

February 26, 2020

Office of Management and Budget
Paperwork Reduction Project
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Attn: Desk Officer for the Administration for Children and Families

RE: Domestic Victims of Human Trafficking Program Data Collection, OMB No.: 0970-NEW

OMB Desk Officer for ACF:

NIWAP, American University, Washington College of Law (NIWAP) commends the HHS Office on Trafficking in Persons for working to improve the Domestic Victims of Human Trafficking Program (DVHT). The Department's commitment to ensuring US Citizen (USC) and Lawful Permanent Resident (LPR) survivors of human trafficking are successfully supported with access to services and assistance that meet their needs to process their trauma and heal from the abuse they have suffered is crucial. We understand that receiving information from DVHT grantees provides helpful information toward this goal, but we are submitting this comment because we are concerned that the proposed forms have not taken into account the protections offered human trafficking victims by Violence Against Women Act (VAWA) confidentiality laws. 8 U.S.C. 1367.

NIWAP is a national training and technical assistance provider that is a resource for judges, court staff, police, prosecutors, victim advocates and attorneys on legal rights of immigrant victims of human trafficking, domestic violence and sexual assault under U.S immigration laws, state family laws, and state and federal public benefits laws. NIWAP staff led successful efforts to include protections for immigrant victims of domestic violence, sexual assault, human trafficking, stalking, elder/child abuse and dating violence in the Violence Against Women Acts of 1994, 2000, 2005 and 2013 and were involved in the drafting of VAWA confidentiality's statutory protections in 1996 as well as improvements in VAWA confidentiality protections as part of VAWA 2000, 2005 and 2013. This included extending VAWA confidentiality protections to human trafficking victims who filed for and were granted T visas.

Like the Freedom Network and human trafficking service provider experts, NIWAP is concerned that the level of detail that the proposed forms request be collected and reported could jeopardize the health and safety of human trafficking victims. We incorporate herein by reference to these comments, the comments submitted on February 25, 2020, by the Freedom Network USA (Attachment A to these comments).

The proposed forms also do not take into account the existence of VAWA confidentiality laws. VAWA confidentiality laws are important because the programs will be serving human trafficking victims who received their lawful permanent residency and citizenship based on having been granted T visas. To date, over 16,000 victims of human trafficking and their family

members have been granted T visas since the first & visas were issued in 2002.¹ T visa recipients were first able to apply for and be granted lawful permanent residency when the T and U visa adjustment rule was issued in as an interim final rule on December 8, 2008.² Thus, since the end of 2013, T visa recipients have been eligible to apply for U.S. citizenship after five years as lawful permanent residents.

As we discuss below, NIWAP is concerned by the highly detailed information that is being requested across the proposed forms and data collection tools. We do not believe the information being collected is necessary and may have harmful unintended consequences. These consequences include requiring production of information about human trafficking victims who were granted T visas that the U.S. Departments of Homeland Security, State, and Justice would be prohibited to seek, obtain, release or share under VAWA confidentiality laws. Congress created VAWA confidentiality protections to stop human traffickers, stalkers, and domestic violence and sexual assault perpetrators from learning about the existence of the facts, information, or evidence contained in, and the actions taken in the case of a victim who has applied for or been awarded one of the forms of immigration relief that receives VAWA confidentiality protection which includes all T visa victims. VAWA confidentiality also precludes government agencies (DHS, State, and DOJ) from relying on information provided by perpetrators and using that information to harm a victim.

In some situations, it may even put clients at grave risk for re-victimization. The FY16 Domestic Victims of Human Trafficking (DVHT) Funding Opportunity Announcement (FOA)³ states that the purposes of the grant program are to:

- Increase outreach and awareness, and identify domestic victims of severe forms of human trafficking;
- Expand collaboration and partnerships to implement innovative, multi-disciplinary, trauma-informed approaches to serve domestic victims of severe forms of human trafficking; and
- Develop, expand, strengthen, coordinate, and oversee the delivery and /or referral of services to domestic victims of severe forms of human trafficking.

We believe the data requested on the proposed forms goes far beyond what the program requires. The information requested is not relevant to accomplishing the primary objectives of DVHT, and in some cases, is likely to compromise victim confidentiality in violation of the terms of the requirements of the DVHT program. HHS specifically recognizes the importance of confidentiality for human trafficking victims and included in the DVHT grant award a

¹ See chart produced by DHS attached as Appendix C. See also Department of Homeland Security, Immigration and Citizenship Data https://www.uscis.gov/tools/reports-studies/immigration-forms-data?topic_id=20718&field_native_doc_issue_date_value%5Bvalue%5D%5Bmonth%5D=&field_native_doc_issue_date_value_1%5Bvalue%5D%5Byear%5D=2012&combined=&items_per_page=10. Taking the data reported in attachment C and adding it to the numbers of T visas issued to principal T visa applicants and their T visa recipient family members by DHS the total number of T visas issued to date is 16,318. However, the data on the USCIS website is missing some quarters of data so is not fully complete.

² Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75540 (Dec. 8, 2008) (Attachment – D).

³ US Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families- Family and Youth Services Bureau, Domestic Victims of Human Trafficking Program (HHS-2016-ACF-ACYF-TV-1186), p 3, available at https://ami.grantsolutions.gov/files/HHS-2016-ACF-ACYF-TV-1186_0.pdf [hereinafter FOA].

requirement that “[p]olicies and procedures must be in place to ensure the non-disclosure of confidential, private, or personally identifiable information concerning victims of human trafficking.”⁴

A review of the history of VAWA confidentiality makes it clear that Congress and the U.S. Department of Homeland Security took steps to ensure that any personally identifying information including locational information and unique details about a victim’s case were protected from the time the victim files for a T visa forever after through lawful permanent residency and after they gain citizenship.⁵ DHS regulations state that “Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367”⁶

In implementing VAWA confidentiality laws, DHS confirmed that the information that receives VAWA confidentiality protections is –

“Any information relating to aliens who are seeking or have been approved for immigrant status as battered spouses, children and parents under provisions of the Violence Against Women Act (VAWA), as victims of a severe form of human trafficking who generally are cooperating with law enforcement authorities, or as aliens who have suffered substantial physical or mental abuse and are cooperating with law enforcement authorities. This definition includes records or other information that do not specifically identify the individual as an applicant or beneficiary of the T Visa, U Visa, or VAWA protections.”⁷

“All DHS officers and employees are generally prohibited from permitting use by or disclosure to anyone other than a sworn officer or employee of DHS, Department of State (DOS), or Department of Justice (DOJ) of any information relating to a beneficiary of a pending or approved application for victim-based immigration benefits, including a battered spouse or child hardship waiver, VAWA self-petition, VAWA cancellation of removal or suspension of deportation case, or T or U nonimmigrant status, including the fact that they have applied for such benefits.”⁸

“The nondisclosure provision provides protection as soon as a DHS employee has reason to believe that the alien may be the beneficiary of a pending or approved victim-based application or petition, and the limitation ends when the application for relief is denied

⁴ FOA, p 5.

⁵ By the terms of the statute VAWA confidentiality protections only end when “when the application for relief is denied and all opportunities for appeal of the denial have been exhausted.” 8 U.S.C. 1367 (a); DEP’T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, 14 (Nov. 7, 2013), <http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001/>.

⁶ 8 C.F.R. 214.14(e)(2)

⁷ DEP’T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, 3 (Nov. 7, 2013), <http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001/>.

⁸ DEP’T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, 2 (Nov. 7, 2013), <http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001/>.

and all opportunities for appeal of the denial have been exhausted.”⁹

“If a DHS employee receives adverse information about a victim of domestic violence, sexual assault, human trafficking or an enumerated crime from a prohibited source, DHS employees should treat the information as inherently suspect and exercise all appropriate prosecutorial discretion with respect to pursuing the adverse information. Further, DHS employees receiving information solely from a prohibited source do not take action on that information unless there is an independent source of corroboration.”¹⁰

“This interim guidance also reminds ICE employees that they are generally prohibited from “permit[ing] use by or disclosure to anyone (other than a sworn officer or employee of “[DHS])” of any information which relates to an alien who is the beneficiary of an application for relief under victim based benefits (VAWA, T or U nonimmigrant status): If ICE employees know that an alien has sought such victim-based benefits, they are generally prohibited from disclosing any information to a third party.”¹¹

“In enacting this nondisclosure provision, Congress sought to prevent, with limited exceptions, disclosure of any information relating to beneficiaries of applications for VAWA benefits (battered spouses or children) or for T or U nonimmigrant status, including the fact that they have applied for benefits. The disclosure of certain information is permitted in limited circumstances. Those circumstances include disclosure for legitimate law enforcement purposes, statistical purposes, and benefit granting or public benefit purposes. See 8 U.S.C § 1367(b) (listing exceptions to general nondisclosure rule).¹²

The VAWA confidentiality statute goes so far as to limit access members of Congress operating in their oversight function have to VAWA confidentiality protected cases. The statute states that in 8 U.S.C. 1367(b)(6) –

“Subsection (a) may not be construed to prevent the Attorney General and the Secretary of Homeland Security from disclosing to the chairmen and ranking members of the Committee on the Judiciary of the Senate or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, information on closed cases under this section in a manner that protects the confidentiality of such information and that *omits personally identifying information* (including locational information about individuals). (Emphasis added).

⁹ DEP’T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS, *in* NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, 6 (Nov. 7, 2013), <http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001/>.

¹⁰ DEP’T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS, *in* NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, 2-3 (Nov. 7, 2013), <http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001/>.

¹¹ John p. Torres and Marcy Forman, *Interim Guidance Relating to Officer Procedure Following the Enactment of VAWA 2005*, *in* NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, 25 (January 22, 2007), <http://niwaplibrary.wcl.american.edu/pubs/iceopla-vawa-confidentiality-2007-foia/>; 8 U.S.C. § 1367

¹² John p. Torres and Marcy Forman, *Interim Guidance Relating to Officer Procedure Following the Enactment of VAWA 2005*, *in* NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, 25 (January 22, 2007), <http://niwaplibrary.wcl.american.edu/pubs/iceopla-vawa-confidentiality-2007-foia/>; 8 U.S.C. § 1367

It is extremely important that HHS' approach to its work with human trafficking victims respect and be consistent with VAWA confidentiality laws. HHS must not collect information on human trafficking victims that in any way could be connected or lead to identification of an individual victim. We strongly oppose using a client identifier that includes personally-identifying information such as date of birth, client initials, facts of the victim's case that could be used by the trafficker or others to identify that particular victim and/or reference to the person's place of residence or country of origin. This directly contradicts the confidentiality policies of the grantee and the requirements of HHS, and is contrary to the VAWA confidentiality protections that foreign-born victims who received T visas are guaranteed. We recommend that DVHT grantees use a randomized client identifier system that does not disclose any PII.

Client Services Forms require specific details on an individualized basis. We strongly oppose reporting forms that include PII, such as date of birth, reference to the person's place of residence or where they will receive services, details about their trafficking experience, or country of origin. This directly contradicts the confidentiality policies of the grantee and the requirements of HHS and is inconsistent with the letter and the spirit of VAWA confidentiality protections. Grantees should be required to only provide client demographics in an anonymized, aggregated format.

In light of these comments, we strongly recommend that HHS reconsider and amend the proposed information collection forms for DVHT programs. I would be happy to discuss these comments with you and provide further information on VAWA confidentiality laws, regulations, and DHS policies. I can be reached at 202-210-8886, orloff@wcl.american.edu.

Sincerely,



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