

# VAWA 2013: Housing Protections for Survivors

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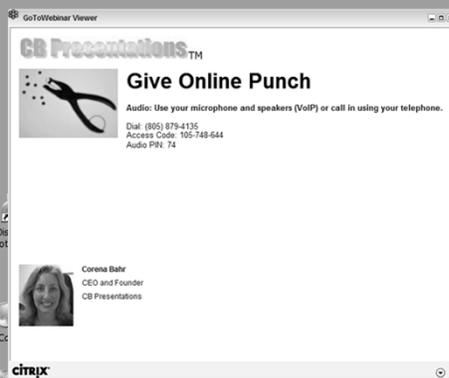
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**AUGUST 21, 2014**

## HOUSING JUSTICE

National Housing Law Project

## GoToWebinar Interface

### 1. Viewer Window



### 2. Control Panel



## Housekeeping

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- Materials were emailed to registrants and will be emailed again after the webinar, along with the evaluations.
- Materials and recording will be posted at <http://nhlp.org/OVWgrantees>.
- MCLE certificates will be emailed to California attorneys.

## Goals for Today

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- Overview of:
  - VAWA 2013's housing protections for survivors of domestic violence, dating violence, sexual assault, and stalking.
  - VAWA implementation so far by the federal agencies.
  - Fair housing laws that provide safeguards for survivors.

## Other Protections for Survivors

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- In addition to VAWA, survivors may have housing protections under state and local laws, such as landlord-tenant laws
- NHLP has an updated 50-state compendium of domestic violence housing laws at <http://nhlp.org/node/1436>

## Violence Against Women Reauthorization Act of 2013

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**VAWA 2013 PROVIDES IMPORTANT SAFEGUARDS FOR  
SURVIVORS IN FEDERALLY ASSISTED HOUSING**



## What is VAWA?

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- VAWA is intended to encourage survivors who are receiving housing subsidies to report and seek help for the abuse against them, without being afraid of being evicted.
- VAWA protects individuals applying for or living in federally subsidized housing from being discriminated against because of acts of domestic violence, sexual assault, dating violence, and stalking committed against them.
- Applies to men and women
- Only applies to federal housing programs

## VAWA 2013 – Authority and Guidance

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- VAWA 2013 maintains VAWA 2005's housing safeguards and adds new protections. 42 U.S.C. § 14043e-11.
- HUD's final regulations implementing VAWA 2005, 75 Fed. Reg. 66,246 (Oct. 27, 2010), continue to apply.
- HUD notice applying VAWA 2013 to HUD programs, 78 Fed. Reg. 47,717 (Aug. 6, 2013).
- RD notice to state directors and program directors of multifamily housing, RD AN No. 4747 (1944-N) (Feb.10, 2014).

## VAWA 2013: Housing Programs

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### HUD Programs

• Public Housing	• § 236 Multifamily rental housing
• Section 8 vouchers	• § 221d3 BMIR (Below Market Interest Rate)
• Project-based Section 8	• HOME
• Section 202 Supportive Housing for the Elderly	• HOPWA (Hous. Opp. for Pple w/AIDS)
• Section 811 Supportive Housing for People with Disabilities	• McKinney-Vento (Homelessness Programs)

### Department of Agriculture

- Rural Development (RD) Multifamily

[www.nhlp.org/OVWgrantees](http://www.nhlp.org/OVWgrantees)

### Department of Treasury/IRS

- Low-Income Hous. Tax Credit (LIHTC)

## Who is Protected?

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### VAWA covers people who are subject to:

**Domestic violence:** Any felony or misdemeanor crimes of violence committed by a current or former spouse, intimate partner, person with whom the victim shares a child, person who is or has cohabitated with the victim

**Dating violence:** Violence committed by a person who is/was in a social relationship of intimate nature with victim as determined by considering three factors

**Sexual assault:** Any nonconsensual sexual act prohibited by law

**Stalking:** Any conduct directed toward a specific person that would cause a reasonable person to fear for safety or suffer substantial distress

**“Affiliated individual” of the victim:** Immediate family or any individual living in the household

## Admissions

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- PHAs, landlords and owners shall not deny an applicant housing on the basis that an applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.



## Ada

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- Ada fled her public housing unit after being attacked repeatedly by her abuser.
- Ada notified the PHA that she had moved out, but the PHA continued to charge her for rent after she left.
- Two years later, Ada's name was at the top of the Section 8 voucher waiting list. The PHA refused to process her application unless she paid the back rent on her public housing unit.
- Poll: Did the PHA's rejection of Ada's application violate VAWA?

## Evictions

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- PHAs, landlords and owners may not evict a tenant on the basis that she is or has been a survivor.
- Crimes against a survivor directly relating to the abuse are not grounds for evicting the survivor or terminating her rental subsidy.
- An 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.
  - A New York court found that a Section 8 tenant could not be evicted for nuisance after her abuser forced his way into her home and assaulted her. *Metro N. Owners LLC v. Thorpe*

## Limitation

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- PHAs and owners can still evict if they can demonstrate an “actual and imminent threat” to other tenants or employees at the property if the survivor is not evicted.
- “Actual and imminent threat” not defined in VAWA
- Current HUD regulations are important:
  - “Threat” consists of a physical danger that is real, would occur within an immediate timeframe, and could result in death or serious bodily harm.
  - Factors to be considered include the duration of the risk, the nature and severity of the potential harm, the likelihood that the harm will occur, and the length of time before the harm would occur. 24 C.F.R. § 5.2005
  - Eviction should occur only if there is no other action to be taken that would reduce or eliminate threat. 24 C.F.R. § 5.2005

## Lease Bifurcation

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- **A public housing authority or landlord may “bifurcate” or split a lease to evict a DV abuser while allowing the victim to stay**
  - Review lease: RD form lease “all perpetrators will be evicted, while the victim may remain” HB 2-3560, Att 6-E.
- **Protection for tenants remaining in housing after lease bifurcation**
  - If the individual who is evicted is the sole tenant eligible to receive the housing assistance, the PHA or landlord must provide the remaining tenant an opportunity to establish eligibility or a reasonable time to move or establish eligibility for another covered housing program.
- **The landlord must follow federal, state, and local law in evicting the abuser**

## Preserving Section 8 Voucher for Survivor

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- **PHA can terminate Sec 8 assistance to the abuser while preserving assistance to survivor**
  - If a family breakup results from DV, “the PHA **must** ensure that the victim retains assistance.” 24 C.F.R. § 982.315.

## Voucher Portability

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- If a Section 8 voucher family moves out in violation of a lease, PHA has grounds to terminate their subsidy. VAWA provides an exception for survivors who must move for safety.
- Many PHAs prohibit Sec 8 voucher tenants from moving during the 1<sup>st</sup> year of their lease, or from moving more than once during a 12-month period. However, these policies do **NOT** apply when the move is needed for safety. See 24 C.F.R. § 982.314

## Emergency Transfers

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- Survivors living in federally assisted housing often need to move or “transfer” to another subsidized unit to protect their safety.
  - Generally, only Section 8 vouchers are portable.
- VAWA 2013 mandates each federal agency to adopt a model emergency transfer plan to be used by PHAs and owners.
- Transfer plan must allow survivor tenants to transfer to another available and safe unit assisted under covered housing program if
  - (1) tenant expressly requests the transfer and
  - (2) either tenant reasonably believes that she is threatened with imminent harm from further violence if she remains or tenant is a victim of sexual assault that occurred on premises within 90 days of request
- Transfer plan must ensure confidentiality so that PHA or owner does not disclose location of new unit to abuser

## Emergency Transfers (cont'd)

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- HUD must establish policies and procedures under which a survivor requesting emergency transfers may receive a tenant protection voucher
  - Annually, Congress may issue tenant protection vouchers for certain purposes.

## Proving Domestic Violence

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- Assume that PHA or landlord seeks to evict because of lease violation. Tenant says 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 by PHA or owner for proof must be in writing.
- Tenant has 14 business days from PHA or landlord's request to provide proof.
- PHA or landlord is free to grant extension if tenant needs more time.

## Proving DV – Options for Documentation

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### 1. Self-Certification Form

- New law revised certification process outlined under VAWA 2005 and implemented through HUD Form 50066 (public housing or Section 8 vouchers) and HUD Form 91066 (project-based Section 8).
- Permits PHAs and owners to request certification via form approved by appropriate federal agency.
- This form must (1) state that the applicant or tenant is victim; (2) state that the incident is ground for protection meeting requirements under VAWA and (3) include perpetrator's name, *if known and safe to provide*.

### 2. Police, Court or Administrative Record

- Record can be from a federal, state, tribal, territorial, or local entity or administrative record.

### 3. Statement from Third Party

- Can be from a victim service provider, medical professional, mental health professional or attorney.
- Must be signed by both the third party and the survivor under penalty of perjury.

## Updated HUD Form 50066 Certification of Domestic Violence

**CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING** U.S. Department of Housing and Urban Development Office of Public and Indian Housing HUD Approval No. 2011-0208 Reg. (2510.2017)

Purpose of Form: The Violence Against Women Reauthorization Act of 2013 ("VAWA") protects qualified tenants, participants, and applicants, and additional individuals, who are victims of domestic violence, dating violence, sexual assault, or stalking from being denied housing assistance, evicted, or removed from housing assistance based on acts of such violence against them.

Use of Form: This is an optional form. A PHA, owner or manager presented with a claim for continued or initial tenancy or assistance based on acts of domestic violence, dating violence, sexual assault, or stalking (hereinafter referred to as "Violence") has the option to require that the victim document or provide written evidence to demonstrate that the violence occurred. The Victim has the option of either submitting this form or submitting third party documentation, such as:

- (1) A record of a Police, State, tribal, territorial, or local law enforcement agency (a police, court, or administrative agency); or
- (2) Documentation signed by the Victim and signed by an employee, agent or volunteer of a victim service provider, an attorney, a medical professional, or a mental health professional from whom the Victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the officers of a court, in which the professional attests under penalty of perjury (28 U.S.C. 1746) that he or she believes that the number of domestic violence, dating violence, sexual assault, or stalking is grounds for protection under 24 Code of Federal Regulations (24 CFR) 1.1201 or 24 CFR 1.1205.

If this form is used by the Victim, the Victim must complete and submit it within 14 business days of receiving it from the PHA, owner or manager. This form must be returned to the person and address specified in the written request for the certification. If the Victim does not complete and return this form (or provide third party verification) by the 14th business day or by an extension of the date provided by the PHA, manager or owner, the Victim cannot be evicted or denied VAWA protection.

If the Victim submits this form or third party documentation in kind above, the PHA, owner or manager cannot require any additional written form from the Victim.

Confidentiality: All information provided to a PHA, owner or manager concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking relating to the Victim (including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking) shall be kept confidential by the PHA, owner or manager, and such information shall not be shared into any shared database. Employees of the PHA, owner, or manager are not to have access to these details unless to afford or assist VAWA protections to the Victim, and have not shared this information to any other entity or individual, except to the extent that disclosure is: (i) requested or consented to by the Victim in writing; (ii) required for use in an eviction proceeding; or (iii) otherwise required by applicable law.

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

Date Written Request Received by Victim: \_\_\_\_\_

Name of Victim: \_\_\_\_\_

Names of Other Family Members Listed on the Lease: \_\_\_\_\_

Name of the Perpetrator(s):  
\*Note: The Victim is required to provide the names of the perpetrator only if the name of the perpetrator is safe to provide, and is known to the victim. \_\_\_\_\_

Perpetrator's Relationship to Victim: \_\_\_\_\_

Date(s) the Incident(s) of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Occurred: \_\_\_\_\_

Location of Incident(s): \_\_\_\_\_

Description of Incident(s) (This description may be used by the PHA, owner or manager for purposes of evicting the perpetrator. Please be as descriptive as possible.)

(INSERT TEXT LINES HERE)

I hereby certify that the information that I have provided is true and correct and I believe that, based on the information I have provided, that I am a victim of domestic violence, dating violence, sexual assault or stalking. I acknowledge that submission of false information is a basis for denial of admission, termination of assistance, or eviction.

Signature: \_\_\_\_\_ Executed on (Date): \_\_\_\_\_

Public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for reviewing and reporting the data. Submission of this form is required by HUD Form 50066 and HUD Form 91066. It is not required to provide a response to certify that the individual is a victim of domestic violence, dating violence or stalking. The information is subject to the confidentiality requirements of the HUD Public Reporting Burden Act. The agency may not collect this information, and you are not required to complete this form unless it displays a currently valid HUD control number.

## Proving DV (cont'd)

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- Poll: Can a housing provider *require* a tenant to provide *third-party* proof of domestic violence, dating violence, stalking or sexual assault to use VAWA's housing protections?

## Proving DV (cont'd)

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- HUD has stated that “an individual requesting protection cannot be required to provide third-party documentation.” 75 Fed. Reg. 66,251.
- However, in cases where 2 household members claim to be the victim and name the other household member as the perpetrator, the housing provider can require third-party documentation.

## Notification and Language Access

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- HUD must develop a notice of VAWA housing rights (HUD notice) for applicants and tenants
- PHAs, owners and managers must provide HUD notice along with the agency-approved, self-certification form to applicants and tenants
  - (1) at the time an applicant is denied residency;
  - (2) at the time the individual is admitted; and
  - (3) with any notification of eviction or termination of assistance.
- HUD guidance prohibiting discrimination against LEP persons is applicable, including specifically for the HUD notice.

## Other Requirements

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- Confidentiality
- Survivors held to same standard as other tenants
- PHA plans
  - Annual plans: PHAs must include a statement of any PHA DV programs.
  - Five-year plans: PHAs must describe goals, objectives, policies or programs they use to serve survivors' housing needs
- No preemption for laws that provide greater protections for survivors
- Impact on existing protections

## VAWA Implementation by HUD

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- **HUD notice applying VAWA 2013 to HUD programs, 78 Fed. Reg. 47,717 (Aug. 6, 2013).**
  - Provisions that are not self-executing
    - ✦ Ex: Emergency transfer; rights of remaining household members post-lease bifurcation
  - VAWA 2005 regulations continue to be in effect
  - Housing providers continue to implement transfer plans outlined in planning documents
- **HUD CPD email blast/HOMEfires newsletter**
  - Housing providers should not wait to provide basic VAWA protections
- **Updated HUD VAWA certification Form 50066**

## VAWA Implementation by RD

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- **RD Administrative Notice 4747 (1944-N)**
- **Purpose of the Administrative Notice (AN)**
- **What does the AN require?**
- **Model emergency transfer plan**
- **Enforcing the AN?**

## Fair Housing and Domestic Violence

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**THE FAIR HOUSING ACT CAN PROVIDE PROTECTIONS FOR SURVIVORS WHO HAVE FACED DISCRIMINATION BECAUSE OF THE VIOLENCE COMMITTED AGAINST THEM**



## Fair Housing Laws

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- Federal Fair Housing Act, 42 U.S.C. § 3601, *et seq.*
- Applies to all housing
- Prohibit discrimination in the renting, leasing, buying/selling, or occupying of a dwelling because of a person's membership in a protected class
- Protected categories

## Statistics: Domestic Violence and Sex

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- **Survivors aren't a protected class under the FHA, but most are female.**
- **Statistics:**
  - HUD FHEO DV Memo: "[W]omen are five to eight times more likely than men to be victimized by an intimate partner..." More than 70% of those murdered by their intimate partners are women.
  - U.S. Bureau of Justice Statistics: 85% of victims of intimate partner violence are women.
  - U.S. Dept. of Justice: Among people who rent their homes, women are 7.4% times as likely as men to be victims of domestic violence.

## Common Discriminatory Policies

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- **Evictions or terminations based on violence against a survivor can violate fair housing laws. Examples:**
  - Policies based on gender stereotypes may violate the FHA.
    - ✦ Ex: An owner evicts women with a history of domestic violence because "they always go back to the men who abuse them."
  - Treating women differently because of their status as victims of DV may violate the FHA.
    - ✦ Ex: A landlord evicts a DV victim because the abuser broke into her unit and she called the police, but does not evict another tenant after a stranger broke into his unit and he called the police
  - Evictions for property damage caused by the abuser

## Common Discriminatory Policies (cont'd)

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- **HUD's Memo also states:**
  - A neutral policy that negatively affects DV victims may violate the FHA because of its disparate impact on women. Example:
    - ✦ A housing provider has a zero-tolerance policy, under which the entire household can be evicted for the criminal act of one household member
    - ✦ Women are disproportionately affected by the zero-tolerance policy because they are the majority of DV victims and can be evicted as a result of the violence of their abusers
    - ✦ As a result, the housing provider should make exceptions to the zero-tolerance policy for DV victims in order to avoid a disparate impact on women.
  - Memo included in materials
  - *See also* FHA's Discrim. Effects Stand., 78 Fed. Reg. 11,460 (2/15/13)

## Enforcing VAWA/ Fair Housing Protections

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- **Informal advocacy**
  - Meet with housing provider or write a letter
- **Eviction defenses**
  - Raise violation of VAWA or fair housing laws as eviction defense
- **Administrative complaint with HUD**
  - One-year statute of limitations
  - Memo from HUD's Office of Fair Housing and Equal Opportunity sets forth the theories HUD will use to analyze discrimination against DV survivors. HUD Memo: Assessing Claims of Housing Discrimination against Victims of DV under FHA and VAWA (2/9/11)
- **Civil lawsuits**
  - Two-year statute of limitations under federal Fair Housing Act
  - Private right of action under VAWA 2013?

## Thank You!

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*This project was supported by Grant No. 2008-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.*