

# Violence Against Women Act (VAWA)

## REFERENCES & NOTES

## Introduction to LIHTC VAWA Compliance Challenges

### IRS Silence on VAWA Implementation

#### Implementation of VAWA

VAWA 2013 did not amend the authorizing statutes for the newly covered housing programs. The Act requires each “Appropriate Agency” to adopt policies and procedures through additional guidance and rule-making to implement the VAWA protections.

#### Appropriate Agency

The term “appropriate agency” means, with respect to a covered housing program, the Executive department (as defined in section 101 of title 5) that carries out the covered housing program.



42 U.S.C § 14043e–11(a)(2)

#### LIHTC – Appropriate Agency

The Department of Treasury is the Executive Department for the Low-Income Housing Tax Credit Program.



#### HUD MFH – Appropriate Agency

The Department of Housing and Urban Development is the Executive Department for the HUD programs, which includes HOME and Housing Trust Funds.



#### RD – Appropriate Agency

The Department of Agriculture is the Executive Department for Rural Development Housing Programs.



While the Department of Treasury is noted as the “appropriate agency”, the IRS has stated informally that they do not see the need to take any action regarding implementing VAWA. Their reasoning for this is that since VAWA is not a requirement of LIHTC program, noncompliance with VAWA does not trigger credit recapture of previously claimed credits, nor does it prevent the owner from continuing to claim credits.

Per the VAWA statute, further guidance and rulemaking is needed by the appropriate agency as it relates to:

- **Appropriate Agency Approved VAWA Certification**
- **Model Transfer Plan**
- **Reasonable time for requalification or to find new housing as it relates to lease bifurcation.**

42 U.S.C § 14043e–11(c)(3)(A)

42 U.S.C § 14043e–11(e)

42 U.S.C § 14043e–11(b)(3)(B)

Many state housing finance agencies have stepped up and assumed the role of the appropriate agency by issuing guidance and instruction for implementing VAWA protections for LIHTC projects within their state.

In this session we will discuss the following topics:

- Lease Bifurcation Challenges
- Unit Transfer Challenges
- VAWA & Fair Housing
- HFA Implementation
  - 2016 VAWA Survey Results
  - 2017 & 2018 Research Update
  - NCSHA VAWA Recommended Practices

# Violence Against Women Act (VAWA)

## REFERENCES & NOTES

## LIHTC VAWA Compliance Challenges

### Lease Bifurcation Challenges

When a lease is bifurcated, the remaining members of the household must establish program eligibility to remain in the unit. There are some instances where a household would not be able to remain in the unit.

- ✓ No original household member remains, and the remaining member does not meet the income limit requirements.
- ✓ Bifurcation results in a full-time student household and no student exception is met.

It should be noted that these challenges are not unique to implementing VAWA as these same challenges may be encountered whenever a member is removed from a household.

### Reasonable Time

One contributing factor to this challenge is the lack of guidance from the IRS regarding the definition of “reasonable time” as it relates to an ineligible household finding new housing.

HUD, in their final rule, stated that generally 90 days must be provided to remaining tenants to find alternate housing. (*Shorter time restraints apply to some HUD programs, such as Section 202/211, Section 202/8, HOPWA, etc. See HUD’s final rule for complete information, page 80772, section F.*)

RD also identified “reasonable time” to be 90 days.

This time frame can trigger a larger concern for the LIHTC owners when bifurcations resulting in ineligible households occur around the end of the owner’s tax year.

### Example: Student Noncompliance as a Result of VAWA Lease Bifurcation

Stacy resides at Laurelwood Hills Apartments, a tax credit project where the owner’s taxable year end is 12/31.

Stacy’s lease was bifurcated on 12/15/2017. As a result of a bifurcation, Stacy’s household is now a full-time student household and no student exception is met. If Stacy’s household is still occupying the unit on 12/31/2017, the unit is considered out of compliance as of the last day of the owner’s tax year. The unit should not be included as a low-income unit when determining the buildings applicable fraction for 2017, thereby reducing the amount of credit that the owner can claim for 2017.

### Example: Student Noncompliance as a Result of VAWA Lease Bifurcation in Year One

Lakeview Apartments:

- New Construction – 9% Applicable Credit %
- Placed in service 10/1/2016.
- Owner deferred credits to 2017.
- Taxable year end is 12/31.
- 10 Units – all same size
- Target Applicable Fraction: 100%
- Eligible Basis: \$400,000
- Annual Credit: \$36,000

Andy moved into unit #105 on 3/5/2017, which was the first year of credit period. Andy’s lease was bifurcated on 12/15/2017. As a result of a bifurcation, Andy’s household is now a full-time student household and no student exception is met.

In this scenario, if Andy still occupied the unit as of 12/31 the unit is an unqualified unit and should not be included as a low-income unit when determining the building’s applicable fraction.

This would reduce the annual credit that the owner can claim to \$32,400.

If unit #105 is later occupied by a qualified household, the unit may be treated as a LIHTC unit, however, the owner will not receive the full credit. When a LIHTC unit is added after year one of the credit period, the owner does not receive the accelerated portion of the credit, and instead can only claim 2/3<sup>rd</sup> of the credit. This is ultimately calculated by multiplying the increase in qualified basis by 1/3<sup>rd</sup> of the applicable credit percentage (4% or 9%).



$$\text{Eligible Basis} \times \text{Applicable Fraction} = \text{Qualified Basis}$$

$$\text{Qualified Basis} \times \text{Applicable Credit \%} = \text{Annual Tax Credit}$$

$$400,000 \times 100 \% \times 9 \% = 36,000 \text{ Original Credit Allocation}$$

$$400,000 \times 90 \% \times 9 \% = 32,400 \text{ Annual Credit}$$

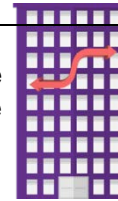
# Violence Against Women Act (VAWA)

## LIHTC VAWA Compliance Challenges, cont.

### Transfer Challenges

#### Transfer within Same Building

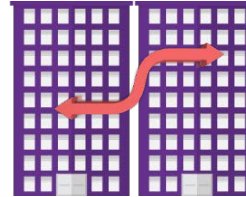
A household may transfer to a unit within the same building (as defined by the Building Identification Number - BIN) without needing to income qualify. This is the case even if the household is currently over 140% of the current income limit.



#### Transfer to a Different Building

Generally, the challenges related to emergency transfers are experienced by properties with more than one building.

A household may transfer to a unit in a different building within a project (as defined by the 8609) without needing to complete a new recertification, if the household's income did not exceed 140% of the applicable federal income limit as of the household's most recent recertification.



**If a household was over 140% of the federal applicable limit at their most recent recertification, the household can not transfer to a unit in a different building. This is the case, even if the building is part of a multiple building project.**

Transfer challenges may be encountered when:

- Multiple Building Projects (per IRS Form 8609 8(b) election)  
A household whose income exceeds 140% of the applicable income limit requests an emergency transfer to another unit, and the only available unit is a different BIN.
- Not a Multiple Building Projects (per IRS Form 8609 8(b) election)  
A household whose income exceeds the current applicable income limit requests an emergency transfer to another unit, and the only available unit is a different BIN.

#### Example: Emergency Transfer – Multiple Building Project

Woodland Views is a three building LIHTC Project. The owner elected to treat all three buildings, A, B, and C, as part of multiple building project by answering “yes” to question 8b on the IRS Form 8609.

Meredith resides in unit 202 in building A. Meredith has requested an emergency transfer under VAWA. The first available unit is unit 541, which is located in building B however, Meredith's income exceeds 140% of the applicable income limit.

In this scenario, the owner is not required to transfer Meredith to unit 541 since Meredith does not meet the program income requirements for transfer. If another unit becomes available in building A, Meredith may transfer to that unit. She will not be eligible to transfer to a unit in a different building unless there is a decrease in her household's income.

#### Example: Emergency Transfer – Not a Multiple Building Project

Skyline Gardens Apartment is a three building LIHTC project. The owner elected to treat each building, A, B, and C, as it's own project by answering “no” to question 8b on the IRS Form 8609.

Christina resides in unit 315 in building B. She has requested and is determined to be eligible for an emergency transfer under VAWA. The first available unit is unit 254 which is located in building C. Since the project is not a multiple building project, in order for Christina to transfer to unit 254, she would need to be income qualified based on the current applicable income limits. It is determined that Christina is over the current income limit applicable for unit 254.

In this scenario, the owner would not need to transfer Christina to unit 254, as she does not meet the program requirements for transfer. If another unit becomes available in building B, Christina may transfer to that unit, but she will not be eligible to transfer to a unit in a different building unless there is a decrease in her household's income.

Treas. Reg 1.42-15(d)  
8823 Guide Pages 4-23 to 4-25

# Violence Against Women Act (VAWA)

## REFERENCES & NOTES

## VAWA and Fair Housing

Compliance with VAWA is not a requirement of LIHTC program, therefore, noncompliance with VAWA does not trigger credit recapture of previously claimed credits, or prevent the owner from continuing to claim credits. However, compliance with the Fair Housing Act is a requirement for the LIHTC program.

“The failure of low-income housing credit properties to comply with the requirements of the Fair Housing Act will result in the denial of the low-income housing tax credit on a per-unit basis.”

IRS Form 8823

“A finding of discrimination, including an adverse final decision by the Secretary of HUD, an adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgment by a federal court, will result in the loss of low-income housing credits.”

8823 Guide Chap. 13/13-3

In HUD's 2011 FHEO memo regarding VAWA, HUD explored three legal theories under the Fair Housing Act relating to violence against women.

1. **Direct Evidence** – Policies that explicitly treat women different than men.
2. **Unequal Treatment** - engages in unequal treatment of victims of domestic violence in comparison to victims of other crimes or unequal application of a seemingly gender-neutral policy.
3. **Disparate Impact** – When there is no direct evidence of unequal treatment, but a policy, procedure or practice disproportionately affects domestic violence victim.



In this memo, HUD also cited 10 fair housing cases involving domestic violence. Two of the cases are reflected below.

### Alvera v. CBM Group

The victim was assaulted by her husband in their apartment. She obtained a restraining order against her husband, and he was subsequently arrested and jailed for the assault. She provided a copy of the restraining order to the property manager.

The property manager then served her with a 24-hour eviction notice based on the incident of domestic violence. The notice specified: "You, someone in your control, or your pet, has seriously threatened to immediately inflict personal injury, or has inflicted personal injury upon the landlord or other tenants." The victim then submitted an application for a one-bedroom apartment in the same building. Management denied the application and refused to accept her rent. After a second application, management finally approved her for a one-bedroom apartment, but warned her that "any type of recurrence" of domestic violence would lead to her eviction. The victim filed a complaint with HUD, which investigated her case and issued a charge of discrimination against the apartment management group. She elected to pursue the case in federal court. The parties later agreed to settle the lawsuit. The consent decree, approved by the Oregon district court in 2001, requires that the management group agree not to "evict, or otherwise discriminate against tenants because they have been victims of violence, including domestic violence" and change its policies accordingly. Employees of the management group must participate in education about discrimination and fair housing law. The management group also agreed to pay compensatory damages to the victim.

### TJ v. St. Louis Housing Authority

The victim endured ongoing threats and harassment after ending her relationship with her abusive boyfriend. He repeatedly broke the windows of her apartment when she refused to let him enter.

She obtained a restraining order and notified her landlord, who issued her a notice of lease violation for the property damage caused by the boyfriend and required her to pay for the damage, saying she was responsible for her domestic situation. Her boyfriend finally broke into her apartment and, after she escaped, vandalized it. The housing authority attempted to evict her based on this incident. The victim filed a complaint with HUD, which conciliated the case. The conciliation agreement requires the housing authority to relocate her to another apartment, refund the money she paid for the broken windows, ban her boyfriend from the property where she lived, and send its employees to domestic violence awareness training.

# Violence Against Women Act (VAWA)

## HFA Implementation

As previously mentioned, many HFAs across the country have taken steps to implement VAWA within their states.

### Protections Delayed

In 2016 a report titled, "Protections Delayed," was published by a national coalition comprised of a number of advocacy agencies as well as legal firms. Included in the report was a survey that was distributed to HFA's to assess which HFAs were implementing VAWA.

This report along with additional resources can be obtained by visiting the Regional Housing Legal Services website at:

<http://www.rhls.org/2017/06/advocacy-toolkit-protections-delayed/>

One valuable resource to HFA's who have not yet taken steps to implement VAWA is the 2017 QAP VAWA Enforcement Extract. This document is a compilation of the VAWA Compliance Language found in the published 2017 QAP.



### The Survey

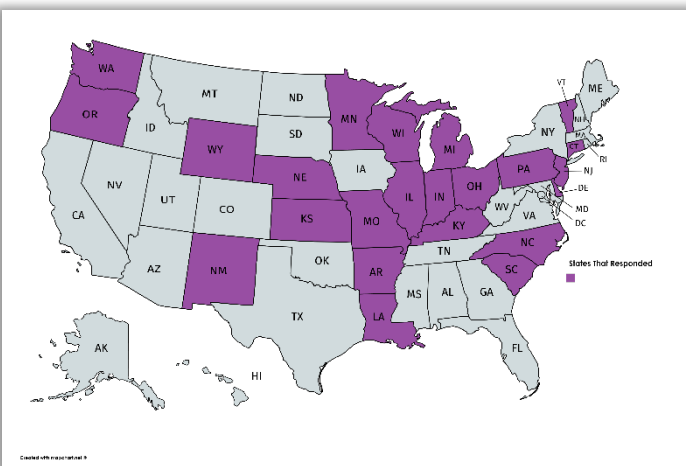
*The below information was provided by RHLS who granted permission to use this information in this presentation.*

#### Survey Method:

The distributed survey included nine questions. The results are based on the information self-reported by the HFA, no independent verification was conducted.

#### Survey Response:

The survey was distributed to all 50 states, and 23 responses to the survey were received.



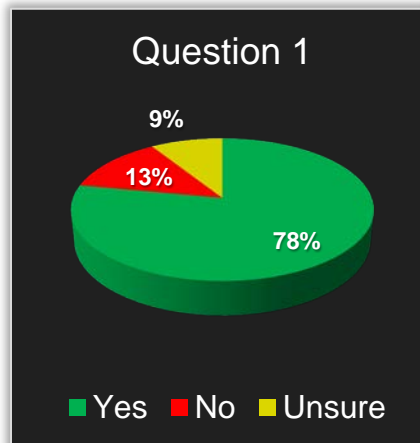
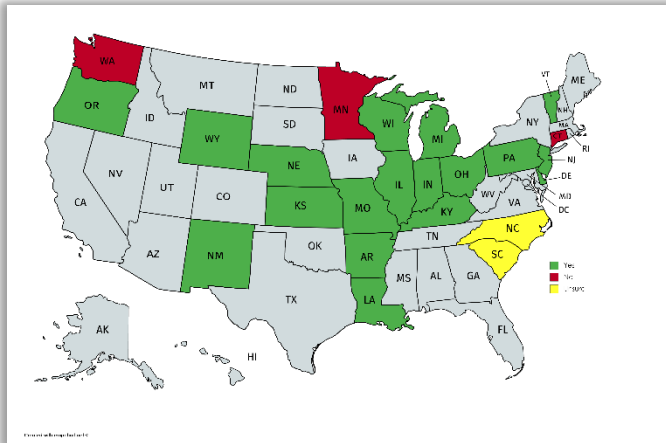
Note: Non-response to the survey does not mean that the State does not have policies regarding VAWA, it simply means that a response to the survey was not received from these states.

# Violence Against Women Act (VAWA)

## HFA Implementation, cont.

### Protections Delayed - Survey Questions and Responses

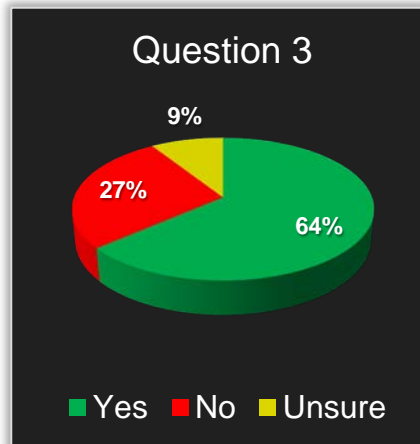
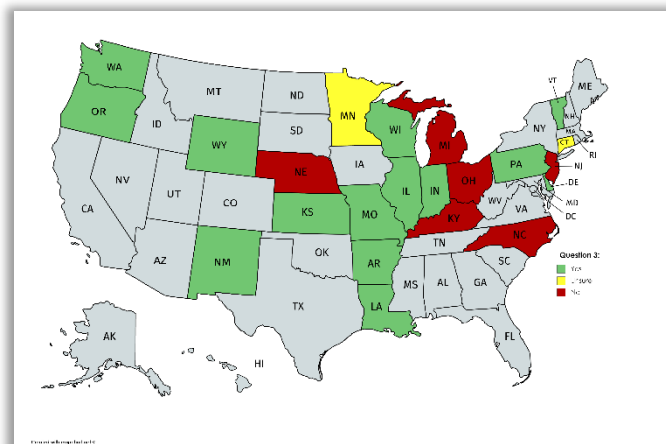
**Q1** - Have you taken, or do you plan to take, any actions to inform residents of LIHTC properties of this change and the new protections, including the prohibition on evicting a victim based on these offenses?



Protections Delayed /Page 10

- 18 of the 23 responding state housing finance agencies reported that they have taken, or plan to take, actions to inform residents of LIHTC properties of VAWA 2013's new protections. Of the responding agencies that have taken or plan to take steps, 11 have already taken action to inform residents of VAWA 2013's new protections, while 7 have not yet taken action but plan to do so in the near future. Some agencies, including Illinois, have also taken affirmative steps to train owners and agents in VAWA compliance and best practices for supporting tenants who are victims of domestic and/or sexual violence.

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



Protections Delayed /Page 11

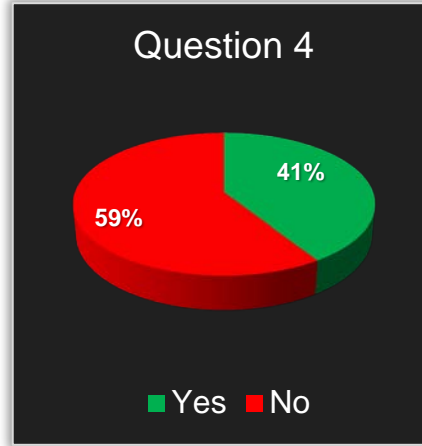
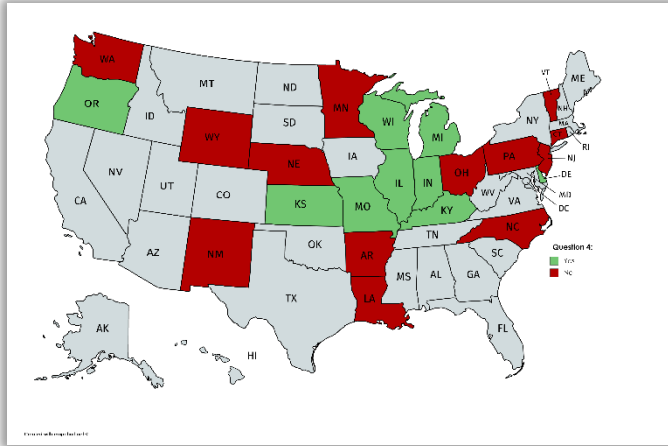
- 15 of the responding agencies reserve the right to bar owners from applying for LIHTC if they are noncompliant with VAWA and have not come into compliance after having been given notice. In Illinois, owners who are not in compliance with VAWA regulations and requirements are subject to negative scoring and/or a mandatory fail. Missouri and New Mexico further clarified in their responses that they reserve the right to bar owners, but attempt to differentiate between willful noncompliance and noncompliance that can be corrected through further education. Some agencies—including those in Nebraska, New Jersey, Minnesota, and North Carolina—reported that they are not certain that barring owners for VAWA noncompliance is within the scope of authority extended to state housing finance agencies and are waiting on additional guidance from Treasury.

# Violence Against Women Act (VAWA)

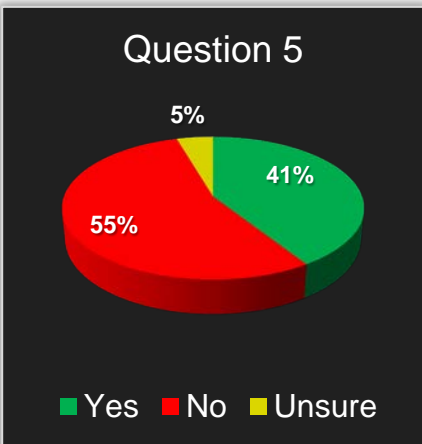
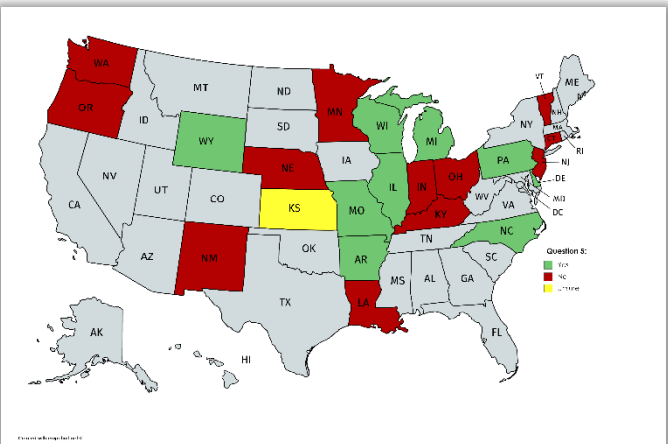
## HFA Implementation, cont.

### Protections Delayed - Survey Questions and Responses, cont.

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



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



- 8 of the 23 responding agencies require the use of a lease addendum that lets residents know that they have rights under VAWA. However, a majority of the responding agencies that require the use of a lease addendum, including Illinois, Delaware, Michigan, Missouri, and Wisconsin, have adopted HUD form 91067: Lease Addendum - Violence Against Women and Justice Department Reauthorization Act of 2005. Two other agencies, Nebraska and Washington, recommend the use of HUD form 91067 but do not require it. As HUD form 91067 was produced to inform residents of their rights under VAWA 2005 and most recently updated in 2008, the use of this form as lease addendum does not represent the full set of tenant protections under VAWA 2013.

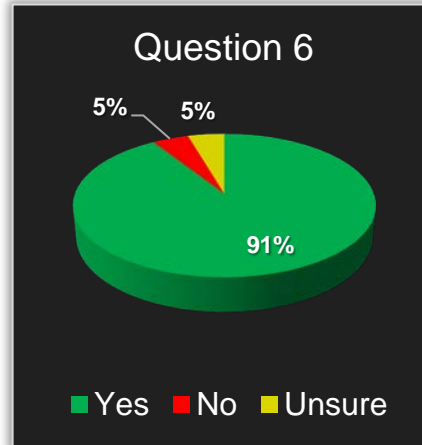
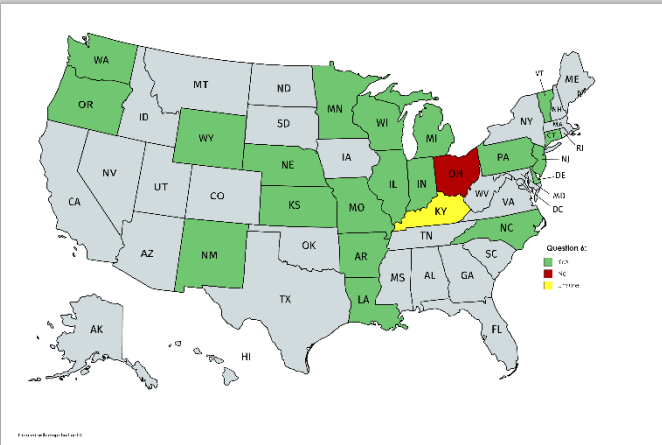
# Violence Against Women Act (VAWA)

REFERENCES & NOTES

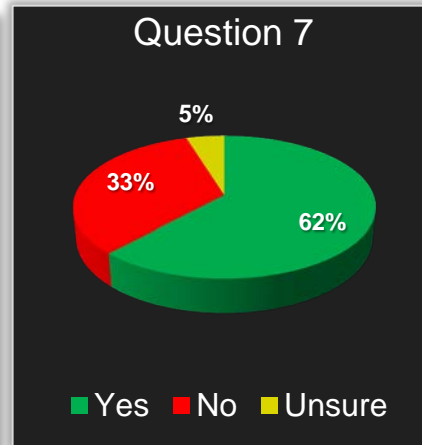
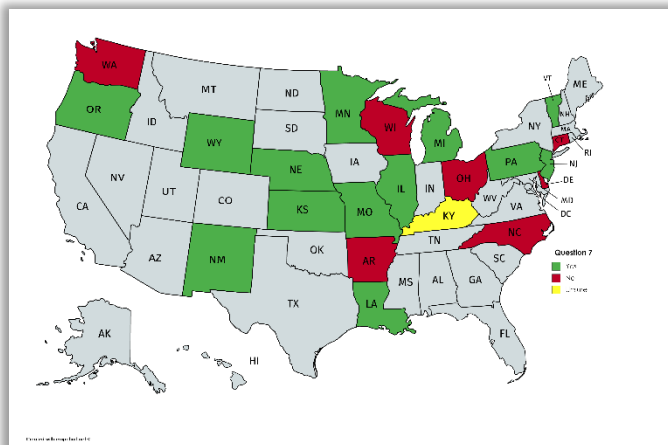
## HFA Implementation, cont.

### Protections Delayed - Survey Questions and Responses, cont.

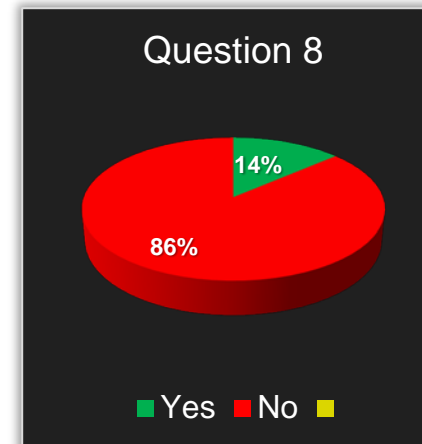
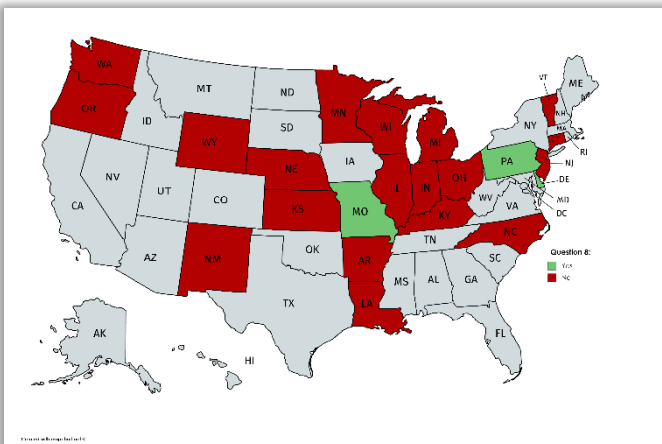
Q6 - Have you taken any actions, or plan to take any actions to inform owners, developers, or management agents of LIHTC housing about this change, and how they can support residents working to protect themselves from violence?



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



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



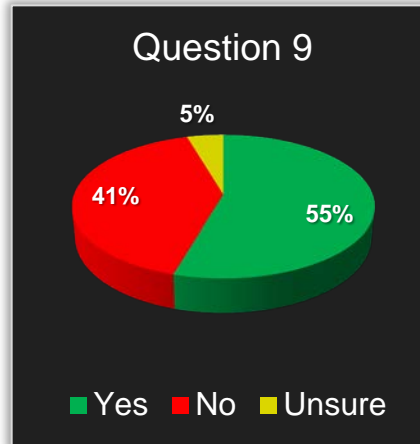
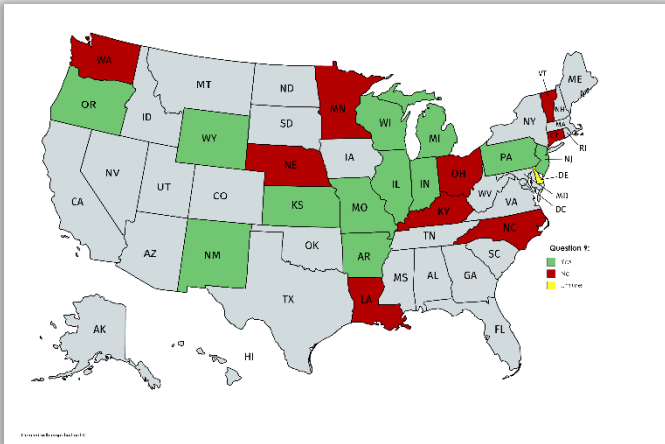


# Violence Against Women Act (VAWA)

## HFA Implementation, cont.

### Protections Delayed - Survey Questions and Responses, cont.

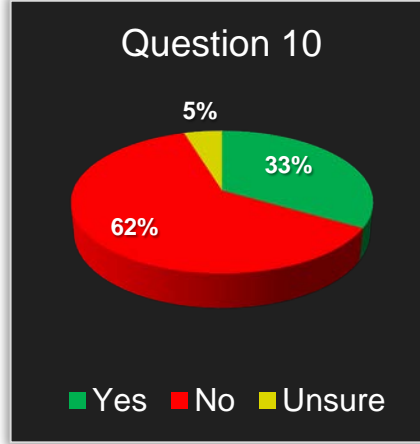
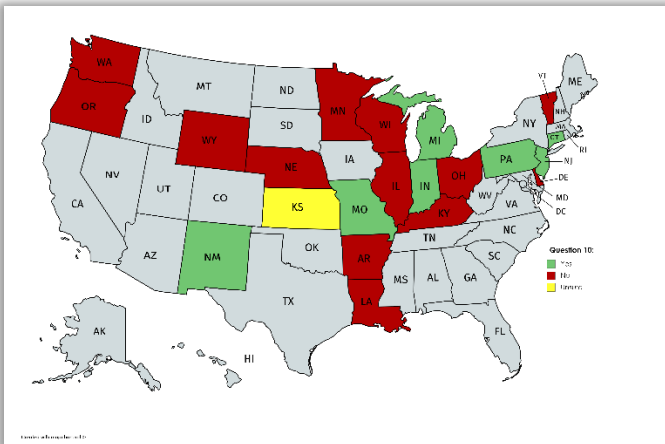
Q9 - Have you revised your compliance monitoring procedures to include VAWA matters?



Protections Delayed /Page 11

- 11 of the 23 responding state housing finance agencies have revised their compliance monitoring procedures to include VAWA matters. Indiana, Missouri, New Mexico, Wisconsin, and Wyoming monitor compliance with VAWA through auditor reviews and visits to the property to ensure compliance. Indiana also specifically reviews tenant selection plans and leases for any discriminatory language. New Jersey, Oregon, and Pennsylvania include VAWA compliance as a part of their yearly certificate of ongoing compliance. Approximately two-thirds of the responding agencies have plans in place to deal with reported owner noncompliance with the provisions of VAWA 2013. The most common approach to addressing noncompliance is the issuance of an 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition form.

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



# Violence Against Women Act (VAWA)

## HFA Implementation, cont.

### 2017 Research Update

In fall of 2017, Regional Housing Legal Services (RHLS) conducted a research update on HFA VAWA implementation.

*This information was provided to E&A Team and permission was granted to E&A to include this update in this presentation.*

#### Method of Data Collection

QAP: RHLS conducted a search of all 2017 QAP available on novoco.com on 9/14/2017.

Compliance Manuals: RHLS conducted a search of all state compliance manuals available on novoco.com on 9/14/2017.

#### Research Results

##### QAPS:

- At least 12 2017 QAPs mention VAWA-related requirements
- 6 QAPs require some sort of tenant notice (in the lease, a lease addendum, or notice of rights)
- 4 QAPs included a basic non-discrimination statement
- 4 QAPs state specifically say that being a victim of domestic violence is not Good Cause for eviction
- 2 QAPs discuss transfer procedures



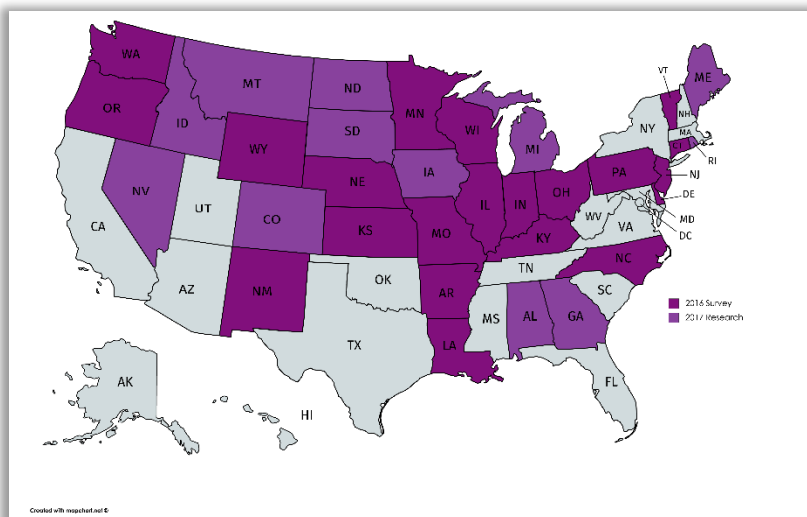
##### Compliance Manuals:



- At least 13 LIHTC Compliance Manuals mention VAWA-related requirements
- 7 states included a basic non-discrimination statement
- 6 require some sort of tenant notice (in the lease, a lease addendum, or notice of rights)
- 5 states specifically say that being a victim of domestic violence is not Good Cause for eviction
- 3 discuss transfer procedures

#### Combined Results

Combining survey results with subsequent research shows at least 33 states are taking some steps to implement VAWA 2013!



Contact RHLS with questions regarding this research or the 2016 survey.

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# Violence Against Women Act (VAWA)

## HFA Implementation, cont.

### 2018 QAPs to Date



20 QAPs were reviewed.

- 7 QAPs include victims of domestic violence, dating violence, sexual assault, or stalking under the QAP selection criterion for tenant populations with special housing needs;
- 4 QAPs stated that a VAWA incident is not good cause for eviction
- 6 QAPs include language regarding emergency transfers
- 1 QAPs includes language regarding notices similar to HUD-5380 and HUD-5382
- 3 QAPs included a basic non-discrimination statement

**70% of the QAPs reviewed included VAWA in some form!**

### NCSHA VAWA Recommended Practices

#### Violence Against Women Act (VAWA) Compliance - Recommendation

Agencies should adopt Housing Credit policies and procedures that support Violence Against Women Act (VAWA) compliance, including:

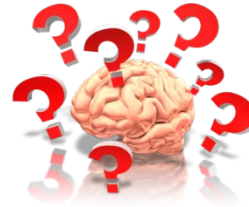
- ✓ Referencing victims of domestic violence, dating violence, sexual assault, or stalking under the QAP selection criterion for tenant populations with special housing needs;
- ✓ Clarifying that a domestic violence incident does not constitute good cause for eviction of the victim if the victim otherwise meets tenant occupancy rules;
- ✓ Notifying Housing Credit development owners and property managers about victims' rights under VAWA, including providing tenant notice, establishing an emergency transfer plan, and formalizing transfer request requirements;
- ✓ Amending extended use agreements to explicitly reference VAWA requirements; and
- ✓ Modifying compliance monitoring procedures to identify VAWA noncompliance. In addition, Agencies should require owners of Housing Credit developments to implement the following practices to ensure VAWA compliance:
  - ❑ Prohibiting denial of assistance and/or eviction from housing (consistent with state eviction laws) on the basis that an applicant or resident is a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or resident otherwise qualifies for admission;
  - ❑ Providing notices similar to HUD-5380 (Notice of Occupancy Rights Under VAWA) and HUD-5382 (Certification of Domestic Violence) to all tenants in existing developments;
  - ❑ Utilizing a lease addendum to inform tenants they are in a Housing Credit unit and that they are protected by VAWA;
  - ❑ Allowing bifurcation of tenant leases in order to evict or terminate assistance of the perpetrator and continue housing assistance for the victim;
  - ❑ Developing policies on acceptable unit transfers, referencing guidance from HUD-5381 (Model Emergency Transfer Plan) and HUD-5383 (Emergency Transfer Request); and
  - ❑ Training property management staff that interact with applicants and tenants on VAWA requirements.

# Violence Against Women Act (VAWA)

REFERENCES & NOTES



Questions? Email your questions to:



[Amandalee@eandateam.com](mailto:Amandalee@eandateam.com)



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# Violence Against Women Act (VAWA)

## REFERENCES & NOTES