

# VAWA and Housing: Past, Present, and Future

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# Agenda

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- Housing and domestic violence: the need for VAWA III
- Current VAWA housing statute and regulations
- Implementation of VAWA housing protections
- VAWA IV
- Discussion regarding experiences with VAWA – what works, what doesn't
- Questions & answers

## Violence Against Women Act

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- ❑ Congress first passed VAWA in 1994, then reauthorized in 2000 - created federal funding programs, legal remedies for battered immigrants, etc.
- ❑ Reauthorized most recently as VAWA 2005, enacted in January 2006.
- ❑ VAWA 2005 included housing protections.

## How Do Violence and Abuse Threaten a Victim's Housing?

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- ❑ Fleeing abusive home leads to homelessness
- ❑ Evictions or threats of penalties and evictions by landlords
- ❑ Lockouts or voucher control by abusers
- ❑ Denial of safety transfer request
- ❑ Denial of request for early lease release
- ❑ Denial of request for lock change

## Cases of Discrimination against Domestic Violence Survivors (pre-VAWA)

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- ❑ Tiffani Alvera v. CBM Group (D. Or. 2001)
- ❑ Aaronica Warren v. Ypsilanti Housing Commission (Mich. 2002)
- ❑ Quinn Bouley v. Young-Sabourin (D. Vt. 2005)
- ❑ Rubi Hernandez, Stanislaus Housing Authority (2005)
- ❑ Tina J., St. Louis Housing Authority (2005)

More information on these cases available at  
[www.aclu.org/fairhousingforwomen](http://www.aclu.org/fairhousingforwomen)

## Effects of Housing Instability and Discrimination on Victims

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- ❑ Victims stay silent about the violence.
- ❑ Victims often are forced to stay in abusive situations because they want to keep their home and do not get the help they need.
- ❑ Violence may escalate, leading to serious injury or death.
- ❑ Victims and their children become homeless and/or impoverished.

## Connections Between Violence, Homelessness, and Poverty

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## Violence, Abuse, and Homelessness

### Congressional Findings – VAWA 2005

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- ❑ 44% of cities surveyed in one report identified domestic violence as a primary cause of homelessness.
- ❑ 92% of homeless women have experienced severe physical or sexual abuse at some point in their lives.
- ❑ There is widespread housing discrimination against victims and their families because of their status as victims of domestic violence.
- ❑ Victims of domestic violence often return to abusive partners because they cannot find long-term housing. The average stay at an emergency shelter is 60 days, while it typically takes 6-10 months for a homeless family to secure housing.

42 U.S.C. § 14043e.



## VAWA: Who Is Protected?

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VAWA covers these categories of federally assisted housing ONLY:

1. Public housing
2. Section 8 Voucher housing
3. Project-Based Section 8 Housing
4. Supportive housing for the elderly or disabled

VAWA covers these categories of victims:

1. A survivor of domestic violence
2. A survivor of dating violence
3. A survivor of stalking

## VAWA: Admissions & Assistance

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- ❑ An individual's status as a victim of domestic violence, dating violence, or stalking is NOT an appropriate basis for denying her housing.



## VAWA: Evictions/Terminations

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- ❑ VAWA created an exception to the “one strike” rule in federally subsidized housing.
- ❑ Incident of actual or threatened DV does NOT constitute a “serious or repeated lease violation” or “good cause” for evicting the survivor or terminating her rental subsidy.
- ❑ There are limits to these protections:
  - Actual and imminent threat
  - Lease violations unrelated to acts of DV

## VAWA: Removing the Abuser

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- Public Housing Agency (PHA) or Section 8 landlord may split or “bifurcate” a lease to evict a tenant who commits DV while keeping the survivor in place.
- PHA may terminate Section 8 assistance to the abuser while preserving assistance to survivor



## VAWA: Safety Moves

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- ❑ Sec. 8 voucher family may move to another jurisdiction if family has complied with all program obligations and is moving for health or safety, even if moving would otherwise violate the lease.
- ❑ VAWA does NOT address emergency transfers in public housing or project-based Section 8.



## VAWA: Proving DV

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- ❑ Assume that PHA or landlord seeks to evict or terminate because of lease violation, & tenant says that the violation is related to DV
- ❑ PHA or landlord is free to take tenant at her word, or can ask tenant to prove DV
- ❑ Any request for proof must be in writing
- ❑ Tenant has 14 business days from PHA or landlord's request to provide proof

## VAWA: Proving DV (cont'd)

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- ❑ PHA or landlord is free to grant extension if tenant needs more time to provide proof
- ❑ Tenant can provide any of these three:
  - HUD's certification form
  - Police or court record; OR
  - Statement signed by survivor and DV service provider, medical professional, or attorney
- ❑ These documents must be kept confidential

## VAWA: Other PHA Obligations

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- PHAs must provide notice of VAWA to public housing tenants, Sec. 8 tenants, & landlords
- PHAs must include VAWA's protections in public housing leases, Sec. 8 lease addendums, and Sec. 8 Housing Assistance Payments contracts
- In 5-year and annual plans, PHAs must discuss DV, dating violence, stalking, and sexual assault



# Implementation Challenges

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- ❑ No Transfer Rights in Public Housing and Project-Based Section 8 Housing or Right to Port/Move within the HCV Program
- ❑ PHA/Owner Plans Not in Compliance with VAWA
- ❑ PHA/Owner Requiring Multiple Forms of Certifications
- ❑ PHAs/Owners Still Trying to Terminate Assistance/Evict Victims of Violence
- ❑ No Notice to Tenants of their VAWA rights
- ❑ Leases not including VAWA protections
- ❑ Lack of HUD Oversight and Accountability

## Transfers/Port/Move

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- ❑ VAWA does not mandate that PHAs/owners provide emergency transfers to victims in public housing and project-based Section 8 housing;
- ❑ VAWA also does not mandate that PHAs permit housing choice voucher holders experiencing violence to port to another PHA jurisdiction or move within the jurisdiction;
- ❑ Tenants forced to choose between their safety or their subsidy.

## PHA Plans/TSPs not in Compliance

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- ❑ PHA Plans (annual, five-year, and consolidated) not documenting current policies for implementing VAWA or description of services offered for victims.
- ❑ ACOP/Admin Plans not appropriately reflecting VAWA obligations
- ❑ Project-based Section 8 owner TSPs/House Rules not referencing VAWA (not a mandate but likely indicator of compliance)

## Multiple Forms of Certification

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- ❑ PHAs/owners requiring tenants/applicants to provide more than one form of certification or a specialized type of information – i.e., VAWA HUD certification form and an Order of Protection or Police Report or requiring documentation to be time sensitive (less than 30 day old police report).
- ❑ PHAs/owners also requiring tenants/applicants to provide a specialized type of certification – i.e., requiring an Order of Protection, less than 30 day old police report

## Terminations/Evictions Ongoing

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- ❑ Terminations/Evictions Using Actual and Imminent Provision of VAWA.
- ❑ Terminations/Evictions For Non-payment of Repair Costs Due To Damage Caused By Abuser.
- ❑ Terminations/Evictions For Calling the Police.

## No Notice to Tenants of VAWA

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- ❑ PHAs not notifying tenants of their rights under VAWA, including their confidentiality rights, and the HUD form.
- ❑ VAWA imposes the notice mandate on PHAs – not owners – even for project-based Section 8 housing and does not require information go to applicants or tenants threatened with eviction.

## Leases Not Including VAWA

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- ❑ PHAs not using the Section 8 tenancy addendum which includes VAWA protections;
- ❑ PHAs not including VAWA protections in their public housing leases;
- ❑ Project-based Section 8 owners not including the VAWA lease addendum issued by HUD MFH last year;
- ❑ Some only produce the VAWA lease addendums in English.

## Lack of HUD Oversight of VAWA

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- ❑ HUD FHEO unwilling for the most part to take VAWA complaints;
- ❑ HUD PIH and MFH doing little to ensure PHAs and owners are in compliance with VAWA.



## Effective VAWA Compliance

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- ❑ Impressing upon PHAs/owners that VAWA is the “floor” not the “ceiling”;
- ❑ Including DV advocates in the process;
- ❑ Engage local PIH/MFH offices in implementing model VAWA practices;
- ❑ Providing PHAs/owners with model VAWA language
- ❑ Survey compliance of PHAs in your state

## VAWA IV: Expanded Reach

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- VAWA's existing housing protections apply *only* to residents of public housing and Section 8 properties
- While some states have enacted laws to extend these protections to other types of housing, including private rental units, others have not → breadth of coverage varies throughout the country
- Reauthorization presents an opportunity to consider expanded applicability of VAWA housing protections, especially within the universe of federally administered and subsidized housing programs

## VAWA IV: Assault Victims

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- Under VAWA III, housing providers may not discriminate against victims of “domestic violence, dating violence, or stalking”
- Provisions do not currently exist for victims of non-intimate partner sexual violence, whose safety needs may include transfers, lease termination, and enhanced security
- While sexual assault is included in the “Purpose” section of VAWA III, it is not referenced in the statutory exception to the “one-strike” eviction rule for victims of “criminal activity directly relating to domestic violence, dating violence, or stalking”

## VAWA IV: Protections for Immigrants

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- Under the Professional Responsibility and Work Opportunity Reconciliation Act (PRWORA), certain abused immigrants are deemed “qualified” for purposes of accessing federal benefits, including “public or assisted housing”
- However, since PRWORA does not directly modify the language of the statute governing public housing and Section 8, housing providers lack clear guidance as to the eligibility status of abused immigrants
- While Congress has directed HUD and the Department of Justice to reconcile Section 214 with other federal laws expanding eligibility, HUD has not yet done so

## VAWA IV: Recommended Transfer Practices

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- Transfer project-based Section 8 families to other covered Section 8 properties of the owner or PHA or to those of other Section 8 property owners
- Permit families to move to unassisted dwelling units and transfer assistance payments to the owners of such units
- Provide families with vouchers reserved by PHAs for victims of violence
- Allow victims of violence in one property to exchange units with those similarly situated in other properties within the jurisdiction

## VAWA IV: Implementation and Compliance

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- Mandatory templates for VAWA notice and planning requirements would encourage greater uniformity in implementation → a possible goal for reauthorization or administrative advocacy
- Model notices would describe tenants' rights under VAWA, procedures for exercising those rights, and contact information for appropriate domestic violence, legal, and social service providers.
- Either VAWA IV or subsequent regulations should require PHAs and landlords to issue notice of VAWA provisions at various instances, including orientations and recertifications, and to post such notices in all public areas, in a manner that accommodates tenants with disabilities and limited English proficiency
- HUD should also be required to issue a template for annual and five-year PHA plan submissions

## VAWA IV: Implementation and Compliance

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- VAWA IV should create a HUD position responsible for overseeing VAWA implementation and ensuring compliance among PHAs and landlords
- This Victims' Rights Director would coordinate the development of federal policy on domestic violence and housing, advise the Secretary and the Assistant Secretary for Fair Housing and Equal Opportunity on VAWA implementation, provide technical assistance to HUD personnel, and ensure that adequate technical assistance is made available to grantees, owners, and nonprofit organizations
- The Director would also support the Office of Fair Housing and Equal Opportunity in the investigation and resolution of tenant complaints concerning VAWA violations

## VAWA IV: Enforcement

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- VAWA IV could potentially address the authority of HUD's Office of Fair Housing and Equal Opportunity to receive complaints, conduct investigations, and prosecute cases in which a victim's rights under VAWA have been violated by a PHA, Section 8 owner or management agent.
- One option would be to grant explicitly a private right of action for aggrieved tenants wishing to file suit for alleged discriminatory practices
- Another option might be to authorize HUD to investigate and resolve complaints internally



## VAWA IV: Final Recommendations

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- To ensure that family break-up does not result in eviction or termination for victims, HUD should require all PHAs and landlords to devise a system for bifurcating vouchers and leases
- VAWA IV or subsequent regulations should clarify that victims may not be penalized subject to “chronic nuisance” laws for seeking police or emergency assistance
- When verifying income, PHAs should waive child support enforcement requirements in cases where compliance would endanger or unfairly penalize victims of sexual or domestic violence

# Additional Resources

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## **Advocacy Documents and Outreach Materials:**

ACLU Women's Rights Project, <http://www.aclu.org/fairhousingforwomen>

National Housing Law Project, <http://nhlp.org/resourcecenter?tid=62>

National Law Center on Homelessness and Poverty, <http://www.nlchp.org/program.cfm?prog=3>

Sargent Shriver National Center on Poverty Law, <http://www.povertylaw.org//advocacy/women-and-family/safe-homes-act>

National Network to End Domestic Violence, <http://nnedv.org>

## **Statutes:**

42 U.S.C. § 1437f (project-based Section 8 and Section 8 vouchers)

42 U.S.C. § 1437d (public housing)

42 U.S.C. § 1437c-1 (public housing agency plans)

42 U.S.C. § 14043e (findings)

## **Regulations:**

24 C.F.R part 5: Protection for Victims of Domestic Violence in Public and Section 8 Housing  
Regulations implementing VAWA are also found throughout 24 C.F.R. parts 91, 880, 882, 883, 884, 886, 891, 903, 960, 982, and 983.

# Additional Resources (cont'd)

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## **Administrative Materials:**

HUD Programs: Violence Against Women Act Conforming Amendments, Interim Rule, 73 Fed. Reg. 72,336 (Nov. 20, 2008).

Form HUD-50066: The HUD-approved certification form that applicants and tenants in public housing and the Section 8 voucher program may use to certify that they are victims of domestic violence, dating violence, or stalking. <http://www.hud.gov/offices/adm/hudclips/forms/hud5.cfm>

Form HUD-50066, Alternate Languages: Form HUD-50066 is available in Arabic, Cambodian, Chinese, Creole, French, Hmong, Korean, Lao, Russian, Spanish, and Vietnamese. <http://www.hud.gov/offices/adm/hudclips/forms/files/50066-langs.pdf>

Form HUD-91066: The HUD-approved certification form that applicants and tenants in the project-based Section 8 program may use to certify that they are victims of domestic violence, dating violence, or stalking. <http://www.hud.gov/offices/adm/hudclips/forms/hud9.cfm>

HUD Notice H 09-15: Provides guidance to owners and managers administering project-based Section 8 properties. <http://www.hud.gov/offices/adm/hudclips/notices/hsg/09hsgnotices.cfm>

HUD Notice PIH 2007-5: Transmits the revised Housing Assistance Payments (HAP) contract and the revised Tenancy Addendum for the Section 8 voucher program. <http://www.hud.gov/offices/adm/hudclips/notices/pih/07pihnotices.cfm>

HUD Notice PIH 2006-42: Transmits Certification Form HUD-50066 and provides guidance to PHAs and owners regarding certification of incidents of abuse. <http://www.hud.gov/offices/adm/hudclips/notices/pih/06pihnotices.cfm>

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