

Protecting the Housing Rights of Domestic Violence Survivors

This outline covers the housing provisions of the Violence Against Women Act of 2005, domestic violence and fair housing laws, and proposed early lease termination legislation

1. What laws did the Violence Against Women Act of 2005 (VAWA) amend, and whom does VAWA protect?

A. Statutory provisions amended by VAWA

Title VI of VAWA 2005 (Pub. L. 109-162; 119 Stat. 2960; HR 3402) amended the Public Housing Program, the Housing Choice Voucher Program, Project-Based Section 8, and the general Section 8 statutes. Section 606 of VAWA amends 42 U.S.C. § 1437d (Public Housing) and Section 607 amends 42 U.S.C. § 1437f (Section 8 programs).

- Note: HUD has not yet issued implementing regulations.

B. Types of housing that VAWA covers

VAWA's protections cover tenants in:

- Public Housing (42 U.S.C. § 1437d);
- The Section 8 Housing Choice Voucher program (42 U.S.C. § 1437f(o));
- Section 8 Project-Based housing (42 U.S.C. §§ 1437f(c), (d)).

VAWA does not cover HUD's other housing subsidy programs, programs administered by the Department of Agriculture's Rural Housing Service, or the Low-Income Housing Tax Credit program. VAWA also does not cover tenants living in private housing without any type of rental subsidy. However, as discussed below, such tenants may be protected by fair housing laws.

C. Parties whom VAWA protects

VAWA protects anyone who:

- (1) Is a victim of actual or threatened domestic violence, dating violence, or stalking, or an immediate family member of the victim (spouse, parent, sibling, child, or any other person living in the household who is related by blood or marriage, or any person to whom the victim stands in loco parentis); AND
- (2) Is living in, or seeking admission to, Public, Section 8 Voucher, or Section 8 Project-Based Housing.

See 42 U.S.C. § 1437d(u)(3)(D); 42 U.S.C. § 1437f(f)(11).

2. How does VAWA define domestic violence, dating violence, and stalking, and must the incidents be repeated?

A. **Domestic violence:** 42 U.S.C. § 13925(a)(6)

“Domestic violence” includes felony or misdemeanor crimes of violence committed by:

- Current or former spouse of the victim
- Person with whom the victim shares a child
- Person who is cohabitating with or has cohabitated with the victim as a spouse
- Person similarly situated to a spouse of the victim under the domestic violence or family violence laws of the jurisdiction
- Also includes crimes of violence committed against a person who is protected under the domestic violence or family violence laws of the jurisdiction (i.e., California)

VAWA’s definition of “domestic violence” also incorporates state law definitions of the term. California Family Code § 6211 defines “domestic violence” as abuse perpetrated against the victim by:

- The victim’s spouse or former spouse.
- Someone the victim lives with or lived with in the past.
- Someone the victim is dating or has dated.
- Someone the victim has a child with.
- Someone to whom the victim is related by blood, marriage, or adoption (including the victim’s parent, grandparent, child, grandchild, brother, or sister)

B. **Dating violence:** 42 U.S.C. § 13925(a)(8)

“Dating violence” is violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- The existence of such a relationship is determined based on the following factors:
 - Length of the relationship.
 - Type of relationship.
 - Frequency of interaction between the persons involved in the relationship.

C. **Stalking:** 42 U.S.C. § 13925(a)(24)

VAWA defines “stalking” as

- To follow, pursue, or repeatedly commit acts with intent to kill, injure, harass, or intimidate; or
- To place under surveillance with intent to kill, injure, harass, or intimidate; and
- To place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to:
 - That person;
 - A member of the immediate family of that person; or
 - The spouse or intimate partner of that person.

D. Must the incidents be repeated?

VAWA does not include a minimum number of incidents of violence that must occur before a tenant or applicant may claim its protections. Rather, VAWA explicitly protects victims of any actual or threatened acts of domestic violence, dating violence, or stalking. Only one incident is required to trigger VAWA's protections, and the incident does not have to be one of actual violence.

3. Who is required to comply with VAWA, and when did the law become effective?

A. Parties who must comply with VAWA

Public housing agencies (PHAs) administering the Public Housing and Section 8 Voucher programs and all landlords, owners, and managers participating in the Section 8 Voucher and Project-Based programs must comply with VAWA.

- Note: The Regional Multifamily Office of HUD has distributed incorrect information to Project-Based Section 8 owners, telling some that they are not subject to VAWA until HUD issues regulations.

B. Effective date

VAWA's housing provisions became effective January 5, 2006. HUD has issued notices instructing PHAs to implement the law without waiting for HUD to issue regulations.

4. How does VAWA affect admissions to federally subsidized housing?

A. Denials of admissions or housing assistance

An individual's status as a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of admission or denial of housing assistance. *See* 42 U.S.C. § 1437d(c)(3); 42 U.S.C. § 1437f(c)(9)(A); 42 U.S.C. § 1437f(o)(6)(B). Therefore, an individual cannot be denied admission to Public Housing or Section 8 Project-Based housing, or denied eligibility for the Section 8 Voucher program due to incidents of domestic violence, dating violence, or stalking. Owners renting to Section 8 tenants also cannot deny housing to an individual solely on the basis of a domestic violence incident.

B. Areas that VAWA does not address

An individual's status as a victim of domestic violence, dating violence, or stalking does not guarantee that he or she will be accepted into a federally assisted housing program. VAWA does not require that PHAs institute a preference for victims of abuse when making admissions decisions. However, PHAs have the discretion to institute such a preference, and local advocates can encourage them to do so during the PHA planning process.

VAWA does not explicitly address whether a PHA or owner must waive an admissions requirement if the applicant cannot meet the requirement due to incidents of abuse. For example, VAWA does not provide guidance for screening applicants who have been the victims of abuse and, as a result, have poor tenancy, credit, or work histories. Note that HUD has encouraged PHAs to inquire into the circumstances and whether domestic violence was a factor in the poor rental history. *See* U.S. Department of Housing and Urban Development, Public Housing Occupancy Guidebook § 19 (2003). Further, 24 C.F.R § 960.203 provides that if a PHA receives unfavorable information with respect to an applicant, “consideration shall be given to the time, nature, and extent of the applicant’s conduct (including the seriousness of the offense).”

5. Does VAWA address safety moves?

A. Portability of Section 8 vouchers

A PHA may permit a family with a Section 8 voucher to move to another jurisdiction if the family 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 domestic violence, dating violence, or stalking. The PHA may permit the family to move even if the family’s lease term has not yet expired. *See* 42 U.S.C. § 1437f(r)(5). However, VAWA does not address the liability that a tenant may incur from the Section 8 owner for terminating the lease early. A PHA may ask for documentation from the family regarding the family’s desire to move to a new jurisdiction. *See* 42 U.S.C. § 1437f(ee).

B. Emergency transfers in public housing

VAWA does not explicitly address a PHA’s obligation to transfer a public housing tenant to another unit in the event that the tenant must move due to domestic violence, dating violence, or stalking. However, PHAs already have the discretion to adopt policies to ensure that a public housing tenant can move if he or she is experiencing domestic violence. HUD has urged housing authorities to implement such policies. *See* U.S. Department of Housing and Urban Development, Public Housing Occupancy Guidebook §§ 19.2, 19.4 (2003).

6. How does VAWA affect evictions?

A. Evictions directly related to abuse

VAWA establishes an exception to the federal “one-strike” criminal activity eviction rule. Actual or threatened criminal activity directly relating to domestic violence, dating violence, or stalking does not constitute grounds (either as a “serious or repeated violation of lease”, or as “good cause”) for terminating assistance, tenancy, or occupancy rights of the victim or an immediate family member of the victim. *See* 42 U.S.C. § 1437d(1)(5); 42 U.S.C. § 1437f(c)(9)(B); 42 U.S.C. § 1437f(d)(1)(B); 42 U.S.C. § 1437f(o)(7)(C); 42 U.S.C. § 1437f(o)(20)(A).

B. The “actual or imminent threat” exception

Despite the eviction protections described above, a PHA or owner may still evict the victim if the PHA or owner can demonstrate an “actual and imminent threat” to other tenants or employees of the property if the victim is not evicted. VAWA does not define the phrase “actual and imminent threat,” nor does it explain what evidence a PHA or owner must provide to establish such a threat. *See* 42 U.S.C. § 1437d(l)(6)(E); 42 U.S.C. §§ 1437f(c)(9)(C)(v) and (d)(1)(B)(iii)(V); 42 U.S.C. §§ 1437f(o)(7)(D)(v) and (o)(20)(D)(iv).

C. Criminal activity unrelated to abuse

VAWA protects tenants from being penalized for incidents of criminal activity in which they were the victim. It does not protect them if the criminal incident for which they are being evicted or denied admission is unrelated to domestic violence, dating violence, or stalking. However, in determining whether to evict, a PHA or owner may not hold a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants. *See* 42 U.S.C. § 1437d(l)(6)(D); 42 U.S.C. §§ 1437f(c)(9)(C)(iv) and (d)(1)(B)(iii)(IV); 42 U.S.C. § 1437f(o)(7)(D)(iv) and (o)(20)(D)(iii).

D. Removing an abuser from a unit

A PHA or owner may bifurcate a lease to evict, remove, or terminate assistance to any tenant who engages in criminal acts of violence against family members or others. This action may be taken without evicting, removing, terminating assistance to, or otherwise penalizing the victim who is also a tenant or lawful occupant. The authority to bifurcate a lease or otherwise remove an individual is applicable to all leases for families participating in the public housing or Section 8 programs. The eviction or termination of assistance must be effected in accordance with federal, state, and local law. *See* 42 U.S.C. § 1437d(l)(6)(B); 42 U.S.C. § 1437f(o)(7)(D)

7. Can a PHA or owner ask for proof of the abuse?

A. Discretion of PHA or owner to ask for certification

PHAs and owners may, but are not required to, ask an individual for certification that he or she is a victim of domestic violence, dating violence, or stalking if the individual seeks to assert VAWA’s protections. At their discretion, owners or PHAs may apply VAWA to an individual based solely on the individual’s statement or other corroborating evidence. *See* 42 U.S.C. §§ 1437d(u)(1); 42 U.S.C. § 1437f(ee)(1).

B. Types of certification permitted

If an individual seeks to assert VAWA’s protections, a PHA, owner, or manager may request in writing that the individual certify that he or she is a victim of domestic violence, dating violence or stalking. The individual can self-certify by completing form HUD-50066, available at www.hudclips.org. The form requests the name of the victim, the name of the perpetrator, the

date on which the incident occurred, and a brief description of the incident. The victim must sign the form and certify that the information is true and correct.

In lieu of the certification form, the victim may provide:

- Documentation signed by the victim and a victim service provider, an attorney, or a medical professional in which the professional attests under penalty of perjury to the professional's belief that the victim has experienced bona fide incidents of abuse.
- A federal, state, tribal, territorial, or local police or court record.

See 42 U.S.C. § 1437d(u)(1)(D); 42 U.S.C. § 1437f(ee)(1)(D).

C. Certification time limit

After a PHA or owner has requested certification in writing, an individual has fourteen business days to respond to the request. If an individual does not provide the documentation within fourteen business days, a PHA or owner may bring eviction proceedings against the tenant or terminate assistance. However, a PHA or owner has discretion to extend this timeframe. 42 U.S.C. § 1437d(u)(1)(A), (B); 42 U.S.C. § 1437f(ee)(1)(A), (B).

D. Confidentiality

Any information provided must be kept confidential, including the individual's status as a victim. PHAs or owners may not enter the information into any shared database or provide it to any related entity. However, advocates should note that disclosure of the certification form may be required for use in an eviction proceeding if the housing authority or Section 8 landlord seeks to evict the batterer. The information may also be disclosed if the victim requests disclosure in writing, or if otherwise required by law. *See* 42 U.S.C. § 1437d(u)(2)(A); 42 U.S.C. § 1437f(ee)(2)(A).

8. What other obligations do PHAs and owners have under VAWA?

A. Obligation to honor court orders

PHAs and owners must honor court orders addressing rights of access to or control of property. Thus, PHAs and owners must observe civil protection orders issued to protect the victim, as well as court orders addressing the distribution or possession of property among household members when a family breaks up. *See* 42 U.S.C. § 1437d(l)(6)(C); 42 U.S.C. §§ 1437f(c)(9)(C)(iii) and (d)(1)(B)(iii)(III); 42 U.S.C. §§ 1437f(o)(7)(D)(iii) and (o)(20)(D)(ii).

B. Notification requirement

PHAs must inform tenants and owners of their rights and obligations under VAWA. For example, PHAs must provide tenants with notice that:

- Incidents of domestic violence, dating violence, or stalking do not qualify as serious or repeated violations of the lease or other "good cause" for termination of the assistance, tenancy, or occupancy rights of a victim of abuse;

- Criminal activity directly relating to domestic violence, dating violence, or stalking does not constitute grounds for termination of the victim’s assistance, tenancy, or occupancy rights;
- Information provided for purposes of certifying that an individual is a victim of domestic violence, dating violence, or stalking must be kept confidential.

See 42 U.S.C. § 1437d(u)(2)(B); 42 U.S.C. § 1437f(ee)(2)(B).

Public housing leases must include this information, as must the Housing Assistance Payments (HAP) contract between PHAs and owners in the Section 8 Voucher program and contracts in the Project-Based Section 8 program. *See* 42 U.S.C. § 1437d(l)(5), (6); 42 U.S.C. § 1437f(o)(20); 42 U.S.C. § 1437f(o)(7)(C), (D).

C. PHA planning process

A PHA must include in its annual plan a description of any activities, services, or programs being undertaken to assist victims of domestic violence, dating violence, stalking, or sexual assault. A PHA must include in its five-year plan a description of any goals, objectives, policies, or programs it uses to serve victims’ housing needs. In addition, VAWA added the housing needs of victims of domestic violence, dating violence, sexual assault, and stalking to the consolidated planning process that local communities undertake every five years to receive HUD assistance. *See* 42 U.S.C. §§ 1437c-1(a)(2), 1437c-1(d)(13); 42 U.S.C. § 12705(b)(1).

The National Housing Law Project is available to assist local advocates in urging housing authorities to update their annual plans, Section 8 Administrative Plans and public housing Admissions and Continued Occupancy Policies to address VAWA.

9. What other resources should I look to in enforcing survivors’ housing rights under VAWA?

A. VAWA’s findings section

VAWA contains several important findings, including:

- That there is a strong link between domestic violence and homelessness
- That women and families are experiencing housing discrimination because of their status as victims of domestic violence
- That victims of domestic violence often return to abusers because they cannot find long-term housing
- That victims often lack steady income, credit history, landlord references, and a current address due to financial abuse by their batterers

See 42 U.S.C. § 14043e.

B. State or local laws

VAWA sets out the minimum protections for survivors. Many states and local jurisdictions are developing laws that include added protections, such as laws that make VAWA’s protections

applicable to private housing. Where these state or local laws exist, they are not preempted by VAWA. See 42 U.S.C. § 1437d(u)(1)(E); 42 U.S.C. § 1437f(ee)(1)(F).

C. HUD documents implementing VAWA

The following documents may be useful to advocates working with PHAs and owners to implement VAWA's protections. All of the documents are available at www.hudclips.org.

- HUD Notice PIH 2006-23: States that VAWA became effective January 5, 2006 and directs PHAs to notify tenants and owners of their rights and obligations under VAWA.
- HUD Notice PIH 2006-42: Transmits Certification Form HUD-50066 and provides guidance to PHAs and owners regarding certification of incidents of abuse. Notes that a signed statement from a third party or a police or court record may be provided "in lieu of" the certification form.
- 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.
- HUD Notice PIH 2007-5: Transmits the revised Housing Assistance Payments (HAP) contract and the revised Tenancy Addendum, and directs PHAs to use the revised documents when executing any HAP contracts or approving new leases. Provides guidance to PHAs and owners regarding bifurcation and portability.
- Form HUD-52641, Form HUD-52641A: The HAP contract and tenancy addendum as revised by HUD to reflect tenants' protections under VAWA.
- 72 Fed. Reg. 12,696 (Mar. 16, 2007): HUD's most complete VAWA guidance. Reminds PHAs that VAWA's provisions are effective even without regulations from HUD. States that PHAs must include a VAWA statement in their annual plans "in their next regularly scheduled plan submission." States that victims can satisfy the certification requirement by providing a certification form, or third party verification, or a police or court record.
- It is unclear whether and when HUD will issue regulations implementing VAWA or provide guidance for project-based Section 8 owners.

10. What is the status of VAWA implementation in Northern California?

- Many PHAs have mailed written VAWA notices to public housing and Section 8 tenants, as well as Section 8 owners. Ex: Fairfield, Roseville, Suisun City.
- Several PHAs have incorporated VAWA into their annual plans. Ex: Roseville, Yolo County
- Several PHAs have incorporated VAWA into their Section 8 Administrative Plans and Public Housing Admissions and Continued Occupancy Policies. Ex: Sacramento County, Vallejo, Fairfield

11. Has any litigation been brought under VAWA?

- *Brooklyn Landlord v. RF* (N.Y. Civ. Ct 2007): Plaintiff lived in a project-based Section 8 unit with her children. Plaintiff's abuser, who had stalked and physically abused her for many years, confronted and shot at the security guard at Plaintiff's building. Plaintiff

raised VAWA as an affirmative defense to eviction. The landlord eventually dismissed the eviction proceeding. Pleadings are available at www.legalmomentum.org

- *Jones v. Hous. Auth. of Salt Lake County*, 07cv743 (D. Utah 2006): Plaintiff alleged that her Section 8 voucher was terminated by the PHA after she was forced to flee her apartment due to domestic violence. Plaintiff alleged that PHA violated VAWA and the FHA by terminating Plaintiff's voucher because of her need to escape domestic violence. Case settled. Contact Meliah Schultzman to obtain the pleadings.

12. What steps can advocates take to implement VAWA?

- Request a meeting with the PHA and local domestic violence agencies to discuss implementation.
- Offer to train PHA staff and resident groups on VAWA and the dynamics of domestic violence.
- Offer to assist the PHA in developing procedures for assisting program participants who are experiencing domestic violence.
- Submit comments during the PHA's annual planning process.
- Urge the PHA to provide notice of VAWA rights through several different channels, such as denial of assistance letters, briefing packets, tenant newsletters, termination letters, posters in the PHA's lobby, and the PHA's website.
- Develop intake screening tools to determine whether a denial of housing, eviction, or termination of assistance is related to domestic violence. Many subsidized housing participants are unaware of their VAWA rights, particularly those who live with their batterers or who are limited English proficient.

13. What rights do survivors have under the Fair Housing Act and California's Fair Employment and Housing Act?

A. Disparate impact claims

- Disparate impact theory has been used to challenge policies that have the effect of treating women more harshly. Several cases have challenged "zero tolerance for violence" policies that mandate eviction for entire households when a violent act is committed at the unit. It has been argued that such policies have a disparate impact on women, who constitute the majority of domestic violence victims.
- Statistical data are crucial to these cases:
 - The U.S. Bureau of Justice Statistics found that 85% of victims of intimate partner violence are women. See U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Crime Data Brief, *Intimate Partner Violence, 1993-2001* at 1 (Feb. 2003).
 - Although women are less likely than men to be victims of violent crimes overall, women are five to eight times more likely than men to be victimized by an intimate partner. Additionally, more than 70% of those murdered by their intimate partners are women. Greenfield, L.A., et al., *Violence by Intimates: Analysis of*

Data on Crimes by Current or Former Spouses, Boyfriends and Girlfriends, U.S. Dept. of Justice, Bureau of Justice Statistics, NCJ-167237 (March 1998).

- In 2005, 129 women were the victims of domestic violence homicide in California, as compared to 31 men. California Dep't of Justice, *Homicide in California 2005* at vi (2006).
- Women constitute 78% percent of all stalking victims. Patricia Tjaden & Nancy Thoennes, Nat'l Inst. of Just. & Ctrs. for Disease Control and Prevention, *Stalking in America: Findings from the National Violence Against Women Survey* at 2 (April 1998).
- *Lewis v. N. End Vill. et al.*, 07cv10757 (E.D. Mich. 2008): Plaintiff's ex-boyfriend kicked in door at her apartment, a LIHTC property. Although Plaintiff had a restraining order, she was evicted for violating lease, which stated that she was liable for damage resulting from "lack of proper supervision" of her "guests." Plaintiff argued that the policy of interpreting the word "guest" to include those who enter a property in violation of a restraining order had a disparate impact on women. Case settled. Settlement and pleadings are available at www.aclu.org/fairhousingforwomen
- *Alvera v. Creekside Village Apartments*, HUD ALJ No. 10-99-0538-8 (2001) (Oregon): Management company sought to evict a tenant under a "zero tolerance for violence" policy because her husband had assaulted her. HUD found that policy of evicting innocent victims of domestic violence because of that violence has a disproportionate impact on women, and found reasonable cause to believe that plaintiff had been discriminated against because of her sex.

B. Disparate treatment claims

- Disparate treatment theory has been used to challenge actions based on gender stereotypes about battered women.
- *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005): Plaintiff evicted after being assaulted by her husband. Landlord stated that Plaintiff did not act like a "real" victim of domestic violence because Plaintiff seemed angry & unconcerned about what would happen to her husband. Court denied landlord's motion for summary judgment on the sex discrimination claim. Case settled.

14. What is the status of early lease termination legislation in California?

- AB 2052 (Lieu) would permit a victim of domestic violence, stalking, or sexual assault to terminate a residential lease early without financial penalty.
- Victim must provide landlord with written notice and an order of protection or a police report within 60 days of the incident of violence.
- The bill has been approved by the Assembly Judiciary Committee and will head to the Assembly Floor as early as May 1. Interested parties can help by calling their assemblymembers and urging them to support AB 2052.

15. Hypotheticals

A. Subsidized Housing: Cassie

- Cassie lives in a tenant-based Section 8 unit. Her ex-boyfriend, who has physically abused her for many years, repeatedly hit a security guard at her building during an attempt to break into her unit. Her abuser was apprehended and will be incarcerated for several months for assault and restraining order violations
- Is Cassie protected by VAWA?
- Can she be evicted? If so, what are her defenses?
- Can her Section 8 assistance be terminated? If so, what are her defenses?
- What if she wants to relocate to a different unit?

B. Unsubsidized Housing: Tiffanie

- Tiffanie lives in an unsubsidized apartment complex, and her abuser assaulted her in the unit. Neighbors heard her screams and called the police. Tiffanie's abuser was arrested and charged with assault. Two days later, Tiffanie received a 30-day notice and was told that the complex's corporate policy mandates lease termination anytime there is a crime in an apartment.
- Can Tiffanie challenge this policy? On what grounds?