom and bathroom or, depending on the circumstances, even to house beneficiaries of different sexes in entirely separate physical locations.

In the case of a recipient that is considering whether to provide sex-specific prevention education, if reliable research suggests that it is a best practice, that fact would likely be a significant consideration supporting a determination that sex-specific programming "is necessary to the essential operation of the program." For example, if research suggests that the bystander intervention model is more effective when it teaches different skills to male and female students, that fact might provide significant support for a decision to provide prevention education in a sex-specific manner.

A recipient should not assume that, because services have been sex-segregated or sex-specific in the past, continued sex segregation or sex specificity is "necessary" to its programming.

13. If a recipient determines that sex-segregated or sex-specific programming is necessary to the essential operation of the program, how does the recipient provide "comparable services" to individuals who cannot be served with the sex-segregated or sex-specific services?

The VAWA nondiscrimination grant condition provides that, in circumstances where sex-segregated or sex-specific programming is necessary to the essential operation of a program, grantees may satisfy the nondiscrimination prohibition by providing comparable services to individuals who cannot be served with the sex-segregated or sex-specific programming. A comparable service is one that is designed to confer a substantially equal benefit. Factors that DOJ will consider, either individually or in the aggregate as appropriate, in determining whether services are comparable include the following: the nature and quality of the services provided, the relative benefits of different therapeutic modalities or interventions, geographic location or other aspects of accessibility, the characteristics of the facilities where services are provided, and the characteristics of the individuals who provide the service. Services need not be identical to be comparable, but they must be of the same or similar quality and duration.

For example, if a recipient has made a fact-specific determination that segregating its shelter by sex is necessary to the essential operation of the program, then the shelter provided to male and female clients must be designed to confer substantially equal

benefits. These benefits might include a secure and furnished sleeping area, bathroom facilities, kitchen facilities or access to food, case management, social services, and transportation to supportive services. The recipient must make every reasonable effort to ensure that the shelter provided to male and female beneficiaries is comparable in safety, quality, and amenities. The recipient must also make every reasonable effort to ensure that, if male clients are housed off-site, they are integrated into the recipient's other, non-shelter services. If the recipient provides counseling, legal advocacy, or parenting groups in its primary building, then it must make every reasonable effort to arrange for transportation to that building so that the male victim or survivor housed remotely can participate in all of the supportive services that the recipient provides.

Many recipients provide education, support, and counseling to domestic violence and sexual assault survivors in group settings. If a recipient has made a fact-specific determination that it is necessary to the essential operation of the group that the group be sex-segregated or sex-specific, then the recipient must make available comparable services to eligible beneficiaries of both sexes. Because the therapeutic benefits of group counseling may be different than the therapeutic benefits of individual counseling, the recipient should make every reasonable effort to provide comparable service through the same therapeutic modality.

Recipients offering a prevention and education program on college campuses also must make a fact-specific determination before providing sex-specific and sex-segregated services. When a recipient legitimately determines that this is necessary to the essential operation of the program, the recipient must ensure that it designs the education programs to confer a substantially equal benefit to each sex. The benefits might include becoming sensitive to issues of sexual assault, domestic violence, dating violence, and stalking; providing skills to intervene as a bystander in situations or conversations involving sexual assault, domestic violence, dating violence, or stalking; and understanding resources for survivors, perpetrators, and bystanders on campus and in the larger community.

14. How may a recipient operate sex-segregated or sex-specific services and not discriminate on the basis of actual or perceived gender identity?

A recipient that operates a sex-segregated or sex-specific program should assign a beneficiary to the group or service which corresponds to the gender with which the beneficiary identifies, with the following considerations. In deciding how to house a victim, a recipient that provides sex-segregated housing may consider on a case-by-case basis whether a particular housing assignment would ensure the victim's health and safety. A victim's own views with respect to personal safety deserve serious consideration. The recipient should ensure that its services do not isolate or segregate victims based upon actual or perceived gender identity. A recipient may not make a determination about services for one beneficiary based on the complaints of another beneficiary when those complaints are based on gender identity.

For the purpose of assigning a beneficiary to sex-segregated or sex-specific services, best practices dictate that the recipient should ask a transgender beneficiary which group or



service the beneficiary wishes to join. The recipient may not, however, ask questions about the beneficiary's anatomy or medical history or make burdensome demands for identity documents.

Some VAWA recipients are also subject to the Prison Rape Elimination Act National Standards (28 C.F.R. pt. 115) or other agency requirements regarding the provision of services to transgender individuals. Those recipients should consult the appropriate federal agency to determine the scope of any applicable requirements.

15. If a person believes that he or she has experienced discrimination on the basis of actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation, or disability by a recipient of federal financial assistance under a covered grant, how does that person file a complaint?

Those who believe that they have experienced prohibited discrimination by a recipient of federal financial assistance under a covered grant may file a complaint with the Office for Civil Rights (OCR). OCR has authority to investigate complaints alleging a violation of the VAWA nondiscrimination grant condition.

To file a discrimination complaint, please download and complete the [Complaint Verification Form \(CVF\)](#) and the [Identity Release Statement \(IRS\)](#) and return both forms to OCR at the following address:

Office for Civil Rights  
Office of Justice Programs  
U.S. Department of Justice  
810 7th Street, NW  
Washington, DC 20531

Generally, you must file a complaint with OCR within one year from the date of the alleged discrimination.

OCR also accepts third-party discrimination complaints on behalf of people who are either unable or reluctant to file a complaint on their own behalf. The absence of a signed IRS from the aggrieved person may severely limit OCR's investigation into a single incident of discrimination against an individual. However, the absence of a signed IRS will not prevent OCR from investigating an alleged discriminatory practice or policy.

Additional information on filing a complaint with OCR is available online at <http://www.ojp.usdoj.gov/about/ocr/complaint.htm>.

16. How will OCR process complaints of discrimination filed under VAWA's nondiscrimination grant condition? What procedures will be put into place under VAWA, and what remedies will be available?

OCR will carefully consider all complaints it receives that allege discrimination against a recipient of funds to which the VAWA nondiscrimination grant condition applies. In most instances, OCR will follow the complaint procedures set forth in 42 U.S.C. § 3789d and the implementing regulations at 28 C.F.R. pt. 42, subpt. D.

Upon receiving a CVF and IRS, OCR will thoroughly review the complaint along with respondent funding records to determine whether OCR has jurisdiction to investigate the complaint and whether the complaint contains enough preliminary information to support a claim under VAWA. As part of this initial assessment, OCR may seek additional information from the complainant about the allegations. Based on this preliminary review, OCR may initiate an investigation, often gathering additional data from both the complainant and the recipient named in the complaint.

Once OCR gathers sufficient information, it will then evaluate the merits of the complaint. If OCR finds that the facts do not support the claim, it will close the complaint, advising the complainant in writing of this action.

If, however, OCR finds that the facts support a finding that the recipient is not in compliance with VAWA's nondiscrimination grant condition, OCR will work with the recipient to explore ways in which it can come into voluntary compliance. Generally, OCR does not obtain individual remedies for complainants; rather, OCR's focus is on ensuring a recipient's overall compliance with applicable nondiscrimination requirements. OCR makes every reasonable effort to negotiate resolution agreements with recipients to remedy civil rights violations and to ensure that federal funding continues. If voluntary compliance cannot be secured, then the recipient risks the suspension or termination of applicable federal funding.

17. Are individuals who report or oppose discrimination by a grantee protected from retaliation?

Yes. Retaliation in response to reporting or opposing discrimination, or in response to participating in the investigation of a complaint of discrimination, *is* itself unlawful discrimination. Recipients under covered grants may not retaliate against individuals who, in good faith, report or oppose practices that violate the VAWA nondiscrimination grant condition. Recipients may not retaliate against individuals for reporting or otherwise opposing discrimination targeted at other individuals or for participating in an investigation of another person's discrimination complaint.

18. Does the VAWA nondiscrimination grant condition create any new civil-rights-related data-reporting requirements?

No. The VAWA nondiscrimination grant condition does not create any new data-reporting requirements, and it does not alter any statutory or regulatory civil-rights-related data-reporting requirements currently in effect. OVW, however, requires that its grantees and subgrantees submit annual or semi-annual progress reports. When a recipient receives funding to serve victims, OVW requires that these progress reports

include demographic information about victims, including aggregate information on race, ethnicity, gender, and age of victims served.

If you have questions or comments about the new nondiscrimination grant condition, or if you would like further information about any of the responses provided here, please contact the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice at [VAWAcivilrights@usdoj.gov](mailto:VAWAcivilrights@usdoj.gov).

**Nothing in this guidance creates any legal or procedural rights enforceable against the United States.**