

Anti-Discrimination Provisions That Apply to Programs Receiving Federal Funding Serving Victims of Violence Against Women Crimes

By: Catherine Longville and Leslye E. Orloff
June 18, 2014, Updated February 10, 2017¹

All programs that serve survivors of domestic violence, sexual assault, stalking, dating violence, child abuse, elder abuse, human trafficking or other crime victims and directly or indirectly receive federal funding or assistance are responsible for complying with anti-discrimination laws.² This fact sheet will discuss the anti-discrimination provisions of laws and programs with particular applicability to immigrant and Limited English Proficient (LEP) crime victims.

Civil Rights Act as Applied to LEP Individuals

The term “LEP” refers to individuals with limited English proficiency.³ Federal law prohibits recipients of federal funding from discriminating against individuals on the basis of race, color, or national origin, which includes limited English proficiency.⁴ Specifically, federal law prohibits:

- The exclusion from participation of;
- The denial of the benefits of; or
- Discrimination against

Any individual under any program or activity receiving Federal financial assistance on the ground of that individual’s:

- Race,
- Color, or
- National origin.⁵

Discrimination on the basis of national origin includes as a matter of federal law discrimination against a person who is limited English proficient. These anti-discrimination requirements apply to any and all programs directly or indirectly receiving any federal funding or assistance.⁶ Further, regulations implementing the Civil Rights Act

¹ This project was supported by Grant Nos. 2015-TA-AX-K043 and 2013-TA-AX-K009 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women. This project was also made possible by Grant Number #90EV0402 from the Administration on Children, Youth and Families, Family and Youth Services Bureau, U.S. Department of Health and Human Services awarded to the National Resource Center on Domestic Violence with the Women of Color Network as the author and distributor. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the U.S. Department of Health and Human Services. It's contents are solely the responsibility of the authors and do not necessarily represent the official views of the Health Resources and Services Administration or the U.S. Department of Health and Human Services.

² DOJ/HHS/HUD Joint Letter on Immigrant Access to Federally Funded Services Necessary to Protect Life or Safety 4 (Aug. 5, 2016) available at <http://niwaplibrary.wcl.american.edu/joint-agency-letter-shelters-transitional-housing/>

³ U.S. Department of Justice, LANGUAGE ACCESS ASSESSMENT AND PLANNING TOOL FOR FEDERALLY CONDUCTED AND FEDERALLY ASSISTED PROGRAMS (May 2011), available at: <http://niwaplibrary.wcl.american.edu/language-access/government-materials/2011-Language-Access-Assessment-and-Planning-Tool.pdf/view>.

⁴ *Id.*; See also, Title VI of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000d et seq.

⁵ Title VI of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000d et seq; Omnibus Crime Control and Safe Streets Act of 1968, codified at 42 U.S.C. § 3789d(c). Notably, discrimination on the basis of national origin is permissible if a recipient of so-called “STOP” grants only provide services to certain racial or ethnic minorities. See Donna Irwin, Leslye E. Orloff, and Krisztina E. Szabo, *Funding Effective Program Services for Immigrant Victims of Domestic Violence*, (Mar. 7, 2014), available at: <http://niwaplibrary.wcl.american.edu/pubs/stop-administrator-monograph-03-07-14>.

⁶ Memorandum from Attorney General Eric Holder, for Heads of Federal Agencies, General Counsels, and Civil Rights Heads, *Federal Government’s Renewed Commitment to Language Access Obligations Under Executive Order 13166* (Feb. 17, 2011), available at http://www.lep.gov/13166/AG_021711_EO_13166_Memo_to_Agencies_with_Supplement.pdf.

prohibit recipients of federal funding or federal assistance from administering programs in a manner that has the effect of discriminating against individuals because of their national origin.⁷

Violence Against Women Act's (VAWA) Anti-Discrimination & Underserved Populations Provisions

VAWA's Anti-Discrimination Protections: VAWA provides opportunities for immigrant victims of domestic violence, sexual assault, stalking, human trafficking and other crimes included in the U Visa to obtain immigration status in the U.S. It also provides funding for programs which offer services to immigrant victims. VAWA 2013 included amendments that include a prohibition against discrimination, which states that no individual in the U.S. may 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 through VAWA or the Office on Violence Against Women based on that individual's:

- Race;
- Color;
- Religion;
- National Origin (includes LEP);⁸
- Sex;
- Gender identity;
- Sexual orientation; or
- Disability.⁹

VAWA's Underserved Populations Focus: From its inception in 1994, VAWA legislation has prioritized ensuring that victims from diverse backgrounds benefited from VAWA's protections and had access to VAWA funded services. To foster equitable access to VAWA funded programs for all victims, VAWA created set asides, special funding options and priorities for underserved populations, culturally specific services, and population specific services¹⁰ in an effort to assure that each of the following groups of victims have equal access to VAWA funded programs and services.

"Underserved populations" includes populations who face barriers in accessing and using victim services, and populations who are underserved due to:

- geographic isolation;
- religion;
- sexual orientation;
- gender identity;
- ethnicity;
- race;
- language barriers;

⁷ See 28 C.F.R. § 42.104(b)(2).

⁸ See HHS' "Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination As It Affects Persons with Limited English Proficiency", 65 Fed. Reg. 52762 (August 30, 2000).

⁹ Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54, § 3(b)(13) (2013) (codified at 42 U.S.C. § 13925(b)(13)).

¹⁰ Population specific services are programs targeted to one or more specific underserved populations. 42 U.S.C. § 13925(a)(21).

- disabilities;
- alienage status; or
- age.¹¹

“*Culturally specific*” means primarily directed toward racial and ethnic minority groups defined as¹²

- American Indians (including Alaska Natives, Eskimos, and Aleuts);
- Asian Americans;
- Native Hawaiians and other Pacific Islanders;
- Blacks; and
- Hispanics (including individuals whose origin is Mexican, Puerto Rican, Cuban, Central or South American, or any other Spanish-speaking country).

Family Violence Prevention and Services Act’s (FVPSA) Anti-Discrimination Requirements

The FVPSA provides funding for services that include emergency housing and related services to victims of domestic violence and their children. The U.S. Department of Health and Human Services, the agency responsible for administering FVPSA funding, has longstanding policies in place confirming that FVPSA funded programs are to be open to all immigrants without regard to immigration status, and that FVPSA has no immigration restrictions.¹³ Further, programs that are receiving FVPSA funding are prohibited from discriminating on the basis of¹⁴:

- Race;
- Color;
- National Origin;
- Age;
- Disability;
- Sex; or
- Religion.

Fair Housing Act’s Anti-Discrimination Provisions

The Fair Housing Act applies to all shelters and transitional housing programs because they fall within the Act’s definition of “dwellings”.¹⁵ Nearly all housing providers, both public and private, are considered dwellings under the Act and are prohibited by federal law from:

- Refusing a sale or rental to a qualified applicant;
- Discriminating against any person regarding the terms, conditions, privileges, or services in connection with a residence;

¹¹ 42 U.S.C. § 13925(a)(39).

¹² 42 U.S.C. § 13925(a)(7). 42 U.S.C. § 13925(a)(6)[42 U.S.C § 300u-6(g)].

¹³ Tom Perez, Office of Civil Rights, HHS, Fact Sheet: Access to HHS-Funded Services for Immigrant Survivors of Domestic Violence (January 30, 2001) available at <http://niwaplibrary.wcl.american.edu/pubs/hud-memo-transitional-housing/>

¹⁴ Family Violence Prevention and Services Act (FVPSA), 98 Stat. 1749, (codified at 42 U.S.C. § 10406(c)(2)); *see also* HHS, Cover Letter to FVPSA Grantees (Aug. 2016); Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d (prohibiting discrimination based on race, color, or national origin under any program or activity receiving Federal financial assistance).

¹⁵ A dwelling is defined as "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families." 42 U.S.C. § 3602(b).

- Making, printing, or publishing any advertisement expressing a preference for a certain type of tenant or buyer¹⁶; or
- Representing that any dwelling is not available for inspection, sale, or rental when such unit is in fact available¹⁷

On account of an individual's:

- Race;
- Color;
- Religion;
- Sex;
- National origin; or
- Familial status.¹⁸

These housing protections are enforceable in nearly all circumstances, except where the dwelling is a single-family house and:

- The owner does not own more than three single-family houses at any one time; or
- The owner does not have any right to the proceeds from the sale or rental of three or more single-family houses; and
- The sale or rental at issue is being carried out without the assistance of a real estate broker and without the use of discriminatory notices or advertisements.¹⁹

These housing-related anti-discrimination provisions also do not apply to rooms or units in dwellings where no more than four families live independently of one another, and the owner actually maintains and occupies one of the rooms or units in the dwelling.²⁰

Federal Emergency Management Agency (FEMA) Funded Programs Anti-Discrimination Requirements

Some programs that provide assistance to crime victims also receive funding from FEMA to provide crisis counseling, emergency or transitional shelter, legal or other services to disaster victims. Federal law and FEMA policy prohibit discrimination in matters of federal emergency relief. Specifically, FEMA's anti-discrimination provision states that no person shall be:

- Denied the benefits of;
- Deprived of participation in; or
- Be discriminated against in

Any program or activity conducted by or receiving financial assistance from FEMA on the ground of that person's:

¹⁶ It is also unlawful to perform this conduct on account of an individual's disability, in addition to the other protected grounds listed above. See 42 U.S.C. § 3604(c).

¹⁷ It is also unlawful to perform this conduct on account of an individual's disability, in addition to the other protected grounds listed above. See 42 U.S.C. § 3604(d).

¹⁸ See 42 U.S.C. § 3604; See also U.S. Department of Housing and Urban Development, *Public Occupancy Guide*, available at: https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/rhiip/phguidebook; DOJ/HHS/HUD Joint Letter on Immigrant Access to Federally Funded Services Necessary to Protect Life or Safety 4 (Aug. 5, 2016) available at <http://niwaplibrary.wcl.american.edu/joint-agency-letter-shelters-transitional-housing/>; Section 109 of Title 1 of the Housing and Community Development Act of 1974 (42 U.S.C. § 5309) (prohibiting discrimination on the basis of race, color, national origin, sex or religion in programs and activities receiving financial assistance from HUD's Community Grant Program).

¹⁹ See 42 U.S.C. § 3603(b)(1).

²⁰ See 42 U.S.C. § 3603(b)(2).

- Race;
- Color;
- National origin;
- Sex;
- Religion;
- Nationality;
- Age;
- Disability;
- Limited English proficiency; or
- Economic status.²¹

This non-discrimination policy applies to all entities which receive federal financial assistance from FEMA, including:

- State and local governments;
- Educational institutions;
- Any institution receiving benefits through the Infrastructure or Mitigation Programs; and
- All local boards and related charitable organizations receiving aid from the Emergency Food and Shelter Program.²²

²¹ Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Pub. L. No. 93-288, § 308 (codified at 42 U.S.C. § 5151).

²² FEMA, ACCOMMODATING INDIVIDUALS WITH DISABILITIES IN THE PROVISION OF DISASTER MASS CARE, HOUSING, & HUMAN SERVICES, REFERENCE GUIDE (FEMA Policy) (last updated 08/03/2012), available at: <https://www.fema.gov/news-release/2007/08/21/accommodating-people-disabilities-disasters-reference-guide-federal-law>