



Protections Delayed:

State Housing Finance Agency Compliance With The Violence Against Women Act

Contributors

American Civil Liberties Union

Mid-Minnesota Legal Aid

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National Housing Law Project

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Synopsis

Nearly 20 people per minute—more than 10 million per year—are physically abused by an intimate partner in the United States. Nearly 1 in 5 women have been the victim of rape or attempted rape. Congress passed the Violence Against Women Act of 1994 (“VAWA”) in response to the pervasive nature of these problems.¹ Over the years, VAWA has been amended multiple times to expand its coverage. Most recently, in 2013, Congress amended VAWA to, among other requirements, prohibit housing providers with Low-Income Housing Tax Credit (“LIHTC”) funding from using domestic violence, dating violence, sexual assault, and stalking (“VAWA Crime”) as grounds for evicting the victim. The amendment was a response to the fact that providers of federally assisted low-income housing, including LIHTC housing, have too often evicted both the perpetrator and the victim of a VAWA Crime, compounding the harm to the victim.

As one of the primary sources of affordable housing in this country, the LIHTC program’s compliance with VAWA is critical. Approximately 90% of new affordable housing is funded by the LIHTC program, and LIHTC has been used to construct nearly 2.8 million units since 1987.

In 2016, a coalition comprised of the National Network to End Domestic Violence, the National Alliance to End Sexual Violence, the National Housing Law Project, the American Civil Liberties Union, the Sargent Shriver National Center on Poverty Law, Mid-Minnesota Legal Aid, and Regional Housing Legal Services created and distributed a survey (“Survey”) to better understand how states were implementing VAWA in LIHTC properties. The Survey was designed to assess the way in which state housing finance agencies (“HFAs”), the state agencies responsible for each state’s LIHTC activities, were implementing VAWA.

The Survey uncovered significant variance among HFAs in VAWA implementation. Some HFAs, such as those in Pennsylvania and Illinois, have taken steps to educate housing providers and tenants about the rights of victims and to monitor provider compliance. However, many have failed to act, citing the need for guidance from the Department of Treasury (“Treasury”), which has been silent on the issue. In addition, we have no information about the practices of a significant number of HFAs that did not respond to the Survey.

This Report is designed to provide the reader with: 1) an understanding of the provisions of VAWA that apply to LIHTC properties; 2) a rationale for HFAs taking action to implement VAWA—even in the absence of Treasury regulations or guidance; 3) recommendations for HFAs to implement VAWA in LIHTC, based on what some HFAs have already done; and 4) a summary of the Survey findings.

May 2017

Contributors



American Civil Liberties Union

The American Civil Liberties Union (ACLU) is a nationwide, non-partisan organization of more than one million members dedicated to preserving the Constitution and civil and human rights. The ACLU Women’s Rights Project, founded in 1972 by Ruth Bader Ginsburg, has been a leader in efforts to eliminate the barriers to women’s full equality in American society. These efforts include challenging discrimination against victims of domestic violence and sexual assault, with a particular area of focus on advancing survivors’ rights to obtain and maintain secure housing. The ACLU has litigated cases on behalf of survivors and advocated for policies at the federal, state, and local levels, including supporting the housing protections of the Violence Against Women Act, first enacted in 2005. www.aclu.org



Mid-Minnesota Legal Aid

For 100 years, Mid-Minnesota Legal Aid has served the residents of Hennepin County. In 1974, it expanded its service area to include the St. Cloud area and in 1979 added the Willmar area. It now serves 20 counties in central Minnesota from the South Dakota to the Wisconsin border, providing free civil legal services to people and families with low incomes and/or disabilities. Legal Aid’s Disability Law Center is the Protection and Advocacy System for Minnesota. As such it provides free civil legal services to children and adults with disabilities throughout the state of Minnesota. Today, 60 Legal Aid lawyers along with 29 legal advocates and assistants and 36 administrative and support staff help more than 10,000 individuals and families annually meet essential needs. www.mylegalaid.org



National Alliance to
End Sexual Violence

National Alliance to End Sexual Violence

The National Alliance to End Sexual Violence (NAESV) is the voice in Washington for the 56 state and territorial sexual assault coalitions and 1,300 local programs working to end sexual violence and support all survivors. www.endsexualviolence.org



National Network to End Domestic Violence

National Network to End Domestic Violence (NNEDV), a social change organization, is dedicated to creating a social, political and economic environment in which violence against women no longer exists. NNEDV is the membership organization of the 56 state and territorial domestic violence and dual domestic violence and sexual assault coalitions. Ensuring that survivors can maintain and access safe housing is a priority for NNEDV. www.nnedv.org



National Housing Law Project

The National Housing Law Project (NHLP) is a private, non-profit, national housing and legal advocacy center established in 1968. Our mission is to advance housing justice for poor people by increasing and preserving the supply of decent, affordable housing; expanding and enforcing low-income tenants' and homeowners' rights; and increasing housing opportunities for historically marginalized groups of people. NHLP has worked with thousands of housing providers, advocates, and attorneys throughout the country on issues involving the housing rights of survivors of domestic and sexual violence. For technical assistance regarding the Violence Against Women Act's housing provisions, please contact Karlo Ng at kng@nhlp.org. www.nhlp.org



Regional Housing Legal Services

Regional Housing Legal Services (RHLS) is a nonprofit law firm with unique expertise in affordable, sustainable housing and its related components – community and economic development, utility matters and preservation of home ownership. RHLS provides innovative project and policy solutions that help create sustainable communities offering decent, safe and affordable housing for lower-income Pennsylvanians. www.rhls.org



Sargent Shriver National Center on Poverty Law

The Sargent Shriver National Center on Poverty Law (Shriver Center) provides national leadership in advancing laws and policies that secure justice to improve the lives and opportunities of people living in poverty. We specialize in practical solutions. We advocate for and serve clients directly, while also building the capacity of the nation's legal aid providers to advance justice and opportunity for their clients. www.povertylaw.org

This report also benefited greatly from the generous help of Olivia Jerjian and Kristina Rosales.

I. Background

The housing protections in VAWA came in direct response to policies adopted by federal housing providers that held everyone in a household liable for a single instance of criminal activity that occurred at the property. These policies, commonly referred to as “one strike,” led to disastrous results for victims of domestic violence in federally subsidized housing programs.² In 1999, as part of a program titled the “National Discussion on Housing and Domestic Violence”, advocates, federal policy makers, and HUD officials addressed the question: how could crime reduction efforts be supported without forcing battered women to suffer the consequences of their abusive partner’s behavior?³ They were particularly concerned with crime reduction policies that exposed a victim to the risk of eviction because of their partner’s or ex-partner’s violence, their property damage, their threat to other tenants, or their violation of family one-strike policies.⁴

In response to this growing national problem, Congress inserted language in the Violence Against Women Act Reauthorization of 2005 (“VAWA 2005”) to protect victims of domestic violence, dating violence, and stalking from eviction, subsidy terminations, and admission denials due to their abusers’ acts.⁵ VAWA 2005 covered public housing, project-based Section 8 housing, and the Section 8 Housing Choice Voucher Program.⁶ In her congressional testimony regarding VAWA 2005 and the need for housing protections for victims, Lynn Rosenthal, the then executive director of the National Network to End Domestic Violence, explained that “[m]any victims of domestic violence have been evicted or denied housing due to the crimes committed against them or because of their abuser’s actions.”⁷ Additionally, Auburn L. Watersong, the Economic Justice Specialist at the Vermont Network Against Domestic And Sexual Violence, explained that “[a]busers intentionally use tactics to limit and control victims’ access to finances, transportation, housing, and banking,” and “[l]andlords often threaten victims with penalties or evictions, or unfairly hold victims accountable for the behavior of their abusers.”⁸ Indeed, domestic violence victims living at LIHTC properties have faced eviction based on the abuse committed against them.⁹

In 2013, Congress expanded the scope of the housing protections in VAWA by passing the Violence Against Women Reauthorization Act of 2013 (“VAWA 2013”).¹⁰ VAWA 2013 built upon VAWA 2005’s recognition that victims could not be denied or evicted from housing due to the acts of their abusers. It also provided additional housing protections for victims of violence, such as an opportunity to transfer to safe housing, and, for the first time, expressly covered victims of sexual assault. VAWA 2013 also expanded VAWA protections to additional housing programs, including the LIHTC program.¹¹

II. VAWA’s Housing Protections

VAWA protects victims from discrimination in accessing and maintaining federally assisted housing because they are victims or threatened victims of VAWA Crimes.¹² VAWA also prohibits any person from being denied assistance, tenancy, or occupancy rights solely on the basis of criminal activity if the criminal activity is directly related to the VAWA Crime engaged in by a household member, guest, or any person under the tenant’s control and the tenant or affiliated individual of the tenant is the victim.¹³

Housing providers may evict or terminate the assistance of a victim if they can demonstrate an actual and imminent threat to other tenants or employees at the property in the event that the tenant is not evicted or terminated from assistance.¹⁴ Additionally, housing providers cannot subject victims of VAWA Crimes to a more demanding standard than other tenants when determining whether to evict or terminate assistance.¹⁵

On November 16, 2016, HUD published the agency's final VAWA rule ("Final Rule"), which implements the requirements of VAWA 2013 for covered housing programs administered by HUD through regulation.¹⁶ Importantly, LIHTC units that are subsidized by VAWA-covered HUD programs are subject to HUD's Final Rule.¹⁷ For example, providers with LIHTC units that have tenants in the Section 8 Housing Choice Voucher Program, that are subsidized by project-based Section 8, or that are funded by HOME must adhere to the Final Rule's requirements. Additionally, the Final Rule emphasizes Treasury's obligation to provide guidance to LIHTC housing providers on the implementation of VAWA 2013.¹⁸

A. Notifying Tenants of VAWA Rights

VAWA 2013 requires housing providers, including LIHTC housing providers, to notify applicants and tenants of their VAWA rights using a notice developed by HUD,¹⁹ along with the respective agency-approved self-certification form,²⁰ at three critical junctures: (1) when an applicant is denied admission, (2) when an applicant is admitted, and (3) when a tenant receives any notice of eviction or termination of assistance.²¹ As part of its Final Rule implementing VAWA, HUD issued this notice of VAWA housing rights, Form HUD-5380, that must be used by LIHTC providers to give to all applicants and tenants in all LIHTC units.²² This notice can be found in Appendix C of this report. In addition, HUD has made available online a Microsoft Word version of this notice so that housing providers can edit the notice to include required contact and program information.²³

Note: For LIHTC units with VAWA-covered HUD funding, this notice and form must be given to existing tenants in these HUD units by December 15, 2017.²⁴

HUD indicated that it will translate this notice and form into multiple languages, consistent with HUD's language access guidance for limited-English proficiency populations.²⁵ Since Treasury has yet to issue an agency-approved VAWA self-certification form, LIHTC housing providers can use HUD's VAWA self-certification form, Form HUD-5382.²⁶ This form can also be found in Appendix D.

B. Determining VAWA Applicability

Tenants can claim VAWA protections solely based on the victim's statement.²⁷ Providers who choose to request documentation that the person is a victim of a VAWA Crime must make that request in writing and give the person at least 14 business days to respond to the request or any extension granted therein.²⁸ A housing provider can evict, deny admission or assistance, or terminate assistance to the victim based on the victim's failure to provide the documentation within the 14 business days or any extension granted.²⁹ Certification can be in the form of the HUD self-certification form or third-party documentation, including police reports, court orders, and administrative orders.³⁰ Housing providers generally cannot require victims to produce third-party documentation or produce more than one form of proof.³¹ However, if the housing provider receives conflicting certifications, the housing provider can require an applicant or tenant to submit third-party documentation.³²

C. Complying with Court Orders & Privacy

Housing providers must honor all court orders addressing rights of access or control of property, including protective orders issued to victims, and any orders addressing the distribution or possession of property.³³ Housing providers

are required to keep strictly confidential the information provided by a victim regarding their status.³⁴ Housing providers also cannot enter the information into any shared databases or disclose to another entity or individual, unless disclosure is required by law, is requested or consented to by the individual in writing in a time-limited release, or required for use in an eviction proceeding.³⁵

D. Lease Bifurcation, Emergency Transfers, & Voucher Policies

Providers can bifurcate a lease to evict or terminate assistance to any tenant or lawful occupant who engages in criminal acts of violence against an individual or others,³⁶ without penalizing the victim.³⁷ Victims who remain in a covered housing unit after the abuser leaves must be given “reasonable time”, as determined by the administering federal agency, to establish eligibility for federally assisted housing programs or to find new housing when a lease is bifurcated.³⁸

Note: For LIHTC units with VAWA-covered HUD funding, HUD established in the agency’s Final Rule that victims and other household members who remain in the unit after lease bifurcations generally have at least 90 days from the date of lease bifurcation or until the end of the lease to establish eligibility for a federal housing program or find other housing.³⁹ However, this time period can vary by HUD program. If you have questions about what time period applies, please contact the National Housing Law Project.

VAWA 2013 creates an emergency transfer process specifically for victims.⁴⁰

Note: For LIHTC units with VAWA-covered HUD funding, housing providers of these units must develop and implement a VAWA emergency transfer plan by June 14, 2017 that adheres to the requirements outlined in HUD’s Final Rule.⁴¹

Furthermore, a victim with a Section 8 Housing Choice Voucher must be able to move to another jurisdiction, without risking losing the assistance, even in the middle of a lease term, if the household has complied with all other obligations of the program and is moving to protect the health or safety of an individual who is or has been the victim of a VAWA Crime.⁴²

III. HFA Power to Protect VAWA Victims

Federal agencies administering the housing programs covered by VAWA 2013 must implement its housing provisions.⁴³ Specifically, VAWA requires each responsible agency to fulfill a number of affirmative obligations outlined by the statute, including, for example, creating a model emergency transfer plan to be used by owners and managers of LIHTC units;⁴⁴ developing a self-certification form;⁴⁵ and defining what is “reasonable time” for tenants who remain after lease bifurcations to find new housing or establish eligibility for another housing program.⁴⁶ HUD and the Department of Agriculture’s Rural Development Office⁴⁷ have issued VAWA regulations or guidance for the programs they administer, but Treasury has not yet acted. Treasury has informally indicated that the agency does not see the need to act because noncompliance with VAWA 2013 is not considered to be non-compliance under the statute that created the LIHTC program (the “LIHTC Statute”).⁴⁸ Nevertheless, LIHTC housing providers are still subject to VAWA’s mandates. Failure to adhere to VAWA can lead to liability for LIHTC providers. Furthermore, the nature of this issue and the severity of the consequences demand that HFAs proactively implement VAWA 2013.

The absence of VAWA regulations or guidance by Treasury should not serve as an obstacle because HFAs have routinely implemented parts of the LIHTC statute without guidance from Treasury.

A. Absence of Treasury Regulation and Guidance: Not an Impediment

HFAs regularly take action to interpret and implement portions of the LIHTC Statute.⁴⁹ For example, the LIHTC Statute requires HFAs to issue “Qualified Allocation Plans” (“QAPs”) that give preference to projects that: 1) serve the lowest income tenants; 2) provide the longest affordability; and 3) are located in qualified census tracts of which the development contributes to a concerted community revitalization plan.⁵⁰ Treasury has not yet issued guidance interpreting this section (although, as of this writing, it is working to provide guidance on the community revitalization plan provision). Yet, HFAs have been implementing this section without Treasury guidance for many years through their QAPs.⁵¹

Similarly, the LIHTC Statute provides that “[t]he extended use period for any building shall terminate on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period... .”⁵² Treasury has not issued any guidance on this provision, but that has not stopped HFAs who are concerned about planned foreclosures from acting. For example, the Maryland Department of Housing and Community Development, has taken action to prevent the early termination of affordability through planned foreclosure.⁵³

Finally, the Survey demonstrates that some HFAs are taking action to implement VAWA, even without Treasury guidance. Some HFAs, such as the Pennsylvania Housing Finance Agency and the Illinois Housing Development Authority, can serve as models for other state HFAs.

B. HFA Implementation Tools

HFAs have a variety of tools at their disposal to either incentivize or compel housing providers to comply with the provisions of VAWA 2013.

i. Qualified Allocation Plans

One of the most significant tools is the QAP. HFAs can modify their QAPs to provide that: 1) VAWA 2013 compliance is a condition for the HFA to approve them for compliance with all program requirements; 2) a VAWA 2013 violation that leads to an eviction is a violation of the requirement for good cause eviction; and 3) the selection criterion “tenant populations with special housing needs” includes victims of domestic violence, sexual assault, dating violence and stalking. For instance, Pennsylvania’s QAP specifically states that “[e]xperience as a victim of domestic violence alone may not constitute good cause for eviction under the terms of the lease (if other occupancy rules are met).”⁵⁴ Additionally, Delaware,⁵⁵ Indiana,⁵⁶ Missouri,⁵⁷ New Jersey,⁵⁸ and Texas⁵⁹ have all included victims of domestic violence as a “tenant population with special housing needs” in their respective QAPs. Another example is Michigan’s QAP, which explicitly states that VAWA 2013 contained “several updates to the housing provisions including a number of legal obligations for owners and managers of rental properties funded by LIHTC” and that Michigan’s HFA “is committed to working closely with property owners to ensure onsite compliance and enforcement when necessary.”⁶⁰

ii. Land Use Restrictive Agreement

HFAs can also compel compliance with VAWA 2013 through their Land Use Restrictive Agreements (“LURAs”). Those HFAs that have LURAs with language requiring housing providers to comply with changes to the law, can simply notify providers that VAWA 2013 exists and that they must comply with it under the terms of the LURA. HFAs that do not already require compliance with changes to the law can modify their LURA to explicitly include reference to VAWA 2013.

iii. Lease Addendum

HFAs can use lease addendums to require compliance with VAWA 2013. Lease addendums serve a dual purpose of providing tenants with some notice that they are covered by the provisions of VAWA 2013. A lease addendum should state that a VAWA violation, which leads to an eviction, is a violation of the requirement for good cause eviction. For example, Pennsylvania requires that all tenants be provided with a lease addendum explicitly stating that “[p]rotections of the Violence Against Women Act, as amended from time to time” apply to LIHTC properties.⁶¹ Ohio also issued its own lease addendum form indicating that the “[p]rotections of the Violence Against Women Act, as amended from time to time” applied to tenants in LIHTC properties.⁶² Additionally, many HFAs reported requiring housing providers to use the HUD multifamily VAWA lease addendum, Form HUD-91067. According to the Survey, Arkansas,⁶³ Illinois,⁶⁴ and Missouri⁶⁵ use Form 91067 to inform tenants of their VAWA rights. Additionally, Iowa’s compliance manual requires that LIHTC providers use Form 91067, which must be executed by each adult household member at certification and must be resigned when a new lease is executed.⁶⁶ Iowa LIHTC projects are issued a State Notice of Non-compliance if they are not using the required forms at certification and recertification.⁶⁷ Georgia also issued a memorandum in 2014 stating that owners and property managers had to implement a VAWA lease addendum for all LIHTC tenants, either by providing the HUD Form 91067, incorporating VAWA protections in their current leases and forms, or creating their own lease addendum form with the required VAWA language.⁶⁸

iv. LIHTC Compliance Manuals

Finally, some HFAs include VAWA rights in their compliance manuals. For example, Kansas’s Compliance Policies and Procedures Manual lists the VAWA protections to which tenants in LIHTC properties are entitled.⁶⁹ It also recommends that owners and property managers attach a Lease Addendum (State Form 41), which includes the VAWA provisions, to each existing or new lease.⁷⁰ Oregon’s LIHTC Compliance Manual mandates that owners and property managers in LIHTC either provide the HUD VAWA lease addendum or create their own lease addendum.⁷¹ Georgia’s LIHTC Compliance Manual states that owners who do not notify their tenants as to their VAWA protections at the three important junctures (that is to say, when “a person applies for housing, when a person is denied residency, and when a person is admitted as a tenant of a housing unit, and when a tenant is threatened with eviction or termination”) are at risk of non-compliance.⁷² Iowa requires that “[a]ll LIHTC owner/managers to comply with the requirements of the VAWA Act and utilize HUD Form 91066, Certification of Domestic Violence, Dating Violence or Stalking, and HUD Form 91067, Lease Addendum.”⁷³

IV. Other Notable Tools

Other tools that HFAs have used include informing LIHTC owners and property managers of VAWA 2013's requirements. For instance, following both the enactment of VAWA 2013 and the issuance of HUD's final rule implementing VAWA 2013, Oregon sent memorandums to LIHTC owners and management agents notifying them of VAWA requirements.⁷⁴ Oregon's 2017 memorandum notes that owners and agents must complete an emergency transfer plan and provide emergency transfers by June 14, 2017. Furthermore, "to be in compliance with the VAWA Final Rule", owners and agents "must implement VAWA Appendix A (HUD-5380) [HUD VAWA rights notice] and C (HUD-5382) [HUD VAWA self-certification form] or self-created forms using exact information immediately."⁷⁵ Another example is Illinois, which sent a management bulletin to its LIHTC owners and property managers indicating that they "must now comply with VAWA."⁷⁶ The Bulletin also stated that "[i]f it is determined that a violation of VAWA is also a violation of a resident's rights under fair housing law, the incident could trigger a loss or recapture of LIHTC."⁷⁷

Additionally, Illinois has an informal transfer process among LIHTC properties. Victims work with Illinois Housing Development Authority's asset management division to identify other LIHTC properties that are safe and available. Asset management then inquires with LIHTC owners and managers about their interest in receiving any VAWA-related transfers.

V. State Housing Finance Agency Survey

In May and June of 2016, we surveyed HFAs to determine the status of VAWA 2013 implementation. Our results indicate that many victims of domestic violence, dating violence, sexual violence, and stalking who reside in LIHTC properties are not receiving the full protection of VAWA 2013 and that the level of protection victims receive varies significantly from state-to-state.

At least one agency expressed the belief that "VAWA is not a requirement of Section 42." More than 20 HFAs provided no response at all, which may indicate that other issues are being prioritized, or that agencies are uncertain about the status of internal VAWA 2013 compliance.

Notable Survey Results (see Appendices A and B for full results)

Several HFAs are actively educating tenants about their rights under VAWA 2013. Some also take past VAWA 2013 violations into consideration when allocating funding to developers. Other HFAs have made a good faith effort to develop policies protecting the housing rights of victims living in LIHTC properties.

- 18 of the 23 responding state housing finance agencies reported that they have taken, or plan to take, actions to inform residents of LIHTC properties of VAWA 2013's new protections. Of the responding agencies that have taken or plan to take steps, 11 have already taken action to inform residents of VAWA 2013's new protections, while 7 have not yet taken action but plan to do so in the near future. Some agencies, including Illinois, have also taken affirmative steps to train owners and agents in VAWA compliance and best practices for supporting tenants who are victims of domestic and/or sexual violence.
- Despite general concurrence on the need to inform residents of new protections, there is significant variation in the approaches taken by individual state housing finance agencies. 11 of the responding agencies have implemented measures to directly notify tenants, such as the use of a mandatory lease addendum; the development of a tenant guide to Section 42 and/or VAWA 2013; and/or the creation of other informational materials, such as posters or flyers. A smaller number of agencies have established policies requiring property

owners or property management to provide notice to tenants about VAWA 2013 protections or explicitly including VAWA 2013 protections in their tenant selection plans.

- 8 of the 23 responding agencies require the use of a lease addendum that lets residents know that they have rights under VAWA. However, a majority of the responding agencies that require the use of a lease addendum, including Illinois, Delaware, Michigan, Missouri, and Wisconsin, have adopted HUD form 91067: Lease Addendum - Violence Against Women and Justice Department Reauthorization Act of 2005. Two other agencies, Nebraska and Washington, recommend the use of HUD form 91067 but do not require it. As HUD form 91067 was produced to inform residents of their rights under VAWA 2005 and most recently updated in 2008, the use of this form as lease addendum does not represent the full set of tenant protections under VAWA 2013.
- 11 of the 23 responding state housing finance agencies have revised their compliance monitoring procedures to include VAWA matters. Indiana, Missouri, New Mexico, Wisconsin, and Wyoming monitor compliance with VAWA through auditor reviews and visits to the property to ensure compliance. Indiana also specifically reviews tenant selection plans and leases for any discriminatory language. New Jersey, Oregon, and Pennsylvania include VAWA compliance as a part of their yearly certificate of ongoing compliance. Approximately two-thirds of the responding agencies have plans in place to deal with reported owner noncompliance with the provisions of VAWA 2013. The most common approach to addressing noncompliance is the issuance of an 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition form.
- 15 of the responding agencies reserve the right to bar owners from applying for LIHTC if they are noncompliant with VAWA and have not come into compliance after having been given notice. In Illinois, owners who are not in compliance with VAWA regulations and requirements are subject to negative scoring and/or a mandatory fail. Missouri and New Mexico further clarified in their responses that they reserve the right to bar owners, but attempt to differentiate between willful noncompliance and noncompliance that can be corrected through further education. Some agencies—including those in Nebraska, New Jersey, Minnesota, and North Carolina—reported that they are not certain that barring owners for VAWA noncompliance is within the scope of authority extended to state housing finance agencies and are waiting on additional guidance from Treasury.
- Three state housing finance agencies—Delaware, Missouri, and New Jersey—reported that they designate victims as a special population in their Qualified Allocation Plan in order to better serve victims and incentivize VAWA compliance. All three states require developers to set aside a minimum number of target units for special populations. Developers in Missouri and Delaware who allocate at least 10% of units to special populations receive additional points on scoring. New Jersey allows developers that set aside 25% of units for victims of domestic violence to participate in a designated special needs cycle. A few other states, including Pennsylvania, address VAWA compliance in their QAP but do not take specific steps to incentivize compliance. Washington and Wyoming reported that they do not incentivize compliance as VAWA compliance is mandatory for developers.
- At least 8 states reported that they are not sure what measures they are permitted or required to take to enforce VAWA compliance. Three states—New Mexico, Washington, and Wyoming—attempt to monitor VAWA compliance, but are unsure if Treasury grants them the authority to take actions against owners who are

noncompliant with VAWA. Vermont stated that there is no guidance on compliance issues from Treasury, but that the agency plans to develop internal compliance monitoring procedures, including adding VAWA compliance to the Owner's Certificate of Ongoing Compliance, even absent guidance from Treasury. North Carolina and Nebraska reported that they are waiting for guidance from HUD and Treasury before making any changes to compliance measures. Minnesota asserted that there is no need to change compliance procedures as "VAWA is not a requirement of Section 42." Oregon reported that they have taken all action possible absent further guidance from HUD and Treasury. In particular, Oregon is waiting for clarification from both agencies on the "notice of rights" portion of VAWA. Virginia reported that, in the absence of Treasury rulemaking, it did not interpret VAWA as currently requiring its HFA to take any action with respect to their administration and monitoring of the LIHTC program. Virginia did specify it will continue to support owner and management company compliance with VAWA by (1) implementing VAWA to the Section 8 program; (2) training their Compliance and Asset Management staff on VAWA; and (3) providing management companies with the HUD VAWA lease addendum form.

VI. Recommendations

We recommend that HFAs take action now to ensure that their tenants are given VAWA 2013's protections. HFA failure to act creates significant health and safety risks for tenants. HFAs can look to their sister agencies that are providing leadership on this issue. Ultimately, Pennsylvania, and Illinois's state housing finance agencies provide the best examples to date of HFAs embracing their obligations under VAWA. The authors of this report stand ready to provide assistance to HFAs as they seek to implement VAWA 2013. In addition, we urge Treasury to act expeditiously to implement the requirements of VAWA 2013, ameliorating the uncertainty facing some HFAs, and extending protections to thousands.

We urge HFAs to:

1. Ensure that the Form HUD-5380, notice of VAWA rights, and Form HUD-5382, VAWA self-certification form, are distributed at the three required points in time, and to all existing tenants, as required by VAWA 2013.⁷⁸ (attached as Appendices C and D);
2. Make clear either in the QAP or a lease addendum (or both) that a VAWA violation which leads to an eviction is a violation of the requirement for good cause eviction, as provided by IRS Revenue Ruling 2004-82.⁷⁹
3. Modify the QAP to include language stating VAWA compliance is a condition for owners to be approved by the state for compliance with all program requirements.
4. For those HFAs with LURAs that require compliance with changes to the law, notify housing providers about the VAWA change and remind them of their duty to comply with changes to the law (other HFAs can modify their LURAs to include VAWA); and
5. Include language in the QAP defining the selection criterion "tenant populations with special housing needs" to include victims of domestic violence, sexual assault, dating violence, and stalking.

We also recommend that Treasury issue regulations or guidance that addresses the matters above as well as the following issues:

1. Outline the obligations of Treasury, the HFAs, and LIHTC housing providers under VAWA 2013;
2. Discuss how a housing provider's noncompliance with VAWA can lead to violations of the Fair Housing Act;⁸⁰ and
3. Create an administrative enforcement mechanism that would evaluate complaints filed pertaining to VAWA violations in LIHTC housing.

VII. Conclusion

We strongly urge Treasury to issue regulations and guidance on the implementation of VAWA 2013 in LIHTC properties. However, HFAs do not have to wait for Treasury to issue regulations or guidance to take critical steps to protect victims who are accessing or maintaining LIHTC units, as required by VAWA 2013. HFAs across the United States, such as those in Pennsylvania and Illinois, for example, have been using various tools to implement victims' VAWA housing rights. These tools include: issuing lease addendums notifying tenants of their VAWA rights (or using HUD form 91067); including language in their QAPs defining the selection criterion "tenant populations with special housing needs" to include victims of domestic violence, sexual assault, dating violence, and stalking; and modifying their LURAs to explicitly include a reference to VAWA 2013. These steps are essential to ensuring not only that victims of domestic violence, sexual assault, dating violence, and stalking are not punished because of the actions of their abusers, but also increasing housing security for victims.

Endnotes

1. Violence Against Women Act, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902 (1994).
2. See Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country, NAT'L LAW CTR. ON HOMELESSNESS & POVERTY 3 (Feb. 2007), <https://www.nlchp.org/documents/Lost-Housing-Lost-Safety> (providing statistics and stories about victims of domestic violence being evicted because of their abusive partner's actions); see also HUD v. Rucker, 535 U.S. 125 (2002) (upholding the "one strike" policy even when the public housing tenants were not aware of the other tenants' criminal activity).
3. Anne Menard, Domestic Violence and Housing: Key Policy and Program Challenges, 7 VIOLENCE AGAINST WOMEN 707, 714 (2001).
4. Id.
5. Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, § 41402, 119 Stat. 2960, 3041-49 (2006) [hereinafter "VAWA 2005"].
6. Id.
7. Testimony before the S. Committee on the Judiciary on the Violence Against Women Act of 2005, 109th Cong. 14 (2005) (statement of Lynn Rosenthal, Executive Director, National Network to End Domestic Violence).
8. The Increased Importance of the Violence Against Women Act in a Time of Economic Crisis: Hearing Before the S. Committee on the Judiciary, 111th Cong. 16 (2010) (statement of Auburn L. Watersong, Economic Justice Specialist, Vermont Network Against Domestic and Sexual Violence, Montpelier, Vermont).
9. For example, Tanica Lewis faced eviction from a LIHTC property in Detroit, MI, after her abuser violated an order of protection and kicked in the door of her home. See <https://www.aclu.org/cases/lewis-v-north-end-village-et-al>
10. Violence Against Women Reauthorization Act of 2013, Pub.L. 113-4, § 601, 127 Stat. 54 (2013) [hereinafter "VAWA 2013"].
11. These housing programs are subject to the VAWA 2013 protections: public housing, Section 8 Housing Choice Voucher Program, project-based Section 8, Section 202 Supportive Housing for the Elderly, Section 811 Supportive Housing for Persons with Disabilities, Housing Opportunities for Persons With AIDS/HIV, HOME Investment Partnerships, Housing Trust Fund, multifamily rental housing under Section 221(d)(3) Below Market Interest Rate, multifamily rental housing under Section 236, McKinney-Vento homeless assistance programs, USDA Rural Development multifamily housing programs, and LIHTC. See 42 U.S.C.A. §14043e-11(a)(3) (West 2017).
12. See generally 42 U.S.C.A. § 14043e-11 (West 2017).
13. Id. at §14043e-11(b)(3).
14. Id. at § 14043e-11(b)(3)(C)(iii); 24 C.F.R. § 5.2003 (2017) (definition of "actual and imminent threat").
15. 42 U.S.C.A § 14043e-11(b)(3)(C)(ii) (West 2017).
16. Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, 81 Fed. Reg. 80,724 (Nov. 16, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf>, [hereinafter "HUD VAWA Final Rule"].
17. See Footnote 12 for the list of federal housing programs covered by VAWA 2013.
18. "...properties funded with Low-Income Housing Credits (LIHTCs) are also subject to VAWA requirements, and housing providers should look to the regulatory agency responsible for LIHTCs—the Department of Treasury—for how to implement VAWA protections in those properties." HUD VAWA Final Rule at 80,731.
19. 42 U.S.C.A. § 14043e-11(d) (West 2017).
20. Id. Form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation (6/30/2017), <https://portal.hud.gov/hudportal/documents/huddoc?id=5382.docx> (Appendix D).

21. 42 U.S.C.A. § 14043-11(d) (West 2017).
22. Form HUD-5380, Notice of Occupancy Rights under the Violence Against Women Act, <http://portal.hud.gov/hudportal/documents/huddoc?id=VAWA-ApdixA-NoticeOcRight.docx> (Appendix C).
23. *Id.*
24. 24 C.F.R. § 5.2005(a)(2) (2017).
25. VAWA Final Rule at 80,725, 80,785, 80,797.
26. HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation (6/30/2017), <https://portal.hud.gov/hudportal/documents/huddoc?id=5382.docx> (Appendix D).
27. 42 U.S.C.A. § 14043e-11(c)(5) (West 2017).
28. *Id.* at § 14043e-11(c)(2)(A).
29. *Id.* at § 14043e-11(c)(2)(B).
30. *Id.*
31. See HUD VAWA Final Rule at 80, 761 (“Housing providers must accept any one of the forms of documentation listed in § 5.2007, at the discretion of the victim...”), 80,762 (“In accordance with VAWA 2013, HUD declines to allow housing providers to require third-party documentation of an occurrence of domestic violence, dating violence, sexual assault, or stalking in any situation except for those involving conflicting evidence.”).
32. 42 U.S.C.A. § 14043e-11(c)(7) (West 2017).
33. *Id.* at § 14043e-11(b)(3)(C)(i).
34. *Id.* at § 14043e-11(c)(4).
35. *Id.*
36. *Id.* at § 14043e-11(b)(3)(B).
37. *Id.*
38. *Id.* at §14043e-11(b)(3)(B)(ii).
39. 24 C.F.R. § 5.2009(b) (2017).
40. 42 U.S.C.A. § 14043e-11(e) (West 2017).
41. 24 C.F.R. § 5.2005(e) (2017).
42. 42 U.S.C.A. § 1437f(r)(5) (West 2017); 24 C.F.R. §§ 982.353(b), 982.353 (c)(4), 982.354(b)(4), 982.354(c)(2)(iii) (2017).
43. 42 U.S.C.A. §§ 14043e-11(g) (West 2017) (“The appropriate agency with respect to each covered housing program shall implement this section, as this section applies to the covered housing program.”), 14043e-11(a)(2) (“Appropriate agency. – The term ‘appropriate agency’ means, with respect to a covered housing program, the Executive department (as defined in section 101 of title 5, United States Code) that carries out the covered housing program.”).
44. *Id.* at § 14043e-11(e) (“Each appropriate agency shall adopt a model emergency transfer plan for use by public housing agencies and owners or managers of housing assisted under covered housing programs...”).
45. *Id.* at § 14043e-11(c)(2) (“A form of documentation described in this paragraph is (A) a certification form approved by the appropriate agency...”).
46. *Id.* at §14043e-11(b)(3)(B)(ii) (...the public housing agency or owner or manager of the housing shall provide the tenant a reasonable time, as determined by the appropriate agency, to find new housing or to establish eligibility for housing under another covered housing program.”).
47. See USDA, RD AN No. 4814 (1944-N), Implementation of 42 U.S.C. 14043e-11 of the Violence Against Women Reauthorization Act in Rural Development’s Multi-Family Housing Programs (Jan. 18, 2017), <https://www.rd.usda.gov/files/an4814.pdf>.

48. Treasury cites to the conforming amendments stating that nothing in VAWA 2013 will disqualify “an owner, manager, or other individual from participating in or receiving the benefits of the low income housing tax credit program under section 42 of the Internal Revenue code of 1986 because of noncompliance with the provisions of this Act.” 42 U.S.C.A. § 1437d note (West 2017); 26 U.S.C.A. § 42 et seq. (West 2017).
49. 26 U.S.C.A. § 42 et seq. (West 2017).
50. *Id.* at § 42(m)(1)(B)(ii).
51. See *infra* Part III.b (providing examples of states that have defined their “lowest income tenants” as including victims of domestic violence).
52. 26 U.S.C.A. § 42(h)(6)(E)(i)(I) (West 2017).
53. The Maryland Department of Housing and Community Development has included the following language in its Low-Income Housing Tax Credit Covenant: “This Covenant shall terminate prior to the expiration of the Extended Use Prior with respect to the Project or any Building upon the date the Project or such Building is acquired by foreclosure or deed in lieu of foreclosure; provided, however, this Covenant shall continue in full force and effect if the Secretary of the Department determines that such acquisition by foreclosure or deed in lieu of foreclosure is part of an arrangement with the Owner, a purpose of which is to terminate this Covenant.” (emphasis in the original)
54. Appendix A, Allocation Plan for Year 2016 Low Income Tax Credit Program, PENNSYLVANIA HOUSING FINANCE AGENCY 19 (2016), http://www.phfa.org/forms/multifamily_program_notices/qap/2013_to_2016/2016_allocation_plan.pdf.
55. State of Delaware 2017 Low Income Housing Tax Credits: Qualified Allocation Plan, DELAWARE STATE HOUSING AUTHORITY 38 (Jan. 3, 2017), http://www.destatehousing.com/Developers/lihtc/2017/2017_qap.pdf (listing survivors of domestic violence as a special needs population).
56. State of Indiana 2016-2017 Qualified Allocation Plan, INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY 42 (2017), [http://www.in.gov/myihcda/files/Final_2016-2017_QAP\(2\).pdf](http://www.in.gov/myihcda/files/Final_2016-2017_QAP(2).pdf) (listing victims of domestic violence as a special needs population).
57. 2017 Qualified Allocation Plan For MHDC Multifamily Programs, MISSOURI HOUSING DEVELOPMENT COMMISSION 11 (May 27, 2016), http://www.mhdc.com/rental_production/2017_fy_items/FY2017_QAP.pdf (“A person with special needs is a person who is . . . homeless, including survivors of domestic violence and sex trafficking.”).
58. Low Income Housing Tax Credit Qualified Allocation Plan, NEW JERSEY HOUSING & MORTGAGE FINANCE AGENCY 6 (Jan. 19, 2017), http://www.state.nj.us/dca/hmfa/media/download/tax/qap/tc_qap.pdf (stating that “individuals with special needs” includes victims of domestic violence).
59. Housing Tax Credit Program Qualified Allocation Plan, TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS 24 (2017), <https://www.tdhca.state.tx.us/multifamily/docs/17-QAP.pdf> (stating that individuals who are protected by VAWA—“domestic violence, dating violence, sexual assault, and stalking”—are tenant populations with special needs).
60. Low Income Housing Tax Credit Program, MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY 11 (2017), https://www.novoco.com/sites/default/files/atoms/files/michigan_2017_final_qap_101916.pdf.
61. Appendix G Pennsylvania Lease Addendum; see also Appendix A, Allocation Plan for Year 2016 Low Income Tax Credit Program, PENNSYLVANIA HOUSING FINANCE AGENCY 19 (2016), http://www.phfa.org/forms/multifamily_program_notices/qap/2013_to_2016/2016_allocation_plan.pdf (“The Agency requires a copy of the form of lease with Agency’s Lease Addendum to be submitted.”).

62. See Appendix H, LIHTC Lease Addendum, Ohio Housing Finance Agency, <https://ohiohome.org/compliance/documents/LIHTC-LeaseAddendum.pdf>.
63. Arkansas's HFA "requires the VAWA Addendum during the tenant applications process."
64. Illinois's HFA "has given guidance to owners/agents to use the language from the HUD Form #91067 with guidance from their attorneys for implementation."
65. Missouri "requires the use of the current HUD lease addendum."
66. Compliance Manual LIHTC & HOME, IOWA FINANCE AUTHORITY 22 (2015), <http://www.iowafinanceauthority.gov/Home/DocumentSubCategory/195>.
67. *Id.* at 119.
68. Memorandum from the Office of Portfolio Management, Georgia Department of Community Affairs, to Owners and Management Agents (Apr. 1, 2014), [https://www.dca.ga.gov/housing/HousingDevelopment/programs/downloads/Compliance/\(2014-04-01\)_DCA_VAWA_Memo.pdf](https://www.dca.ga.gov/housing/HousingDevelopment/programs/downloads/Compliance/(2014-04-01)_DCA_VAWA_Memo.pdf).
69. Housing Tax Credit Program: 2015 Compliance Policies and Procedures Manual, KANSAS HOUSING RESOURCES CORPORATION 57-61 (2015), <http://www.kshousingcorp.org/SharedFiles/Download.aspx?pageid=266&mid=784&fileid=1949>.
70. *Id.* at 60.
71. LIHTC Program Compliance Manual, OREGON HOUSING AND COMMUNITY SERVICES 57-59 (2016), <https://www.oregon.gov/ohcs/APMD/PCS/pdf/2016-OHCS-LIHTC-Compliance-Manual.pdf>
72. Low Income Housing Tax Credit Program Compliance Manual, GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS 24 (Feb. 2016), <http://www.dca.state.ga.us/housing/HousingDevelopment/programs/downloads/2016QAPDOcs/Manual/F.%20LIHTC/DCALIHTCComplianceManual.pdf>
73. Compliance Manual LIHTC & HOME, IOWA FINANCE AUTHORITY 22 (2015), <http://www.iowafinanceauthority.gov/Home/DocumentSubCategory/195>
74. Memorandum from Jennifer Marchand, Multifamily Program Compliance Technical Advisor, Oregon Housing and Community Services, to Owners and Management Agents (Feb. 6, 2017) <http://www.oregon.gov/ohcs/APMD/PCS/pdf/HUD-VAWA-Final-Rule-Guidance.pdf>; Memorandum from Jennifer Marchand, Lead Compliance Officer and LIHTC Technical Advisor, Oregon Housing and Community Services, to Owners and Management Agents (Jan. 2, 2015), <http://www.oregon.gov/ohcs/APMD/PCS/pdf/VAWA-Memo-1-2-2015.pdf>
75. Memorandum from Jennifer Marchand, Multifamily Program Compliance Technical Advisor, Oregon Housing and Community Services, to Owners and Management Agents (Feb. 6, 2017) <http://www.oregon.gov/ohcs/APMD/PCS/pdf/HUD-VAWA-Final-Rule-Guidance.pdf>
76. ILLINOIS HOUSING DEVELOPMENT AUTHORITY, Management Bulletin #435 to Owners/Agents of Section 8/236, HOME and Tax Credit developments from Diane Smith, Asst. Director Asset Management Services (Aug. 8, 2013), <https://www.ihda.org/wp-content/uploads/2016/04/MB435VAWA2013MB.pdf>
77. *Id.*
78. See 42 U.S.C.A. § 14043e-11(d)(2) (West 2017).
79. IRS Revenue Ruling 2004-82.
80. See, e.g., Letter from HUD Assistant Secretary Sandra B. Henriquez to executive directors of PHAs on new housing protections in VAWA 2013 (Sep. 30, 2013), <http://nhlp.org/files/Sept%202013%20VAWA%20letter%20to%20PHAs.pdf>; Memorandum from Sara K. Pratt, HUD Deputy Assistant Secretary for Enforcement and Programs, to FHEO Office Directors and FHEO Regional Directors, Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHA) and the Violence Against Women Act (VAWA) (Feb. 9, 2011), <http://nhlp.org/files/FHEO%20domestic%20violence%20memo.pdf>.

Appendix A

Appendix A

Questions Analyzed

Q1 - Have you taken, or do you plan to take, any actions to inform residents of LIHTC properties of this change and the new protections, including the prohibition on evicting a victim based on these offenses?

Q3 - If an owner is not in VAWA compliance and it has not been corrected after notice, do you reserve the right to bar the owner from applying again for LIHTC?

Q4 - Does your LIHTC tenant selection plan review include VAWA compliance?

Q5 - Have you created a lease addendum which would let residents know that they have rights under VAWA and how to use those rights to help protect themselves?

Q6 - Have you taken any actions, or plan to take any actions to inform owners, developers, or management agents of LIHTC housing about this change, and how they can support residents working to protect themselves from violence?

Q7 - Have you conducted, or plan to conduct, any trainings for owners, developers, or management agents for LIHTC housing about how they can implement procedures to ensure that the applicable VAWA provisions are being followed at their properties?

Q8 - Have you made any changes to your Qualified Allocation Plan to encourage VAWA compliance, such as incentives for developers who demonstrate they are actively implementing procedures to ensure they are complying with VAWA's requirements or which disqualifies owners/managers who have a history of violating the provisions of VAWA?

Q9 - Have you revised your compliance monitoring procedures to include VAWA matters?

Q10 - Have you revised your annual owner certification form to specifically mention compliance with VAWA?

Appendix A (continued)

	Q1	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10
Arkansas	Y	Y	N	Y	Y	N	N	Y	N
Connecticut	N	Unsure	N	N	Y	N	N	N	Y
Illinois	Y	Y	Y	Y	Y	Y	N	Y	N
Delaware	Y	Y	Y	Y	Y	N	Y	Unsure	N
Indiana	Y	Y	Y	N	Y		N	Y	Y
Kansas	Y	Y	Y	Unsure	Y	Y	N	Y	Unsure
Kentucky	Y	N	Y	N	Unsure	Unsure	N	N	N
Louisiana	Y	Y	N	N	Y	Y	N	N	N
Michigan	Y	N	Y	Y	Y	Y	N	Y	Y
Minnesota	N	Unsure	N	N	Y	Y	N	N	N
Missouri	Y	Y	Y	Y	Y	Y	Y	Y	Y
Nebraska	Y	N	N	N	Y	Y	N	N	N
New Jersey	Y	N	N	N	Y	Y	N	Y	Y
New Mexico	Y	Y	N	N	Y	Y	N	Y	Y
North Carolina	Unsure	N	N	Y	Y	N	N	N	
Ohio	Y	N	N	N	N	N	N	N	N
Oregon	Y	Y	Y	N	Y	Y	N	Y	N
Pennsylvania	Y	Y	N	Y	Y	Y	Y	Y	Y
South Carolina	Unsure								
Vermont	Y	Y	N	N	Y	Y	N	N	N
Washington	N	Y	N	N	Y	N	N	N	N
Wisconsin	Y	Y	Y	Y	Y	N	N	Y	N
Wyoming	Y	Y	N	Y	Y	Y	N	Y	N

Yes	17	13	8	7	19	13	3	11	7
No	3	5	13	13	1	6	18	9	13
Unsure	1	3	0	1	1	1	0	1	1

Appendix B

Appendix B

Results and Rankings

State	Compliance Score
Illinois	*****
Michigan	*****
Missouri	*****
Pennsylvania	*****
Delaware	****
Indiana	****
Kansas	****
New Mexico	****
Oregon	****
Wisconsin	****
Wyoming	****
Arkansas	***
Louisiana	***
Nebraska	***
New Jersey	***
Vermont	***
Connecticut	**
Kentucky	**
Minnesota	**
North Carolina	**
Washington	**
Ohio	*

State	Response
Alabama	NR
Alaska	NR
Arizona	NR
California	NR
Colorado	NR
Florida	NR
Georgia	NR
Hawaii	NR
Idaho	NR
Iowa	NR
Maine	NR
Maryland	NR
Massachusetts	NR
Mississippi	NR
Montana	NR
Nevada	NR
New Hampshire	NR
New York	NR
North Dakota	NR
Oklahoma	NR
Rhode Island	NR
South Carolina	NR
South Dakota	NR
Tennessee	NR
Texas	NR
Utah	NR
Virginia	Provided response via letter
West Virginia	NR

Key	
*****	7 or more yes responses
****	6 yes responses
***	3 to 5 yes responses
**	2 yes responses
*	0 to 1 yes responses
NR	No response

Appendix C

[Insert Name of Housing Provider¹]

Notice of Occupancy Rights under the Violence Against Women Act²

To all Tenants and Applicants

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.³ The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that **[insert name of program or rental assistance]** is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

Protections for Applicants

If you otherwise qualify for assistance under **[insert name of program or rental assistance]**, you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Protections for Tenants

¹ The notice uses HP for housing provider but the housing provider should insert its name where HP is used. HUD’s program-specific regulations identify the individual or entity responsible for providing the notice of occupancy rights.

² Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

³ Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

If you are receiving assistance under **[insert name of program or rental assistance]**, you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under **[insert name of program or rental assistance]** solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

Removing the Abuser or Perpetrator from the Household

HP may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If HP chooses to remove the abuser or perpetrator, HP may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, HP must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, HP must follow Federal, State, and local eviction procedures. In order to divide a lease, HP may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

Moving to Another Unit

Upon your request, HP may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, HP may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

- (1) You are a victim of domestic violence, dating violence, sexual assault, or stalking.** If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.
- (2) You expressly request the emergency transfer.** Your housing provider may choose to require that you submit a form, or may accept another written or oral request.
- (3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit.** This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

HP will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

HP's emergency transfer plan provides further information on emergency transfers, and HP must make a copy of its emergency transfer plan available to you if you ask to see it.

Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking

HP can, but is not required to, ask you to provide documentation to “certify” that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from HP must be in writing, and HP must give you at least 14 business days (Saturdays, Sundays, and Federal holidays do not count) from the day you receive the request to provide the documentation. HP may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to HP as documentation. It is your choice which of the following to submit if HP asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- A complete HUD-approved certification form given to you by HP with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.
- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.
- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, “professional”) from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- Any other statement or evidence that HP has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, HP does not have to provide you with the protections contained in this notice.

If HP receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), HP has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, HP does not have to provide you with the protections contained in this notice.

Confidentiality

HP must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

HP must not allow any individual administering assistance or other services on behalf of HP (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

HP must not enter your information into any shared database or disclose your information to any other entity or individual. HP, however, may disclose the information provided if:

- You give written permission to HP to release the information on a time limited basis.
- HP needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
- A law requires HP or your landlord to release the information.

VAWA does not limit HP's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

Reasons a Tenant Eligible for Occupancy Rights under VAWA May Be Evicted or Assistance May Be Terminated

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, HP cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if HP can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

- 1) Would occur within an immediate time frame, and
- 2) Could result in death or serious bodily harm to other tenants or those who work on the property.

If HP can demonstrate the above, HP should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

Other Laws

VAWA does not replace any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to

additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

Non-Compliance with The Requirements of This Notice

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with **[insert contact information for any intermediary, if applicable]** or **[insert HUD field office]**.

For Additional Information

You may view a copy of HUD's final VAWA rule at **[insert Federal Register link]**.

Additionally, HP must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact **[insert name of program or rental assistance contact information able to answer questions on VAWA]**.

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY). You may also contact **[Insert contact information for relevant local organizations]**.

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

For help regarding sexual assault, you may contact **[Insert contact information for relevant organizations]**

Victims of stalking seeking help may contact **[Insert contact information for relevant organizations]**.

Attachment: Certification form HUD-XXXXX **[form approved for this program to be included]**

Appendix D

**CERTIFICATION OF
DOMESTIC VIOLENCE,
DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING,
AND ALTERNATE DOCUMENTATION**

**U.S. Department of Housing
and Urban Development**

OMB Approval No. 2577-0286
Exp. 06/30/2017

Purpose of Form: The Violence Against Women Act (“VAWA”) protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of “domestic violence,” “dating violence,” “sexual assault,” or “stalking” in HUD’s regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE,
DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

1. Date the written request is received by victim: _____

2. Name of victim: _____

3. Your name (if different from victim's): _____

4. Name(s) of other family member(s) listed on the lease: _____

5. Residence of victim: _____

6. Name of the accused perpetrator (if known and can be safely disclosed): _____

7. Relationship of the accused perpetrator to the victim: _____

8. Date(s) and times(s) of incident(s) (if known): _____

10. Location of incident(s): _____

In your own words, briefly describe the incident(s):

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____

Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.