


Violence Against Women Reauthorization Act of 2013: Housing Protections

1

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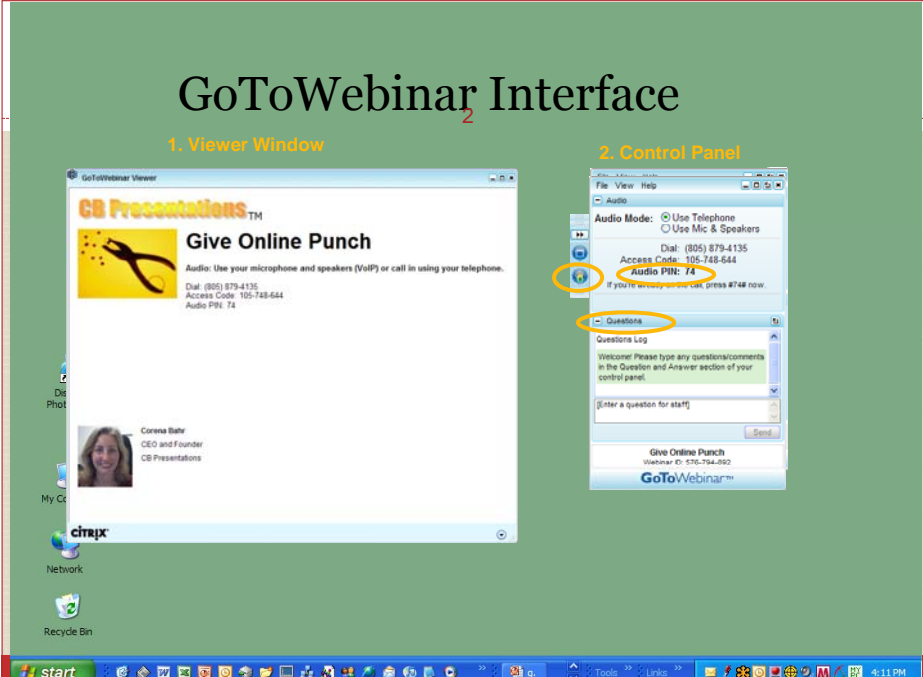
HOUSING JUSTICE

National Housing Law Project



GoToWebinar₂ Interface

1. Viewer Window 2. Control Panel



The screenshot displays the GoToWebinar interface. On the left, the 'Viewer Window' shows a presentation slide titled 'Give Online Punch' by Corena Bahr, CEO and Founder of CB Presentations. The slide includes contact information: Dial: (805) 879-4135, Access Code: 105-748-644, and Audio PIN: 74. On the right, the 'Control Panel' is visible, featuring options for 'Audio Mode' (Use Telephone or Use Mic & Speakers), dial-in numbers, and the 'Audio PIN: 74'. A 'Questions' section is also present, with a 'Send' button for submitting questions.

Housekeeping

3

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

Goals for Today

4

- Review and discussion of the VAWA 2013's new and continuing housing protections for survivors of domestic violence, dating violence, sexual assault and stalking.
- Quick overview of federally assisted housing programs covered by VAWA 2013.

Other Protections for Survivors

5

- In addition to VAWA, DV survivors may have protections under state landlord-tenant laws, state fair housing laws, and the federal Fair Housing Act
 - See HUD Memo: Assessing Claims of Housing Discrimination against Victims of DV under FHA and VAWA (2/9/11)
- NHLP has a 50-state compendium of domestic violence housing laws at <http://nhlp.org/node/1436>

VAWA Reauthorized in 2013

6

**VAWA 2013 CONTINUES PROTECTIONS UNDER
VAWA 2005 AND PROVIDES NEW PROTECTIONS**



VAWA Reauthorized in 2013

7

- VAWA was enacted in 1994, reauthorized in 2000, 2005, and in March of 2013.
- VAWA 2013 maintains VAWA 2005's housing safeguards, expands the housing programs to which the law applies and adds new protections.
- VAWA 2013's housing protections are effective now. Some of the amendments require changes to the regulations or actions by federal agencies for purposes of implementation, but most of the provisions must be implemented now by landlords and managers of the covered housing programs.

VAWA Laws and Regulations

8

- VAWA 2013 streamlines the housing protections for all the covered housing programs by repealing many of the prior provisions that had been replicated in several program statutes and consolidating them into a new section of VAWA, to be codified at **42 U.S.C. § 14043e-11**.
- HUD's final regulations implementing VAWA 2005 on October 27, 2010. See 75 Fed. Reg. 66,246.
 - The regulations continue to apply to public housing, voucher and project-based Sec. 8 programs
 - Contain helpful language on several issues affecting DV survivors, which we'll discuss.

Quick Summary of VAWA 2013 Protections

9

- VAWA 2013 continues the following:
 - Protections for survivors applying for HUD subsidized housing.
 - Protections against evictions and subsidy terminations.
 - Facilitates safety moves for survivors with Section 8 vouchers.
 - Permits lease bifurcation to remove the perpetrator from the unit.
 - Rules for proving domestic violence, dating violence, or stalking.
 - Obligates PHAs to have plans & goals and describe PHA programs to assist survivors.
- VAWA 2013's new provisions provide for:
 - Coverage of more federal housing programs.
 - Protections to survivors of sexual assault and LGBT survivors.
 - Rights for survivors remaining in housing after lease bifurcation.
 - Expansion of documentation rights to show abuse.
 - What landlords may do when there are conflicting certifications.
 - Development of model plans for use for emergency transfers.
 - Notification concerning VAWA housing rights at three critical junctures in multiple languages.

Federal Housing Programs Covered by VAWA 2013

10

**VAWA 2013 COVERS MANY MORE
FEDERAL HOUSING PROGRAMS THAN VAWA 2005**



VAWA 2005 & 2013: Expanded Coverage

11

Programs that were covered by VAWA 2005:	Programs added by VAWA 2013:
Public Housing	Other HUD programs
Section 8 vouchers	<ul style="list-style-type: none"> • § 236 Multifamily rental housing
Project-based Section 8	<ul style="list-style-type: none"> • § 221d3 BMIR (Below Market Interest Rate)
Section 202 Supportive Housing for the Elderly*	<ul style="list-style-type: none"> • HOME
Section 811 Supportive Housing for People with Disabilities*	<ul style="list-style-type: none"> • HOPWA (Hous. Opp. for Pple w/AIDS)
<p>*Originally added by HUD regulations. Now provided for in the VAWA 2013 statute.</p>	<ul style="list-style-type: none"> • McKinney-Vento (Homelessness Programs)
	Department of Agriculture
	<ul style="list-style-type: none"> • Rural Development (RD) Multifamily
	Department of Treasury/IRS
	<ul style="list-style-type: none"> • Low-Income Hous. Tax Credit (LIHTC)

Brief Introduction to Federal Housing Programs

12

- Common characteristics
- Unique features
- Where is the housing located and how to find it

Federal Housing Programs: Common Features

13

- Owner of the unit may be any type of entity
 - PHA or other state or local government agency
 - Nonprofit
 - For-profit or limited partnership
- Regulator may include
 - A federal department, such as HUD, Department of Agriculture, Rural Development, or IRS
 - A state or local agency may also be involved

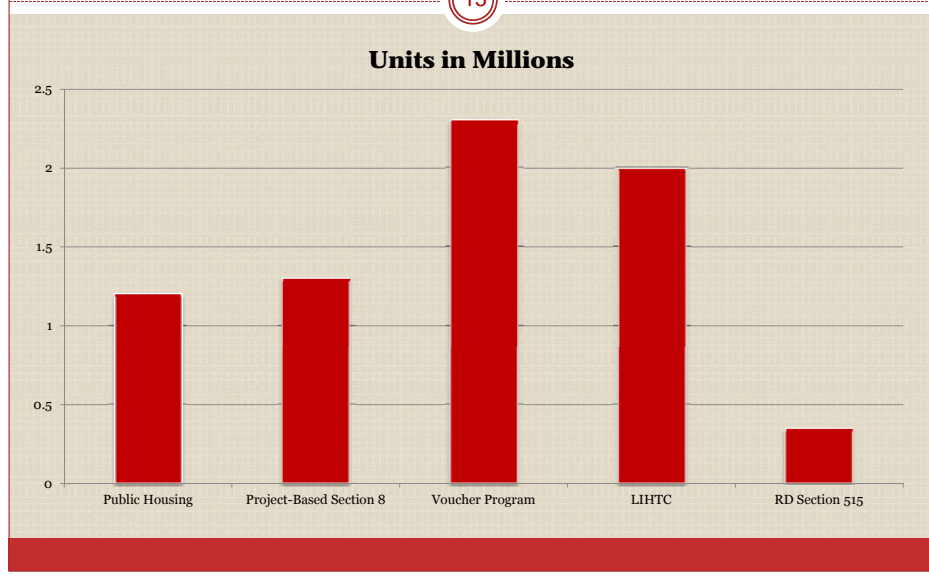
Federal Housing Programs: Common Features

14

- Admission is generally restricted to low income (defined as a % of AMI); there may also be targeting to the lowest income families
- Rents overall are below market and for some of the largest programs rents are a % of family income
- Lease or lease addendum is often a required form
- Eviction and/or termination from the program:
Good cause generally required
 - There are exceptions

Federal Housing Programs: Comparing Subsidized Housing Programs

15



Federal Housing Programs: Unique Features

16

- Rules and regulations for each programs vary
- HUD Programs
 - Public Housing: Owned and managed by PHA
 - Voucher Program: Housing subsidy moves with the family
 - Project-based Section 8: privately owned and subsidy does NOT move with family
 - Section 202: Supportive housing for families whose head is elderly
 - Section 811: Supportive housing for families whose head is disabled
 - Section 236 and 221d3 BMIR: privately owned; rent controlled
 - HOME: state/local gov't allocates federal funds for this housing
 - HOPWA: housing for low-income families living with HIV/AIDS
 - McKinney Vento: Housing for homeless and disabled

Federal Housing Programs: Unique Features

17

- Department of Agriculture
 - RD multifamily: located in towns with $\leq 20,000$ in population or if within a SMA, $\leq 10,000$ in population & rural character
- Department of Treasury/IRS
 - Low Income Housing Tax Credit (LIHTC): Restricted rents set at 30% of 50% or 60% of AMI

Federal Housing Programs: How to Locate or Identify the Housing

18

- To help ID type of federal housing program involved, see information packet.
 - Chart entitled “Federal Housing Programs in Brief”
 - Outlines of federal housing programs (Public Housing, Project-based Section 8, Vouchers, Multifamily, RD, LIHTC)
 - Additional website link
 - ✦ <http://preservationdatabase.org/> (Public Housing, HUD mortgages, project-based rental assistance, LIHTC, RD)

Overview of VAWA 2013's Housing Protections

19

**VAWA 2013 INCLUDES
MANY NEW PROTECTIONS FOR SURVIVORS**



Coverage

20

VAWA covers people who are subject to:

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

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

Sexual assault: Any nonconsensual sexual act prohibited by law

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

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

Admissions

21

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



Ada

22

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

Evictions & Terminations

23

- PHAs, landlords and owners may not deny assistance to, terminate assistance for or evict a tenant on the basis that she is or has been a survivor.
- Crimes against a survivor “directly relating to” the abuse are not grounds for evicting the survivor or terminating her rental subsidy.
- An incident of actual or threatened DV does not constitute a “serious or repeated lease violation” or “good cause” for evicting the survivor or terminating her rental subsidy.
 - Review lease: *Note* RD form lease “all perpetrators will be evicted, while the victim may remain” HB 2-3560, Att 6-E.

Sonya

24

- Sonya is a Section 8 voucher tenant:
 - Sonya’s ex-boyfriend, John, cut himself while breaking into her unit. A security guard responded to the incident and made a report to management.
 - Soon after, Sonya received an eviction notice for nuisance due to “several domestic disputes between you and John.”
 - Sonya had several police reports and a restraining order documenting John’s violence against her.
- A court found that the landlord was prohibited from evicting Sonya under VAWA. *Metro N. Owners LLC v. Thorpe*, <http://www.nhlp.org/node/75>

Limitations

25

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

Removing the Abuser from the Unit

26

- PHA or Section 8 landlord may “bifurcate” a lease to evict a tenant who commits DV while preserving the survivor’s tenancy rights.
 - This provision is subject to state and local law. No guidance on how VAWA and state and local law will interrelate.
- **New protection for tenants remaining in housing as a result of lease bifurcation**
 - If the individual who is evicted is the sole tenant eligible to receive the housing assistance, the PHA or landlord must provide the remaining tenant an opportunity to establish eligibility or a reasonable time to move or establish eligibility for another covered housing program.

Removing the Abuser from the Voucher

27

- Additionally, PHA may terminate Sec 8 assistance to the abuser while preserving assistance to survivor
 - If a family breakup results from DV, “the PHA **must** ensure that the victim retains assistance.” 24 C.F.R. § 982.315.
 - Consider asking for the voucher to be assigned to the survivor during restraining order, divorce, or separation proceedings.

Voucher Portability

28

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

Emergency Transfers

29

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

Emergency Transfers (cont'd)

30

- HUD must establish policies and procedures under which a survivor requesting emergency transfers may receive a tenant protection voucher
 - Annually, Congress may issue tenant protection vouchers for certain purposes.
- Implementation issues:
 - What can advocates & survivors do during the interim period before federal agencies adopt model emergency transfer plans?
 - ✦ Are PHAs and owners required to use transfer plans?
 - ✦ Is a survivor entitled to receive a transfer voucher if other transfer options are infeasible?
 - What advocacy is needed to influence the federal agencies' implementing regulations/model policies?

Proving DV: Procedural Requirements

31

- Assume that PHA or landlord seeks to evict because of lease violation. Tenant says the violation is related to DV.
- PHA or landlord is free to take tenant at her word, or can ask tenant to prove DV.
- Any request by PHA or owner for proof must be in writing.
- Tenant has 14 business days from PHA or landlord's request to provide proof.
- PHA or landlord is free to grant extension if tenant needs more time.

Proving DV: 3 Options for Documentation

32

1. Self-Certification Form

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

2. Police, Court or Administrative Record

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

3. Statement from Third Party

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

Proving DV (cont'd)

33

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

Proving DV (cont'd)

34

- HUD has stated that “an individual requesting protection cannot be required to provide third-party documentation.” 75 Fed. Reg. 66,251.
- However, in cases where 2 household members claim to be the victim and name the other household member as the perpetrator, the housing provider can require third-party documentation.
 - Included in VAWA statute for the first time in 2013
 - Currently in HUD's implementing regulations for VAWA 2005

Proving DV (cont'd)

35

- Poll: Can a covered housing provider deny a request for VAWA protections if the victim has third party verification from a mental health provider or attorney?
 - Note: Caution about waiving attorney-client privilege

Notification and Language Access

36

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

Notification and Language Access (cont'd)

37

- HUD issued its LEP Guidance in 2007 (72 Fed. Reg. 2732) (Jan. 22, 2007). The Guidance instructs recipients of federal funding to:
 - conduct a four-factor analysis;
 - develop a Language Access Plan (LAP); and
 - provide appropriate language assistance.

Notification and Language Access (cont'd)

38

- Implementation issues:
 - What are PHAs, owners and managers obligated to do before HUD develops the notice?
 - ✦ PHAs and project-based owners and managers must comply with current regulations and use HUD required lease and lease addendum
 - ✦ What about notice to tenants in other covered housing programs?
 - What can advocates and survivor tenants do during the interim period before HUD develops this notice?

Other Requirements

39

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

Areas Where VAWA's Application Is Unclear

40

- VAWA housing protections do not clearly address:
 - Cases where the link between DV and the program violation is indirect, such as the abuser refusing to pay the rent.
 - Cases where survivor signed an agreement to keep the abuser off the premises or to repay damages caused by the abuser.
 - Cases where survivor repeatedly reconciles with abuser.
 - Where to file complaints if a PHA refuses to comply.

Systemic Advocacy

41

- In addition to advocating for individual survivors, consider:
 - Outreach and training PHAs and owners on VAWA 2013 and the dynamics of domestic violence, sexual assault, and stalking.
 - Reviewing the policies of PHAs and owners and suggesting ways that these policies could better serve DV survivors.
 - Forming a local working group composed of organizations such as: transitional housing providers, legal services, DV and homeless advocates, to address survivors' housing needs.

Resources

42

- NHLP's website for OVW grantees:
<http://nhlp.org/OVWgrantees>
- Webinar information packet:
 - Resources on how to identify federal housing program
 - VAWA 2005/2013 side-by-side comparison chart
 - Articles summarizing key provisions of VAWA 2013

Contact Information

43

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