

VAWA Complaint Process

The Violence Against Women Reauthorization Act of 2022 (VAWA 2022) provides protections for survivors of domestic violence, dating violence, sexual assault, and stalking who seek to access or maintain federally-assisted housing.¹ VAWA 2022 continues the housing safeguards developed under prior reauthorizations, expands housing protections for survivors, and explicitly creates a process for filing complaints under VAWA. This article focuses on the new complaint process. For information on the expanded housing protections, see [The Violence Against Women Reauthorization Act of 2022: What Survivor Advocates Need To Know](#) (September 2022).

VAWA 2022 requires HUD to enforce VAWA's housing rights "consistent with, and in a manner that provides, the same rights and remedies as those provided for in the Fair Housing Act."² As of October 1, 2022, FHEO and the U.S. Attorney General's Office will enforce VAWA's housing protections using the same processes that are used to enforce the Fair Housing Act.³ As such, VAWA complaints can now be filed with HUD's Office of Fair Housing and Equal Opportunity (FHEO).⁴ HUD will accept and investigate VAWA complaints as provided in its current fair housing regulations. VAWA complaints can be filed using FHEO's online portal at <https://www.hud.gov/fairhousing/fileacomplaint>, mail, email or telephone (1-800-669-9777 or TTY: 1-800-877-8339).

Who Can File a VAWA Complaint

A survivor covered by VAWA's protections who has had their VAWA rights violated under VAWA, or an advocate acting on their behalf or organization committing time to rooting out VAWA violations, can file a complaint. VAWA's core housing protections⁵ not only apply to survivors of domestic violence, dating violence, sexual assault and stalking, but also any affiliated individual, including a spouse, parent, sibling, child or person living in the household with the survivor.⁶ In addition, VAWA 2022 added two new provisions that expand VAWA protections beyond survivors of violence and sexual assault. First, the anti-retaliation provision protects any person who exercises rights under VAWA or assists anyone in exercising their VAWA rights from coercion, intimidation, threats, interference or retaliation.⁷ Second, under the right to report crime and emergencies provisions, "[l]andlords, homeowners, tenants, residents, occupants, and guests of, and applicants for, housing" have the right to seek law enforcement or emergency assistance on behalf of someone in need of assistance and cannot

¹ *Consolidated Appropriations Act of 2022*, Pub. L. 117-103, 136 Stat. 49 (March 15, 2022), codified at 34 U.S.C.A. § 12491, et seq. (West 2022).

² *Notice to Public Regarding FHEO Enforcement Authority and Procedures: Violence Against Women Act of 2022 (VAWA)*, FHEO Notice FHEO-2023-01 (Jan. 20, 2023); 34 U.S.C. §§ 12494 & 12495 (2023).

³ 34 U.S.C. §§ 12494(c) & 12495(d) (2023).

⁴ FHEO Notice FHEO-2023-01 *supra* note 2.

⁵ 24 C.F.R. § 5.2005(b).

⁶ 34 U.S.C. § 12491(b) (2023).

⁷ 34 U.S.C. § 12494 (2023).

be penalized for doing so.⁸ Individuals, organizations or member-based groups, such as a domestic violence or sexual assault group, a tenant council or association, or a fair housing organization may be able to file a VAWA complaint for interference with the right to report crime or for retaliation (or both).

VAWA Complaint Intake

Upon receipt of the complaint, FHEO will complete its intake process, which includes determining whether the complaint is timely and whether it has jurisdiction over the complaint.⁹ To be timely, complaints must be filed within 1 year of the VAWA violation.¹⁰ If the VAWA violation is ongoing, it can be filed more than 1 year after the initial violation.¹¹ If the complaint is filed more than 1 year after the VAWA violation and is not ongoing in nature, FHEO can but is not required to accept the complaint for investigation.¹²

In making its jurisdictional determination, FHEO will assess whether it can accept the complaint under VAWA and/or another fair housing or civil rights law that it enforces, such as the Fair Housing Act or Section 504 of the Rehabilitation Act.¹³ However, VAWA complaints do not need to allege a violation of another fair housing or civil rights law for FHEO to accept the complaint for investigation. As part of its intake, FHEO may interview the person who brought the complaint, call the complainant, and will assess whether immediate action is needed to address any timely or emergency issues, such as an eviction. As such, it is important that the complainant explain that immediate action is necessary or that the survivor's advocate convey that to the intake specialist. In a case requiring immediate action, FHEO may refer the matter to the Department of Justice for enforcement. However, it is important to note that FHEO rarely takes such action or does so on its own accord.

VAWA Complaint Investigation

If the complaint is timely filed and FHEO has jurisdiction, then FHEO can accept the complaint for investigation. Where the VAWA complaint implicates violations of other laws where FHEO has concurrent jurisdiction with other agencies or entities, FHEO should determine, considering the best interest of the survivor, whether the complaint or a portion thereof should be retained by FHEO, rather than referred to an equivalent state civil rights agency who also adjudicates these cases.¹⁴ For example, if the complaint implicates a Fair Housing Act violation, in addition to a VAWA violation, FHEO will retain the portion of the complaint alleging a VAWA violation where the complaint was initially filed with HUD. FHEO also has the discretion to retain both the Fair Housing Act claim and the VAWA claim.

⁸ 34 U.S.C. § 12495 (2023).

⁹ FHEO Notice FHEO-2023-01 *supra* note 2.

¹⁰ 24 C.F.R. § 103.35

¹¹ 24 C.F.R. § 103.35

¹² FHEO Notice FHEO-2023-01 *supra* note 2.

¹³ FHEO Notice FHEO-2023-01 *supra* note 2; 24 C.F.R. § 103.5 (2023).

¹⁴ *Guidance on the Implementation of FHEO Notice FHEO-2023-1* (March 27, 2023).

If FHEO accepts the complaint, it will assign an investigator(s) to investigate the allegations contained therein. FHEO generally has 100 days to investigate a complaint. FHEO will notify the party accused of committing the violation, called the respondent, of the complaint and provide them with an opportunity to respond to the allegations. The investigation may include interviewing the parties and witnesses, obtaining documents and inspecting properties. FHEO has subpoena power to obtain additional evidence, such as emails or other documentation concerning the alleged violations, where necessary.

Compliance Reviews

In addition to conducting an investigation after receiving a complaint, HUD may also initiate a compliance review. VAWA 2022 added a new section mandating that Agency's establish a process for conducting compliance reviews and making the information collected as part of that review publicly available.¹⁵ Where possible the process should be incorporated into existing compliance review processes.¹⁶ Agencies are required to review compliance with (1) requirements prohibiting the denial of assistance, tenancy, or occupancy rights on the basis of domestic violence, dating violence, sexual assault, or stalking; (2) the confidentiality provisions; (3) the notification requirements; (4) the provisions for accepting documentation; (5) emergency transfer requirements; (6) the prohibition on retaliation. HUD needs to issue additional guidance or rulemaking on VAWA compliance reviews, but FHEO can rely upon its existing compliance review process under the Fair Housing Act.¹⁷

Conciliation or Voluntary Compliance

The parties to the complaint will have the option to resolve or settle the complaint voluntarily at any time from the filing of the complaint to the issuance of a charge or dismissal of the complaint. FHEO will also attempt to conciliate, or settle, the complaint throughout its investigation. Any conciliation agreement is voluntary. If the parties reach an agreement, they will sign a conciliation agreement, which FHEO must approve, and the investigation will be closed. FHEO will be responsible for monitoring compliance with the agreement. Typical terms of a compliance agreement include mandatory training of the respondent.

There are a variety of demands advocates can advance to resolve the complaint. For example, advocates could ask for written policy changes; the development of partnerships with domestic violence and sexual assault groups (who are paid to consult with the covered housing provider); a relief fund for other victims of VAWA discrimination if the issue is systemic; mandatory training covering on VAWA, other civil rights laws, and the dynamics of abuse and sexual violence and for all current and future staff; restoration of housing rights to the complainant

¹⁵ 34 U.S.C. § 12492

¹⁶ 34 U.S.C. § 12492 (a)(1)(A).

¹⁷ While regulatory action is still needed before implementing this section under VAWA, 34 U.S.C. § 12492, pursuant to FHEO-2023-01, HUD is utilizing the compliance review processed under the Fair Housing Act, 24 C.F.R. § 103.204.

(and others if systemic); monitoring terms with meaningful metrics, i.e., the housing provider has to submit to FHEO the number of VAWA requests and their outcomes.

Determination & Enforcement

If the complaint is not resolved voluntarily, FHEO will make a cause determination as to whether a VAWA violation has or is likely to occur. If FHEO determines there is not reasonable cause to believe a violation has occurred or will occur, it will dismiss the complaint with a Determination of No Reasonable Cause and notify the parties of the dismissal. If FHEO determines there is reasonable cause to believe a violation has occurred or will occur, HUD's Office of General Counsel will issue a charge of discrimination. The case will then either proceed before a HUD administrative law judge or may be referred to the Department of Justice.

What Advocates Should Consider When Filing a HUD VAWA complaint with FHEO

As this process is still new to FHEO, advocates need to be aware of potential challenges before filing. First, FHEO investigators may not be fully informed about all of the rights survivors have under VAWA. Complaints should clearly articulate the law and the violation, citing the statute, guidance, and regulations where possible. Second, investigators are also unlikely to be trained to conduct trauma-informed interviews. Advocates should set the terms of those interviews, try to elicit what questions will be asked in advance, and limit those questions that are likely to retraumatize survivors. If clients have already written out their experience, for example by completing the HUD VAWA Certification Form (Form HUD-5382), advocates should encourage FHEO to rely upon that information.

Because the structure for VAWA complaints is built off of the same system created to investigate other civil rights complaints, parts of this process may also play out in ways contrary to VAWA. For example, FHEO is to first determine if it has jurisdiction over the complaint. The main question will often be if the complainant is a survivor entitled to VAWA's protections. Based upon some of the initial VAWA investigations underway by FHEO, advocates have reported that FHEO investigators are asking for written third party documentation of a person's status as a survivor, even though VAWA does not permit covered housing providers to demand this level of documentation in most cases. Advocates must insist that investigators follow VAWA's documentation rules to establish jurisdiction.

Given the generally slow pace of the HUD complaint process, advocates need to simultaneously pursue additional advocacy, such as asking for a stay or status quo agreement so that the survivor is not evicted or at risk of losing their housing subsidy pending the resolution of the complaint. Advocates can help the complaint process and the quality of the investigation by providing a suggested list of document requests FHEO can issue to the respondent. Advocates can also suggest who FHEO should interview as a part of the investigation. Because most VAWA violations likely also constitute a Fair Housing Act violation for sex discrimination, advocates

should consider alleging violations of both the FHA and VAWA.¹⁸ Where possible, and if consistent with your client's wishes, seek systemic relief so that other survivors do not have their VAWA or other rights violated. Systemic relief may also come from requesting a simultaneous compliance reviews which invites a broader review of the housing provider's policies. By identifying "other aggrieved parties" in the complaint, which should be any other applicant or tenant (current or former) at the property who is a survivor or whose household includes a survivor who was subject to respondent's unlawful policies, systemic relief could also be achieved. Advocates could also identify domestic violence and sexual assault coalitions who were forced to support and shelter survivors who should have been housed without their rights being violated.

For more information or guidance on the VAWA complaint process, please contact Kate Walz, kwalz@nhlp.org or Natalie Maxwell, nmaxwell@nhlp.org.

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¹⁸ Sara K. Pratt, *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the Violence Against Women Act* (Feb. 2011)
<https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.PDF>