

E&A Team Presents....

# Conquering LIHTC VAWA Compliance Challenges



*Presented by:*

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## Introduction

### IRS Silence on VAWA Implementation

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 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.



# CONQUERING COMPLIANCE: FOCUS ON VAWA

Introduction 2016 VAWA 2017 Research 2018 Update

## IRS Silence on VAWA Implementation

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.

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.



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# CONQUERING COMPLIANCE: FOCUS ON VAWA

Compliance

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## 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.

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# CONQUERING COMPLIANCE: FOCUS ON VAWA

## 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 reduces the applicable fraction to 90%, which reduces 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%).

32,400 Annual Credit

# CONQUERING COMPLIANCE: FOCUS ON VAWA

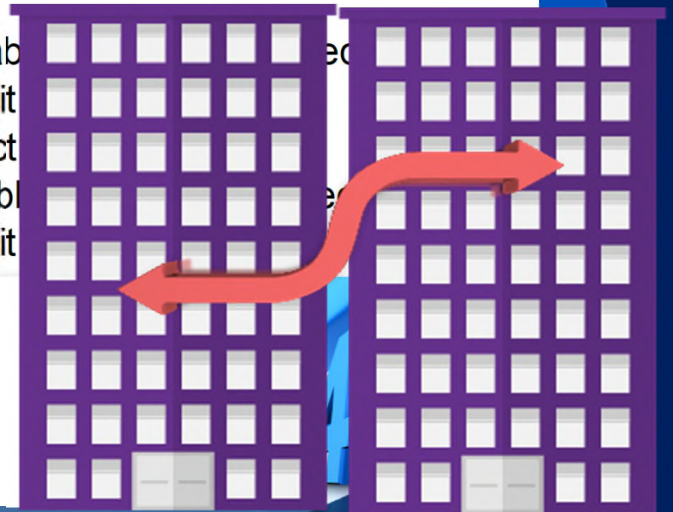
## Compliance Challenges

### Transfer Challenges

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

If These 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 for an emergency transfer to another unit, and the only available unit is in a Multiple Building Project.
- Not a Multiple Building Projects (per IRS Form 8609 8(b) election)  
A household whose income exceeds the current applicable income limit for an emergency transfer to another unit, and the only available unit is in a project that is not a Multiple Building Project.



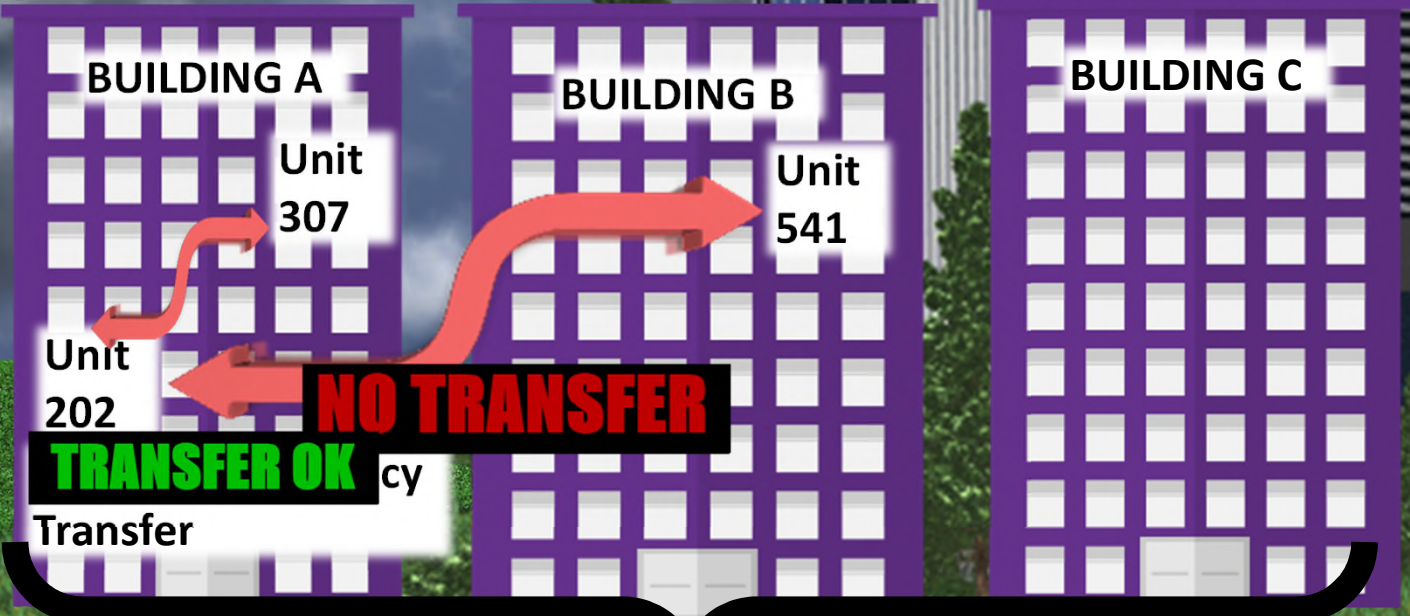
b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)? . . . . .

Yes  No



# ONE PROJECT

AG1



**TRANSFER OK** cy  
Transfer



**Slide 8**

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**AG1**

**Sign Words**

Amanda Gross, 1/5/2018

b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)? . . . . .

Yes

No

**ONE PROJECT**

**ONE PROJECT**

**ONE PROJECT**

AG1

**BUILDING A**

**BUILDING B**

**BUILDING C**

Unit  
401

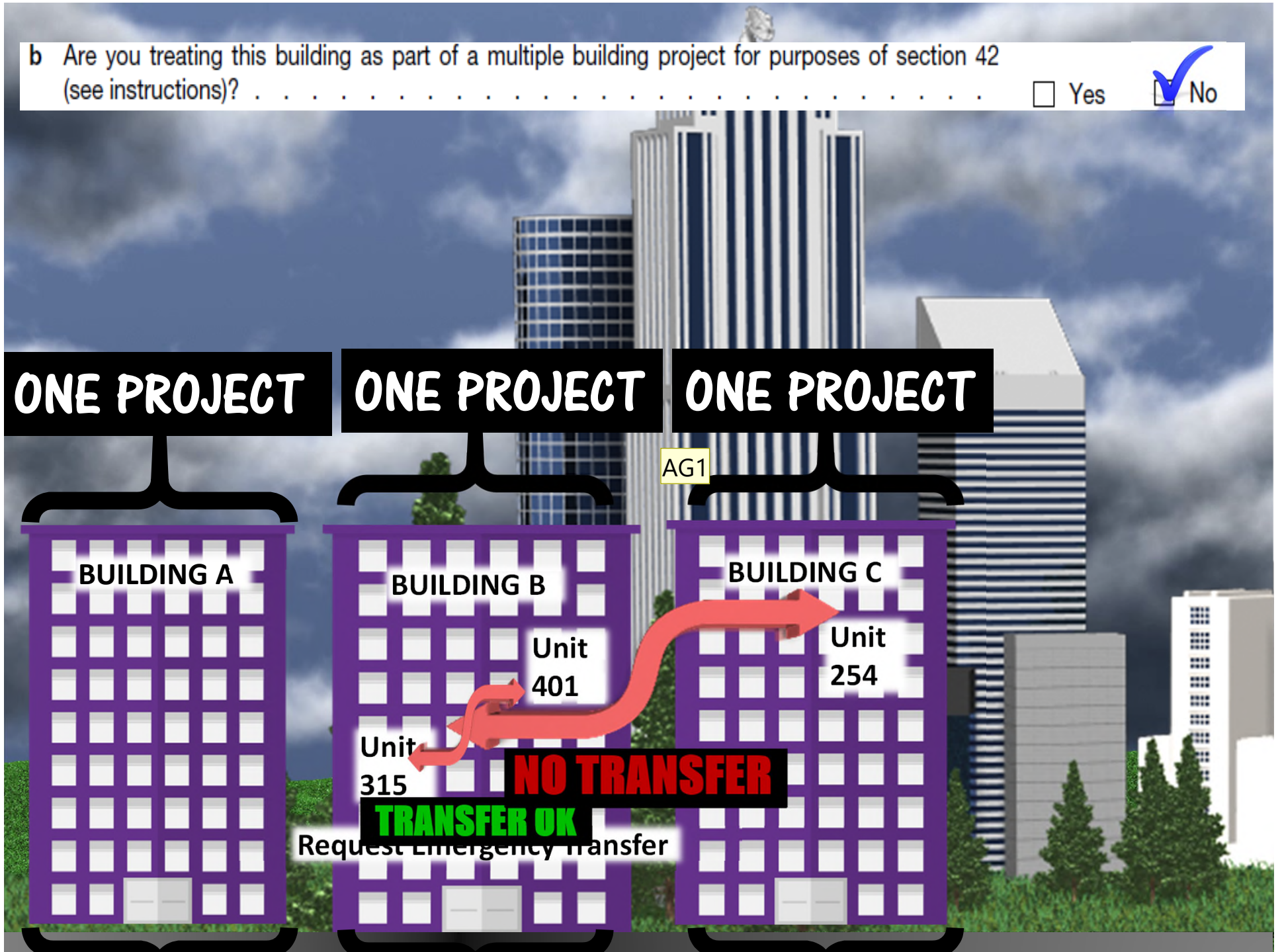
Unit  
254

Unit  
315

**NO TRANSFER**

**TRANSFER OK**

Request Emergency transfer



**AG1**

**Sign Words**

Amanda Gross, 1/5/2018

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## VAWA and Fair Housing

### 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.

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.

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# CONQUERING COMPLIANCE: FOCUS ON VAWA

Compliance  
Challenges

2016 VAWA  
Survey

## Protections Delayed

This report along with additional resources can be obtained by visiting the [Regional Housing Legal Services](http://www.rhls.org) 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.



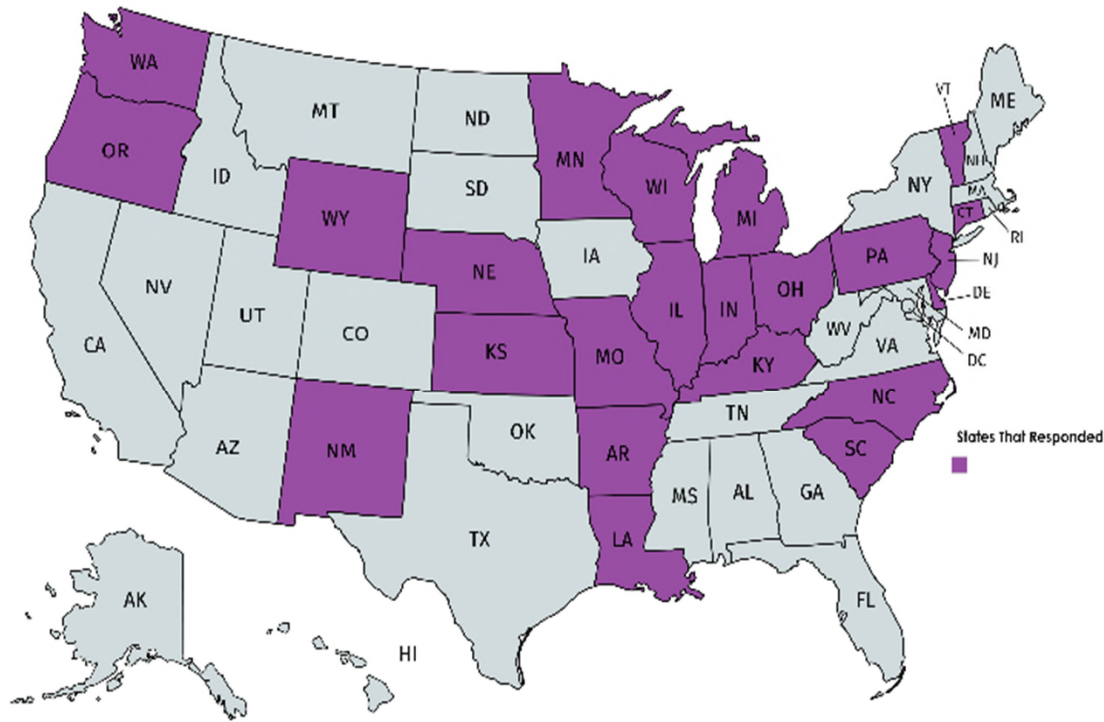
# Protections Delayed

## 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.



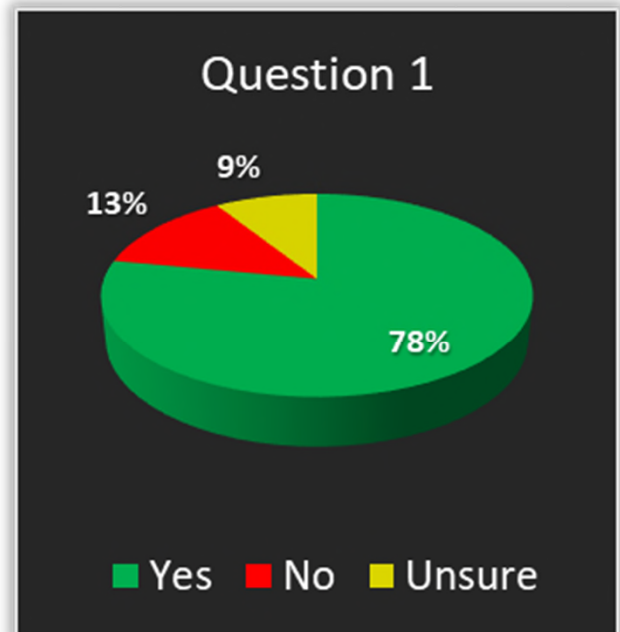
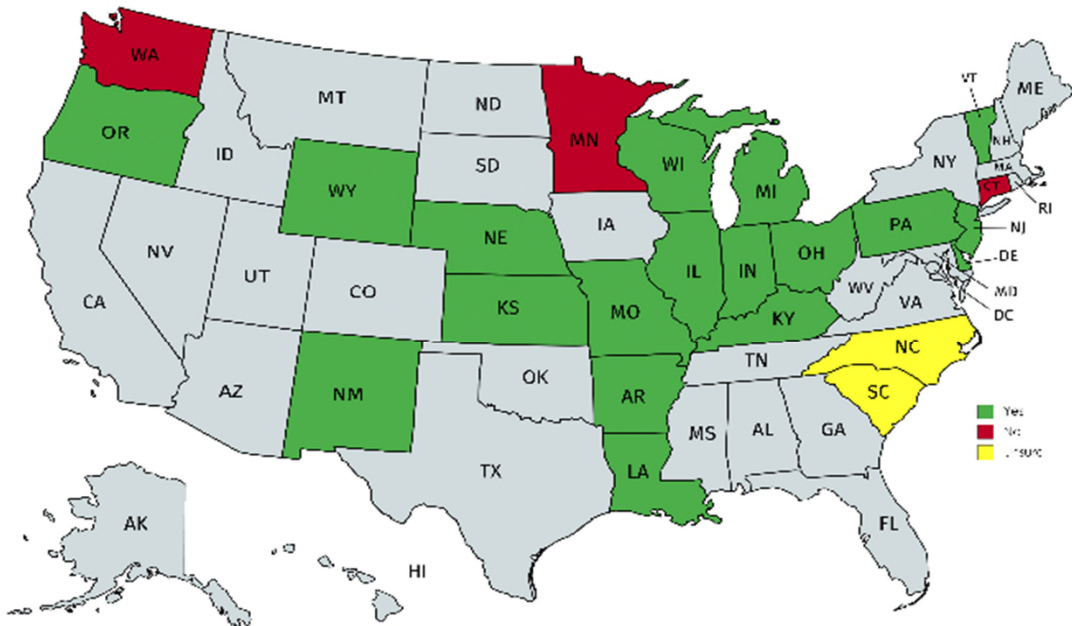
## Protections Delayed:

State Housing Finance Agency Compliance With The Violence Against Women Act

**Contributors**

- American Civil Liberties Union
- National Resources Legal Center
- Eastern Michigan University School of Law
- National Resource to End Domestic Violence
- National Housing Law Center
- Radical Housing Law Services
- Sagehen Shriver National Center of Housing Law

**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?**

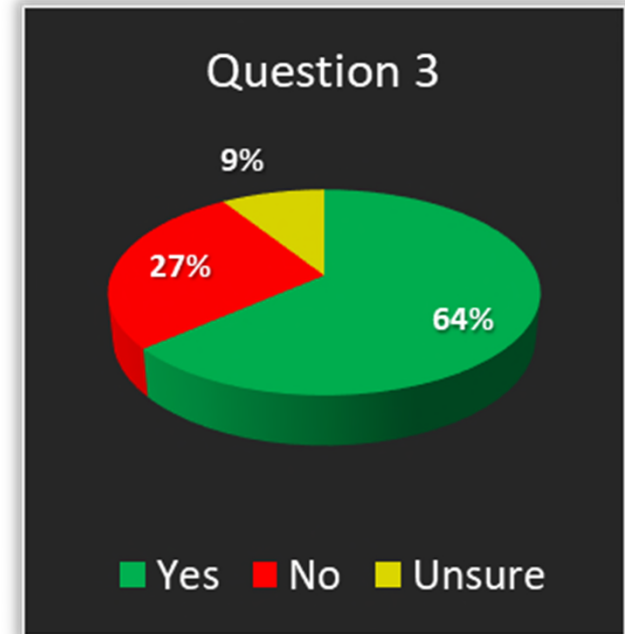
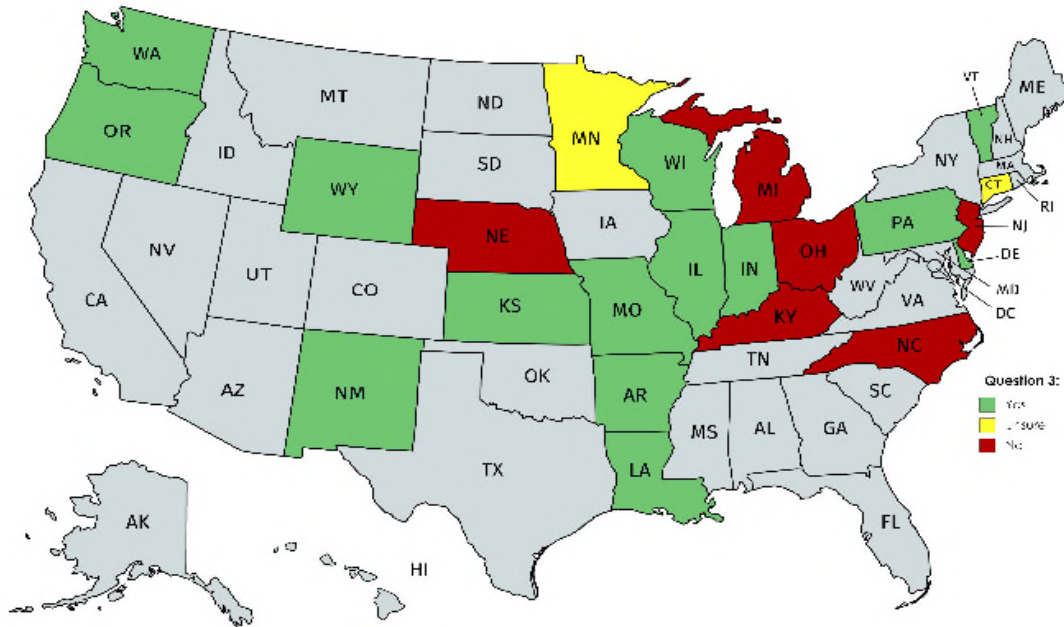


Source: HUD, 2014

➔ 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?**

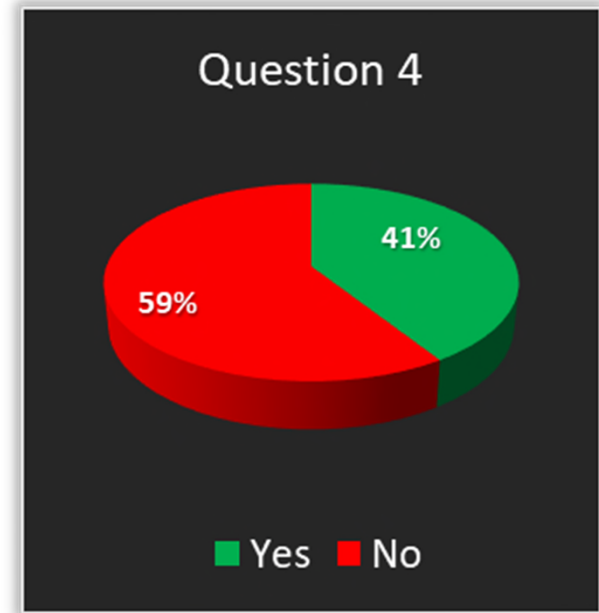
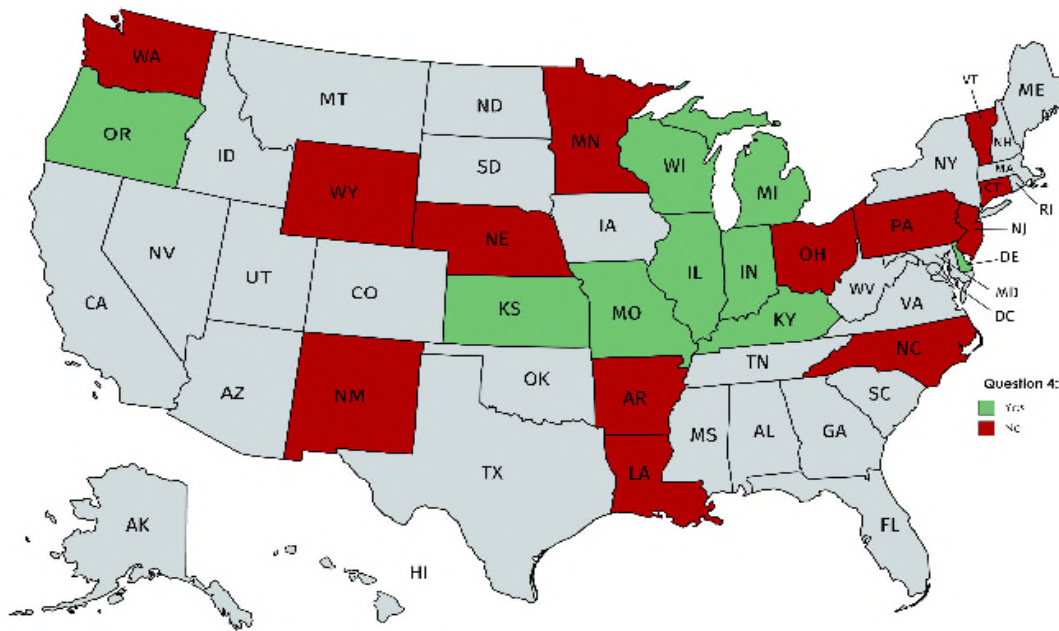


➔ Protections Delayed /Page 11

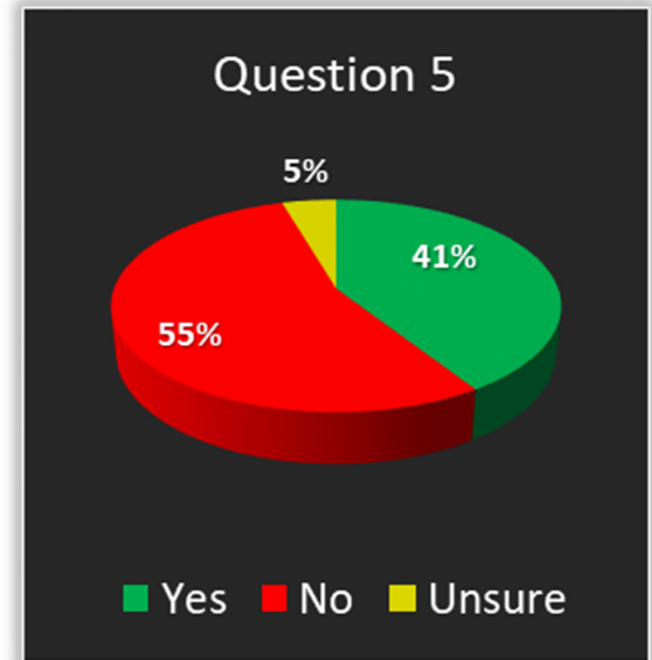
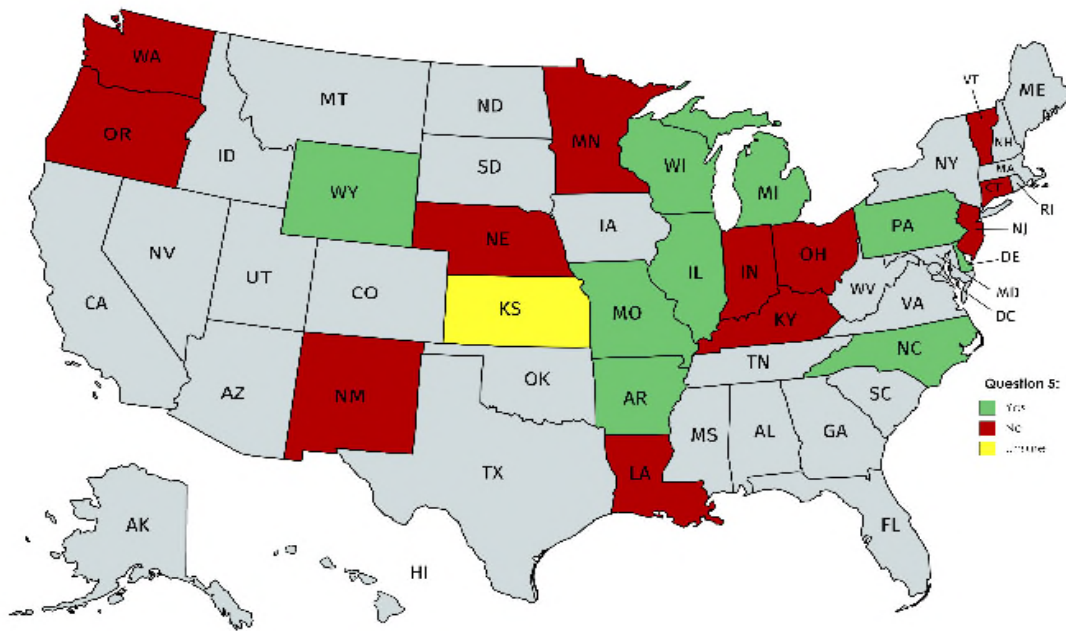
- 15 of the responding agencies reserve the right to bar owners from applying for LIHTC if they are noncompliant with VAWA and have not come into compliance after having been given notice. In Illinois, owners who are not in compliance with VAWA regulations and requirements are subject to negative scoring 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.



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



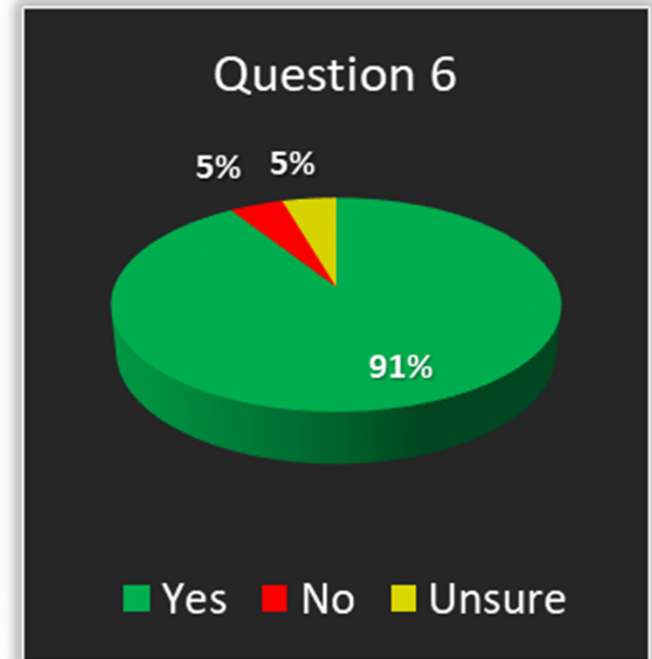
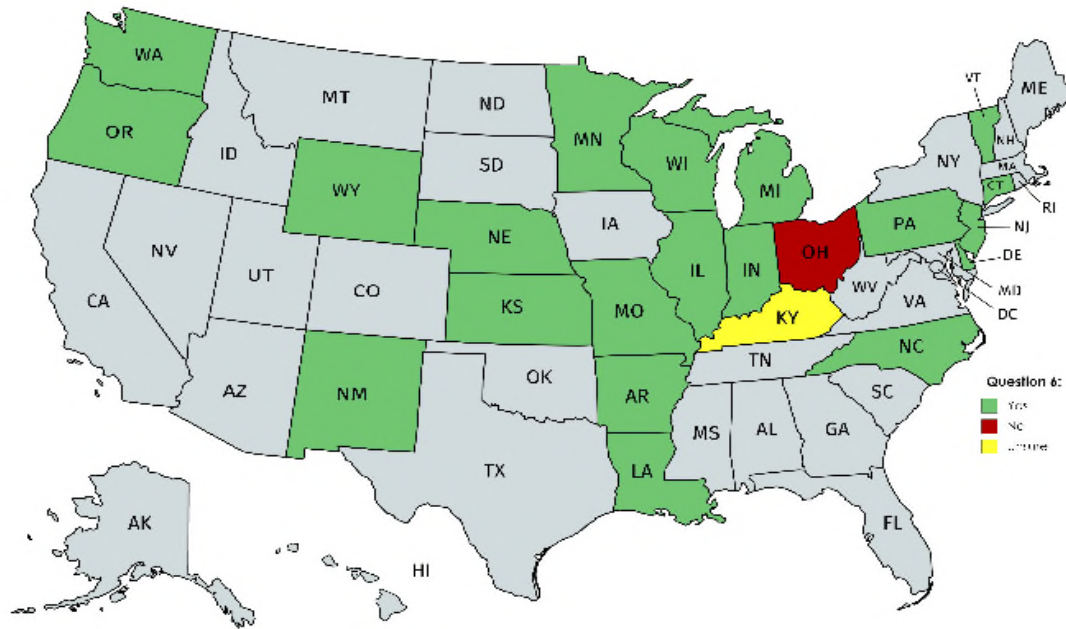
Q5 - Have you created a lease addendum which would let residents know that they have rights under VAWA and how to use those rights to help protect themselves?



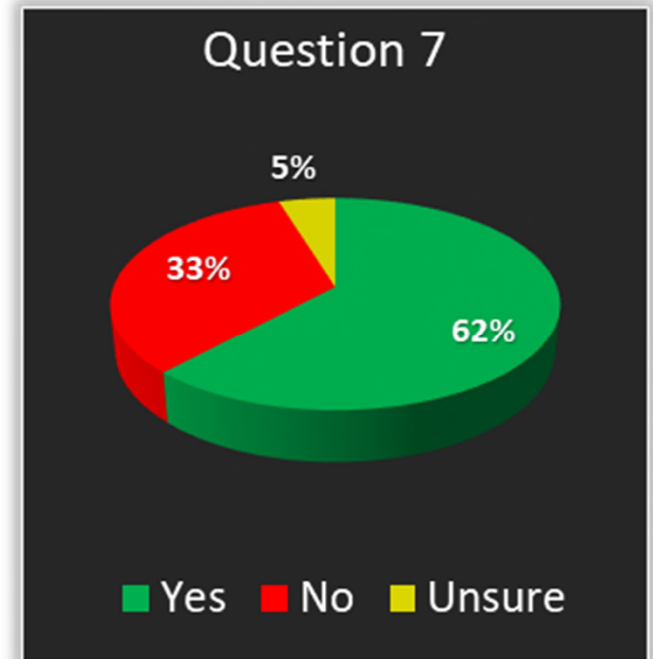
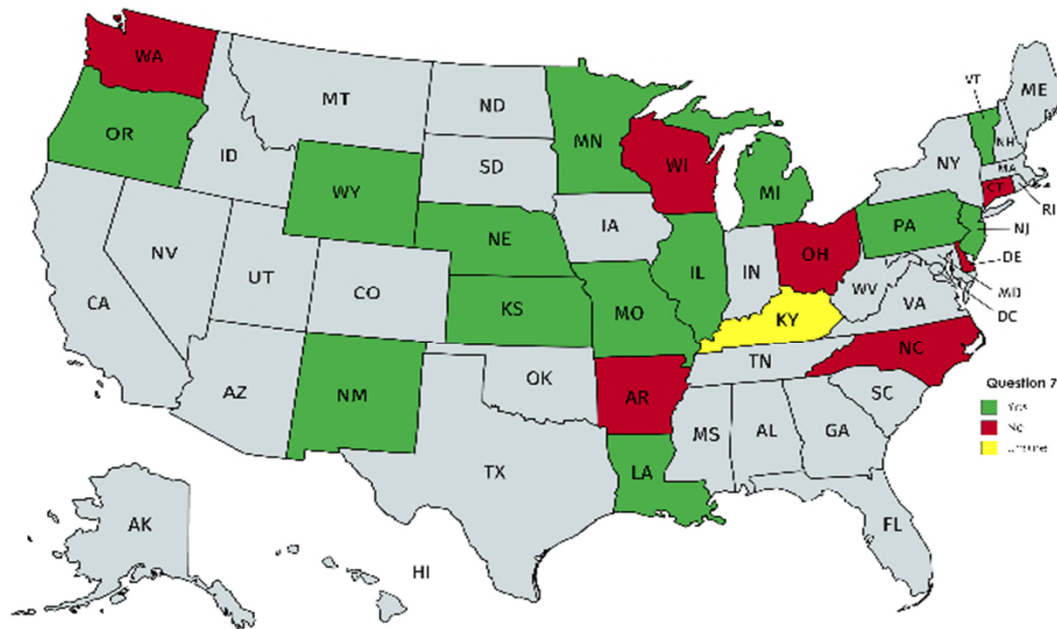
➔ Protections Delayed /Page 11

- 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.

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?

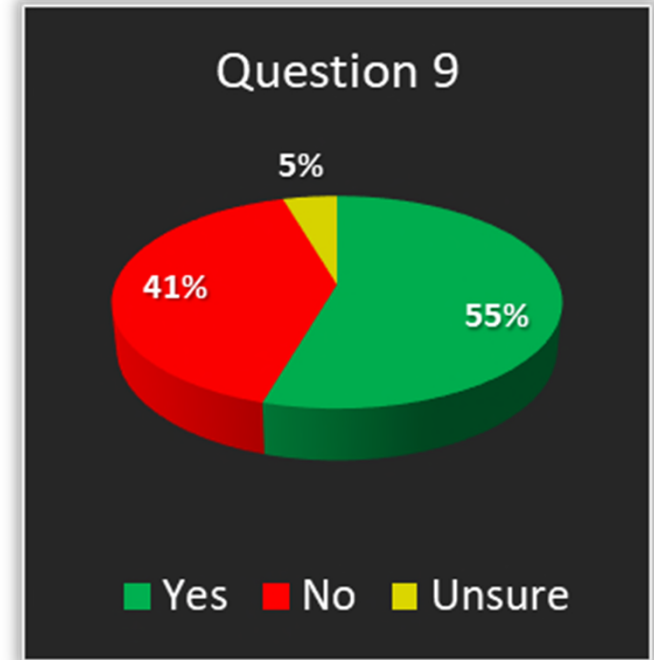
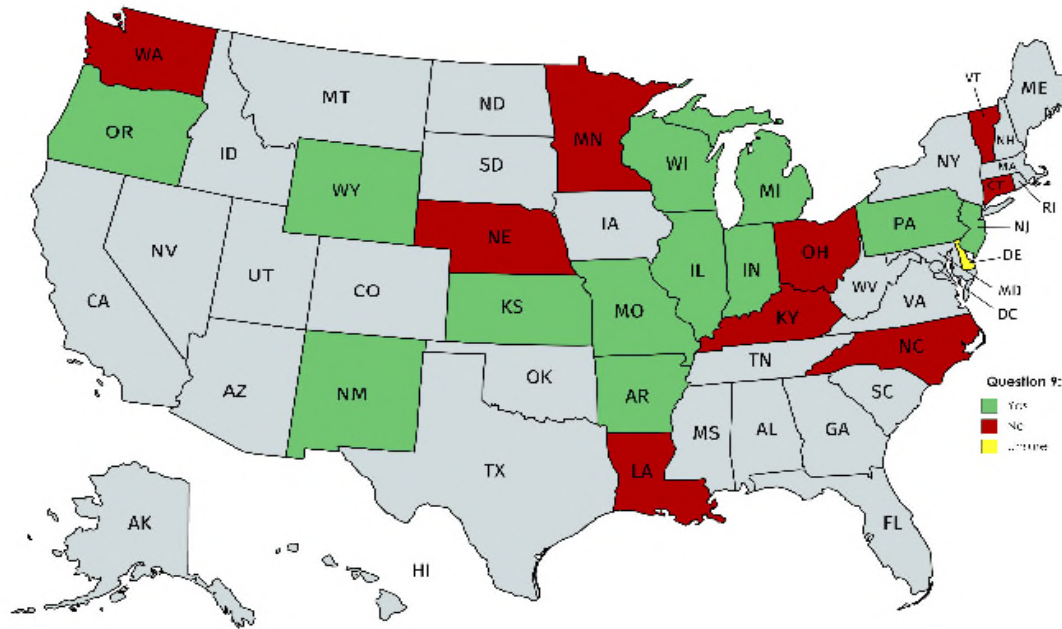


Q7 - Have you conducted, or plan to conduct, any trainings for owners, developers, or management agents for LIHTC housing about how they can implement procedures to ensure that the applicable VAWA provisions are being followed at their properties?





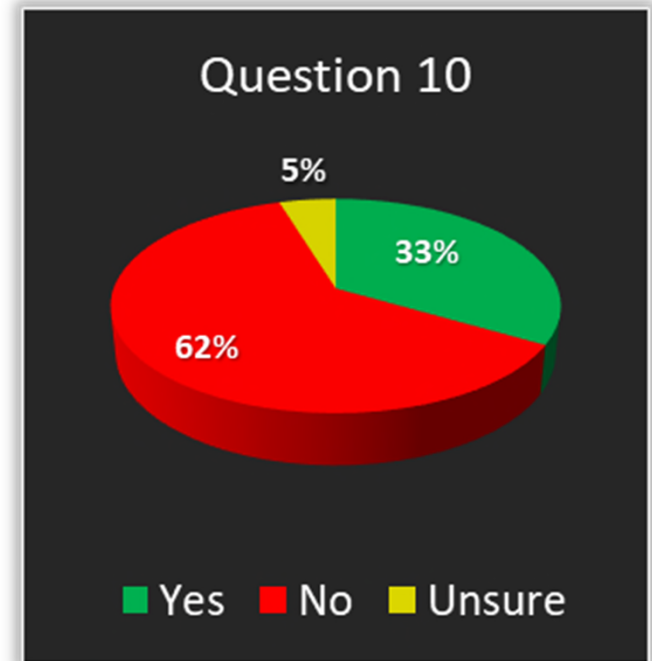
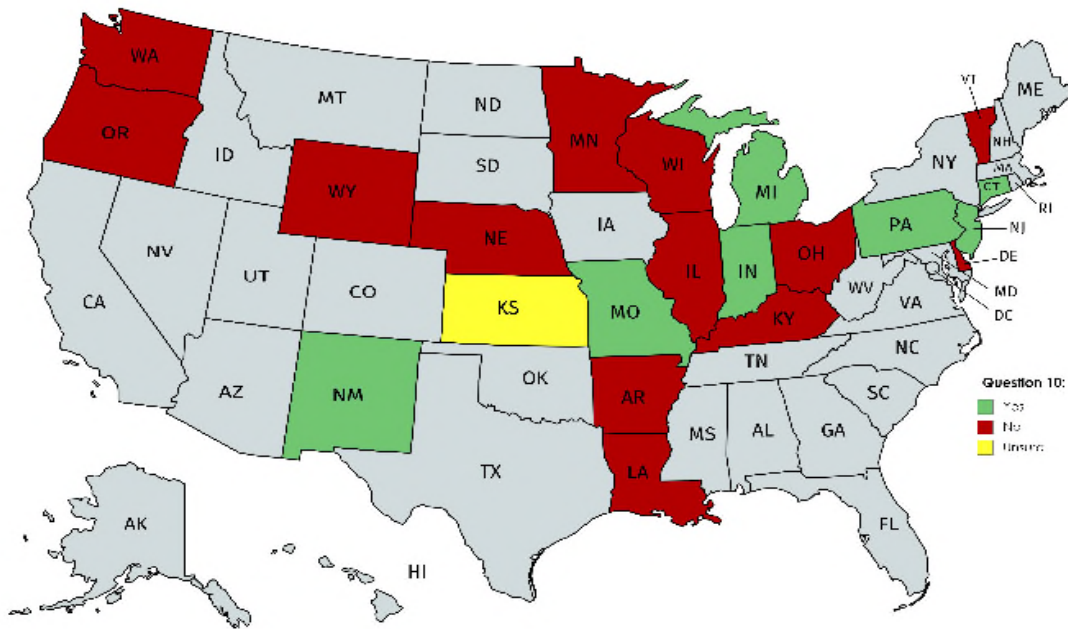
## Q9 - Have you revised your compliance monitoring procedures to include VAWA matters?



➔ 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?



# CONQUERING COMPLIANCE: FOCUS ON VAWA

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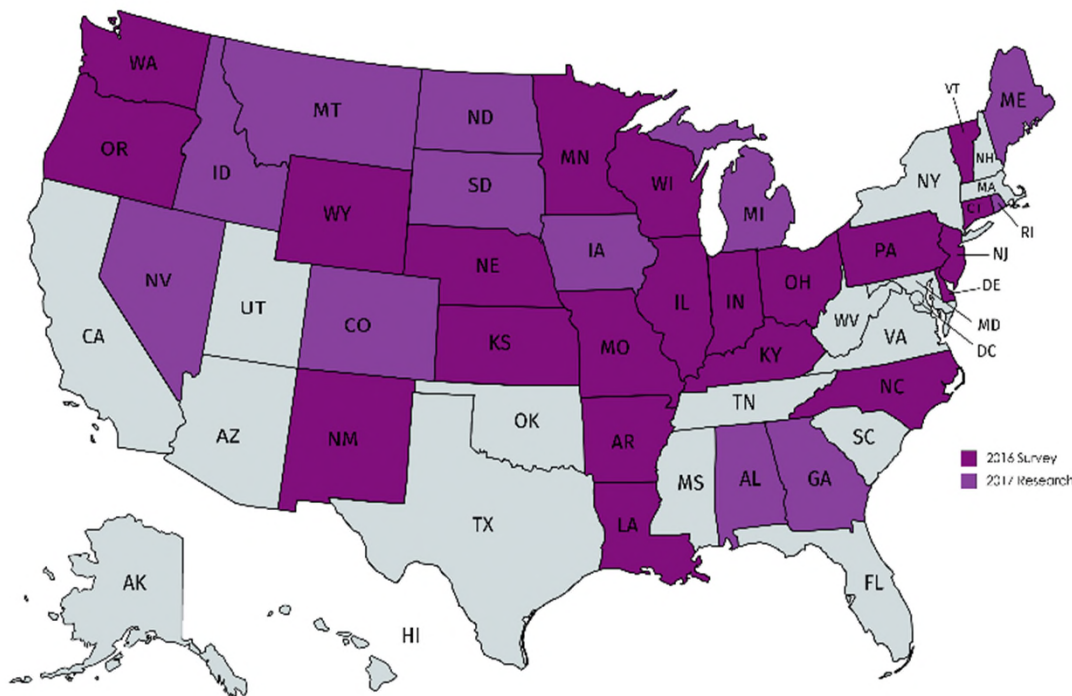
2016 VAWA  
Survey

2017 Research  
Update



## Combined Results

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



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estic violence is not Good



# CONQUERING COMPLIANCE: FOCUS ON VAWA

Compliance

2016 VAWA  
Survey

2017 Research

2018 Update

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Update

2018 VAWA Research



## 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!**

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2016 VAWA  
Survey

2017 Research

2018 Update

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

- ✓ 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:
  - ✓  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.
  - ✓  Utilizing a lease addendum to inform tenants they are in a Housing Credit unit and that they are protected by VAWA;

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