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# NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

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## *The impact of the Violence Against Women Act 2005 (VAWA) on the housing rights and options of survivors of domestic and sexual violence*

### **Frequently Asked Questions**

The federal Violence Against Women Act of 2005 (VAWA 2005) (Public Law 109-162), signed into law on January 5, 2006, includes important new housing legal protections and programs for victims of domestic violence, dating violence, sexual assault, and stalking. Out of a recognition that domestic violence is a leading cause of homelessness nationally, and that victims of domestic violence around the country are discriminated against in housing because of the acts of their abusers against them, Congress and the President agreed to remedy these barriers for the first time.

### **Overview**

#### **What housing programs and housing legal protections are in VAWA?**

Title VI of VAWA 2005 includes the following housing programs and protections:

- Amendments to the federal Public Housing and Section 8 statutes to clarify that victims of domestic violence may not be evicted from or denied housing because they are victims
- Amendments to federal housing planning requirements to ensure that the needs of victims are considered in these local planning processes
- Amendments to the federal McKinney-Vento Homeless Assistance Act to ensure safety and confidentiality for victims in the Homeless Management Information System (HMIS)
- New federal grant program for public and assisted housing agencies to address domestic violence through agency policy changes, training, and best practices
- New federal grant program to ensure local community collaboration in developing long term affordable housing for victims
- Clarifying changes in federal transitional housing for victims

#### **When did the new VAWA housing provisions become effective?**

The housing provisions in VAWA became effective on January 5, 2006, the date the bill was signed into law. The new housing grant programs are authorized beginning in federal fiscal year (FY) 2007, which begins October 1, 2006. Before the programs can be administered, they must receive federal funding from Congress through the annual appropriations process for fiscal year 2007. The President's budget for FY 2007 (beginning October 1, 2006) does not include funding for these new programs. Changes to the existing transitional housing grant program will go into effect in fiscal year 2007.

## **Where can I find a copy of the new law?**

VAWA 2005 became Public Law 109-162. Copies are available at <http://thomas.loc.gov> by clicking on “Public Laws.” Legal research databases also have slip copies. The title of the legislation was the “Violence Against Women and Department of Justice Reauthorization Act of 2005.” The housing provisions are in Title VI of the law, and are part of a much larger bill.

## **Where are the housing provisions in the new law?**

Title VI of VAWA 2005, entitled “Housing Opportunities and Safety for Battered Women and Children,” addresses housing. The housing grant programs are in Sections 601 and 602, to be codified along with longstanding VAWA programs. Amendments to the housing planning and reporting requirements are in Sections 603 and 604. The HMIS amendments are in Section 605. Amendments to Public Housing and Section 8 are in Sections 606 and 607. The above statutory amendments in Sections 603 to 607 are to be codified as follows:

- Section 603 at 42 U.S.C. § 1437c-1
- Section 604 at 42 U.S.C. § 12705(b)(1)
- Section 605 at 42 U.S.C. § 11383
- Section 606 at 42 U.S.C. § 1437f
- Section 607 at 42 U.S.C. § 1437d

Unless otherwise noted, all citations below are to the relevant statutory section, as amended by Pub. L. 109-162 (January 5, 2006).

## **Amendments Affecting Federal Housing**

### **What federal housing programs did VAWA amend?**

VAWA amended the Public Housing Program (42 U.S.C. § 1437d), the Housing Choice Voucher Program (42 U.S.C. § 1437f(o)), and Project-Based Section 8 (42 U.S.C. §§ 1437f(c), (d)).

### **Who is covered by the new protections in these amendments?**

The new protections cover victims of domestic violence, dating violence, and stalking who are tenants in the federal Public Housing and Section 8 voucher and project-based programs.

The protections also cover immediate members of the victim’s family. “Immediate family member” includes: any person living with the victim and related to him or her by blood or marriage; or the victim’s spouse, parent, brother, sister, child, or any person to whom the victim stands in loco parentis. *See* 42 U.S.C. § 1437d(u)(3)(D); 42 U.S.C. § 1437f(f)(11).

### **Who must comply with the new law?**

Public housing agencies (PHAs) administering the federal 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 the new law.

## **How does the law define domestic violence, dating violence, and stalking?**

The new law follows the federal definitions of domestic violence, dating violence, and stalking as the terms have been defined in VAWA.

“Domestic violence,” as defined in VAWA, “includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other adult person against a victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction receiving grant monies.” *See* 42 U.S.C. § 1437d(u)(3)(A); 42 U.S.C. § 1437f(f)(8).

“Dating violence” means “violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.” *See* 42 U.S.C. § 1437d(u)(B); 42 U.S.C. 1437f(f)(9).

“Stalking” means “to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, 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.” *See* 42 U.S.C. § 1437d(u)(3)(C); 42 U.S.C. § 1437f(f)(10).

## **How many incidents of domestic violence, dating violence, or stalking are necessary to trigger the law’s protection?**

The new law protects an individual when one incident of domestic violence, dating violence, or stalking occurs against the victim, and when that incident forms the basis for the PHA’s or landlord’s action against the victim.

## **What legal protections does VAWA provide against denial of housing and eviction on the basis of domestic violence, dating violence, or stalking?**

The statute provides that 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(d)(1)(A); 42 U.S.C. § 1437f(o)(B).

The statute also establishes an exception to the federal “one-strike” criminal activity eviction rule for tenants who are victims. VAWA explicitly provides that an incident of actual or threatened domestic violence, dating violence, or stalking does not qualify as a “serious or repeated violation of the lease” or “good cause for terminating the assistance, tenancy, or occupancy rights of the victim.” *See* 42 U.S.C. § 1437d(l)(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). VAWA also provides that “criminal activity directly relating to domestic violence, dating violence, or stalking” does not constitute

grounds for termination of a tenancy. *See* 42 U.S.C. § 1437d(1)(6); 42 U.S.C. § 1437f(c)(9)(C); 42 U.S.C. § 1437f(d)(1)(C); 42 U.S.C. § 1437f(o)(7)(D); 42 U.S.C. § 1437f(o)(20)(B).

**What about the offender alone? Can a PHA or Section 8 landlord evict a tenant if the individual engages in criminal acts of physical violence against a family member?**

VAWA explicitly provides that a PHA or Section 8 landlord “may bifurcate a lease” in order to evict, remove, or terminate the assistance of the offender while allowing the victim, who is a tenant or lawful occupant, to remain. *See* 42 U.S.C. §1437d(1)(6)(B); 42 U.S.C. § 1437f(o)(7)(D); 42 U.S.C. § 1437f(o)(20)(D).

**What about court orders that address rights of access to or control of the property, such as civil protection orders or divorce orders from domestic violence and family court judges?**

VAWA seeks to ensure that PHAs and Section 8 landlords honor civil protection orders and other court orders from domestic violence and family court judges that address rights of access to or control of the property. *See* 42 U.S.C. § 1437d(1)(6)(C); § 1437f(o)(7)(D); § 1437f(o)(20)(D)(ii).

**Suppose the victim engages in separate criminal activity that has nothing to do with being the victim of domestic violence, dating violence, or stalking?**

VAWA protects tenants who are victims of criminal activity that directly relates to domestic violence, dating violence, or stalking from eviction on those grounds. However, a PHA or Section 8 landlord may evict a victim for unrelated criminal activity as long as in doing so, the PHA or Section 8 landlord does not hold the victim to a more demanding standard than other tenants. *See* 42 U.S.C. § 1437d(1)(6)(D); 42 U.S.C. § 1437f(o)(7)(D); 42 U.S.C. § 1437f(o)(20)(D)(iii).

**Are there any circumstances where a victim who is eligible for the housing might still be evicted, despite the new law?**

Yes. If a PHA or Section 8 landlord demonstrates “an actual or imminent threat to other tenants or those employed at or providing service to the property” if that tenant’s tenancy is not terminated, then the PHA or Section 8 landlord may evict the victim. *See, e.g.*, 42 U.S.C. § 1437d(1)(6)(E); 42 U.S.C. § 1437f(o)(7)(D); 42 U.S.C. § 1437f(o)(20)(D)(iv).

**Before complying, may a PHA or Section 8 landlord ask an individual for documentation that he or she is or has been a victim of domestic violence, dating violence, or stalking?**

Yes. However, nothing in the statute requires the PHA or Section 8 landlord to ask for this documentation before complying. A PHA or landlord may comply based solely on the individual’s statement or other corroborating evidence. *See* 42 U.S.C. § 1437d(u)(1)(D); 42 U.S.C. § 1437f(ee)(D).

**What information counts as documentation that a PHA or Section 8 landlord may recognize under the statute?**

A victim may fully satisfy a PHA’s or Section landlord’s request for documentation by producing a federal, state, tribal, territorial, or local police or court record that documents the incident or incidents of violence. Alternatively, a victim may provide a statement in which “an employee,

agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or the effects of the abuse” attests under penalty of perjury that the professional believes that “the incident or incidents in question are bona fide incidents of abuse.” The victim also must sign or attest to the documentation. In addition, the documentation must name the offender. Finally, the statute also allows PHAs and Section 8 landlords to request documentation through a certification form approved by HUD. *See* 42 U.S.C. § 1437d(u)(1)(A), (C); 42 U.S.C. § 1437f(ee)(1)(A), (C).

### **How long does an individual have to produce documentation?**

After a PHA or Section 8 landlord has requested the documentation in writing, an individual has 14 business days to respond to the request. If an individual does not provide the documentation within 14 business days, the PHA or landlord may bring eviction proceedings against the tenant. However, the PHA or Section 8 landlord also may extend this timeframe at its discretion. *See* 42 U.S.C. § 1437d(u)(1)(A), (B); 42 U.S.C. § 1437f(ee)(1)(A), (B).

### **What happens to information an individual provides to a PHA or landlord about incidents of domestic violence, dating violence, or stalking, or about his or her status as a victim?**

If an individual provides certification, the PHA or Section 8 landlord must keep the information confidential, including the individual’s status as a victim of domestic violence, dating violence, or stalking. A PHA or Section 8 landlord may not enter the information into any shared database or provide it to any related entity. However, a PHA or Section 8 landlord may disclose the information if: the victim requests or consents to the disclosure in writing; the information is required for use in eviction proceedings related to whether the incident or incidents in questions qualify as a serious or repeated violation of the lease or criminal activity directly relating to domestic violence, dating violence, or stalking; or disclosure is otherwise required by applicable law. *See* 42 U.S.C. § 1437d(u)(2)(A); 42 U.S.C. § 1437f(ee)(2)(A).

### **Does an individual’s status as a current or former victim of domestic violence, dating violence, or stalking guarantee that his or her housing application will be accepted?**

No. VAWA protects an individual from being denied admission and from being evicted on the basis of his or her status as a victim of domestic violence, dating violence, or stalking, only so long as the individual otherwise qualifies for the housing. The new law did not change existing housing eligibility requirements.

### **What if a state, local, or federal law provides greater housing protection to victims of domestic violence, dating violence, or stalking than VAWA does?**

In such a case, the statute provides that the state, local, or federal law that provides greater protection to victims supersedes the provisions in VAWA.

### **Does VAWA clarify portability for victims of domestic violence, dating violence, or stalking in the Section 8 Housing Choice Voucher Program?**

Yes. The new law amended the Section 8 Housing Choice Voucher Program to clarify that a family with a Section 8 voucher may 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 and who reasonably believe[s] he or she was imminently threatened by harm from further violence if he or she remained” in the unit. In complying with the new law, the original PHA may ask for certification from the family regarding the family’s desire to move to a new jurisdiction. *See* 42 U.S.C. § 1437f(r)(5); 42 U.S.C. § 1437f(ee).

In federal public housing, PHAs already have the discretion to adopt policies to ensure that a public housing resident can move if he or she is experiencing domestic violence. The Department of Housing and Urban Development (HUD) has urged PHAs to do so by, for example, issuing a voucher to the resident to ensure that he or she can move. In addition, HUD has urged PHAs to accept a wide range of documentation to establish the occurrence of domestic violence, including a credible statement from the victim. *See* U.S. Department of Housing and Urban Development, Public Housing Occupancy Guidebook §§ 19.2, 19.4 (2003).

In addition, VAWA authorized a new federal grant program requiring that participating PHAs and subsidized housing providers adopt portability mechanisms and emergency transfer policies for victims, among other requirements. All PHAs and many HUD-assisted housing providers will be eligible to apply for these funds. For more information on the new program, please see below.

**Does the new law establish any federal statutory preference on housing waiting lists for victims of domestic violence, dating violence, or stalking?**

No. As was the case prior to the new law, there is no federal statutory preference for victims of domestic violence. However, HUD and Congress already have urged local PHAs to consider preferences for individuals who are victims of domestic violence, consistent with the PHA plan for the agency. *See* § 514(e), Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, 112 Stat. 2461 (October 21, 1998)) (Public Housing and Section 8); 24 C.F.R. § 960.206(b)(4); U.S. Department of Housing and Urban Development, Public Housing Occupancy Guidebook § 19.0 (2003) (Public Housing).

For victims residing in public housing who are petitioning for “qualified alien” citizenship status, HUD urges PHAs to adopt a preference subcategory for these victims as well. *See* U.S. Dep’t of Housing and Urban Development, Public Housing Occupancy Guidebook § 19.5 (2003).

In addition, VAWA authorized a new federal grant program requiring that participating PHAs and assisted housing providers adopt local preferences for victims, among other requirements. All PHAs and many federally-assisted housing providers will be eligible to apply for these grant funds. For more information on the new grant program, please see below.

**Does the new law amend the federal Fair Housing Act to prohibit housing discrimination against victims of domestic violence, dating violence, sexual assault, or stalking in all housing, or provide a parallel federal legal protection against housing discrimination?**

No. Unfortunately, Congress dropped provisions that had been proposed to achieve this broader goal. However, VAWA authorized a new federal grant program requiring that participating PHAs and subsidized housing providers certify that they do not discriminate against victims of domestic violence, dating violence, sexual assault, and stalking, among other requirements. All PHAs and many federally-assisted housing providers will be eligible to apply for these grant funds. For more information on the new grant program, please see below.

## **Did VAWA 2005 clarify battered immigrants' eligibility for long term federal housing assistance?**

No. Unfortunately, VAWA does not address this issue. However, in 2003, Congress directed HUD to work with the Department of Justice “to develop any necessary technical corrections to applicable housing statutes with respect to qualified aliens who are victims of domestic violence and Cuban and Haitian immigrants to ensure that such statutes are consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Illegal Immigration Reform and Personal Responsibility Act of 1996.” *See* Conference Report to Accompany H.J. Res. 2, Consolidated Appropriations Resolution, FY 2003, 1495.

In addition, for mixed families residing in public housing, HUD urges PHAs to refer immigrant victims of domestic violence to agencies that can assist victims in obtaining eligible citizenship status. For those victims who are petitioning for “qualified alien” status under the law, HUD urges PHAs to adopt a preference subcategory for these victims. *See* U.S. Department of Housing and Urban Development, Public Housing Occupancy Guidebook § 19.5 (2003).

All immigrants are eligible for HUD-funded emergency shelter and transitional housing, as well as for federally-funded emergency domestic violence shelter and transitional housing, regardless of citizenship status. *See* 66 Fed. Reg. 3613 (Jan. 16, 2001) (A.G. Order 2353-2001); Letter from HUD Secretary Andrew Cuomo to HUD Funds Recipients (Jan. 19, 2001).

## **Do the VAWA amendments cover all federal housing programs?**

No. VAWA amended the Public Housing Program (42 U.S.C. § 1437d), the Housing Choice Voucher Program (42 U.S.C. § 1437f(o)), and Project-Based Section 8 (42 U.S.C. § 1437f(c), (d)). Congress did not amend other HUD housing assistance programs, the Low Income Housing Tax Credit program administered through the Internal Revenue Service, or housing programs administered through the Department of Agriculture Rural Housing Service, for example.

However, many additional federally-assisted housing providers receiving HUD funds will be eligible to apply for a new federal grant program under VAWA that is designed to respond to domestic violence, dating violence, sexual assault, and stalking in federally-assisted housing. For more information on the new grant program, please see below.

## **How will tenants know of their new housing rights under VAWA?**

Under the statute, PHAs must inform tenants of their new rights and owners and managers of their rights and obligations. For example, PHAs must provide tenants with notice: that an incident or incidents of domestic violence, dating violence, or stalking do not qualify as serious or repeated violations of the lease; that criminal activity directly relating to domestic violence, dating violence, or stalking does not constitute grounds for termination of a tenancy; and that new confidentiality provisions govern the disclosure of information under the law. *See* 42 U.S.C. § 1437d(u)(2)(B); 42 U.S.C. § 1437f(ee)(2)(B).

Leases must include this information, as must the housing assistance payment contract between the PHA and participating landlords in the voucher 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).

Additionally, PHAs must inform Section 8 voucher tenants of the possibility of voucher portability between jurisdictions to escape an imminent threat of further violence from domestic violence, dating violence, or stalking. *See* 42 U.S.C. § 1437f(ee)(2)(B).

### **What planning processes must PHAs and local communities undertake under the new law to assist victims with their housing needs?**

The statute now requires PHAs to include a description of any goals, objectives, policies, or programs they have in place to serve the housing needs of child and adult victims of domestic violence, dating violence, sexual assault, and stalking when they are developing their five-year PHA plans. *See* 42 U.S.C. § 1437c-1.

The statute also adds 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 housing assistance. *See* 42 U.S.C. § 12705(b)(1).

### **Changes in Homeless Management Information System (HMIS)**

VAWA amended the McKinney-Vento Homeless Assistance Act to require HUD to instruct grantees and sub-grantees under the act not to enter personally-identifying information into any shared databases, such as the Homeless Management Information System (HMIS). The change is intended to protect the safety and confidentiality of victims of domestic violence, dating violence, sexual assault, and stalking who use emergency shelter and homeless services programs that receive funding under the act and are therefore otherwise subject to HMIS data reporting requirements. *See* 42 U.S.C. § 11383.

### **New Grant Program for Public and Assisted Housing Agencies to Address Domestic Violence, Dating Violence, Sexual Assault, and Stalking**

In line with the long-standing history and intent of VAWA, the new law also helps PHAs and federally-assisted housing providers respond appropriately to domestic violence, dating violence, sexual assault, and stalking through an incentive grant program.

Grants will be used for educating and training agency staff, developing improved housing admissions and occupancy policies and best practices, improving collaboration with victim services organizations, and reducing discriminatory evictions and denials of housing to victims.

To be administered by the Office on Violence Against Women in the Department of Justice, in consultation with HUD and the Department of Health and Human Services (HHS), Congress authorized funding for the grant program at \$10 million for each of fiscal years (FY) 2007 through 2011. *See* § 41405, Pub. L. 109-162. Before the program can be administered, it must receive actual funding from Congress through the separate annual appropriations process. The President’s budget for FY 2007 (beginning October 1, 2006) does not include funding for the program.

Eligible housing providers under the new program will include PHAs, tribally designated housing entities, and owners or managers of housing assisted under the following HUD housing programs: section 8 of the United States Housing Act of 1937 (42 U.S.C. § 1437f) (all HUD Section 8

housing); sections 213, 220, 221(d)(3), 221(d)(4), 223(e), 231, or 236 of the National Housing Act (12 U.S.C. §§ 17151(d)(3), (d)(4), or 1715z-1) (HUD mortgage insurance programs for low-income families); section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. § 1701s) (HUD rental assistance for low-income families); section 202 of the Housing Act of 1959 (12 U.S.C. § 1701q) (HUD supportive housing for the elderly); section 811 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. § 8013) (HUD supportive housing for persons with disabilities); title II of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. § 12701 et seq.) (HOME Investment Partnerships Program); subtitle D of title VIII of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. § 12901 et seq.) (Housing Opportunities for Persons with AIDS); title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.) (Community Development Block Grants).

### **New Grant Program for Collaboration in Developing Long term Housing Stability for Victims**

The new law establishes a grant program to fund collaborative local efforts to create long term housing stability for victims of domestic violence, dating violence, sexual assault, and stalking who are homeless or at risk for becoming homeless. The program is designed to provide an incentive for local housing, homelessness, and victim services providers to establish partnerships in approaching community agencies for development of long term, affordable housing.

To be administered by HHS, the grant program received funding authorization from Congress of \$10 million for each of fiscal years (FY) 2007 through 2011. *See* § 41404, Pub. L. 109-162. Before the program can be administered, it must receive actual federal funding from Congress through the separate annual appropriations process. The President's budget for FY 2007 (beginning October 1, 2006) does not include funding for the program.

### **Amendments to Transitional Housing for Victims Grant Program**

The new law clarifies certain requirements in the existing transitional housing program for victims, which the Office on Violence Against Women of the Department of Justice administers, to ensure voluntary participation in supportive services and to permit operating expenses as an eligible use of funds. Congress also increased the program's annual authorization from \$30 million to \$40 million for each of fiscal years (FY) 2007 through 2011. *See* 42 U.S.C. § 13975. The program is subject to annual appropriations from Congress. The President's budget for FY 2007 (beginning October 1, 2006) includes \$14.9 million for the program.

*For additional information, please contact:*

*Naomi Stern, Staff Attorney, Domestic Violence Program  
National Law Center on Homelessness & Poverty, (202) 638-2535 x208, [nstern@nlchp.org](mailto:nstern@nlchp.org)  
or*

*Terri Keeley, Women's Law and Public Policy Fellow  
National Law Center on Homelessness & Poverty, (202) 638-2535 x205, [tkeeley@nlchp.org](mailto:tkeeley@nlchp.org)*