

Understanding the HUD Complaint Process for VAWA Survivors

November 9, 2023



National Housing Law Project



NHLP's mission is to advance housing justice for underserved people and communities. For over ten years, NHLP has been funded by the Department of Justice's Office on Violence Against Women to serve as a national technical assistance provider on the housing protections under the Violence Against Women Act (VAWA). NHLP has worked with thousands of advocates and housing providers on VAWA compliance and implementation issues.

Today's Agenda

- Welcome
- Introductory Remarks
- Today's Speakers
- A Brief Overview of VAWA
- HUD Discrimination Complaint Process
- Common Scenarios
- Available Resources
- Questions & Answers

Introductory Remarks



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Today's Speakers

- Erik Heins, Director of Enforcement Support Division, HUD Office of Fair Housing and Equal Opportunity
- Kate Walz, Associate Director of Litigation, National Housing Law Project
- Natalie Maxwell, Managing Attorney, National Housing Law Project

Survivors' Rights Under VAWA - overview

- Cannot be denied admission, be evicted, or have their assistance terminated because of the violence committed against them;
- Must get a notice of housing rights under VAWA;
- Can request that an abuser be removed from the lease and housing, where applicable;
- Proving the violence;
- Must be given time to establish eligibility;
- Strict confidentiality;
- Emergency Transfers.

HUD VAWA 2022 Implementation

- Jan. 2023 Information Collection Notice - *new* forms
- March 2023 Information Collection Notice
- FHEO Notice on VAWA Complaints
- New HUD VAWA complaint form
- Survivors of Human Trafficking
- New dedicated website.

VAWA 2022 Updates

- Remaining federal housing programs
- New Domestic Violence Definition
- Retaliation
- Right to report crime
- Training/Technical Assistance
- Federal Compliance Reviews & Enforcement

VAWA Covered New Programs

- Section 202 Direct Loan program
- Transitional Housing Assistance for Homeless Veterans
- Grant programs for homeless veterans with special needs
- Supportive Services for Veteran Families (SSVF)
- Veterans Affairs Supportive Housing (VASH)
- National Housing Trust Fund
- Transitional Housing Assistance Grants for survivors
- Rural Development Vouchers
- “Catch all” provision – by notice

New Definition of Domestic Violence

- VAWA 2022 amended the definition of domestic violence to include economic abuse committed under the family or domestic violence laws of the jurisdiction receiving grant funding for purposes of services;
- Jan. 4, 2023 Interim Guidance: HUD interprets the core VAWA definition more broadly to include technological abuse, economic abuse, and a pattern of any other coercive behavior committed, regardless whether or not it constitutes a felony or misdemeanor crime.
- “...can be reasonably interpreted to be covered by HUD’s existing VAWA regulations which applies to covered housing programs and covered housing providers.”
- Further guidance forthcoming.

VAWA 2022, cont'd – protection from retaliation

- Applies to VAWA covered programs.
- Cannot discriminate against anyone who exercises VAWA rights or testified, or assisted in any manner related to VAWA housing rights.
- Cannot coerce, intimidate, threaten, interfere with, retaliate against someone because they exercise rights/protections, who has exercised rights/protections, aided or encouraged someone else to exercise rights/protections.
- This includes intimidating or threatening any person because they assisted or encouraged a person entitled to claim these rights; and retaliating against any person because they participated in any investigation or action to enforce these rights.

VAWA 2022, cont'd – Rt To Report Crime

Came in response to crime-free programs and nuisance ordinances:

- Protects right of landlords, homeowners, tenants, residents, occupants, guests, and applicants for housing to seek law enforcement or emergency assistance or on the basis on criminal activity of which they are a victim or otherwise not at fault.
- Cannot penalize or take action against, including actual or threatened: penalties, fines, or fees; eviction; refusal to rent or renew tenancy; refusal to issue permits; closure of the property, or designation of the property as a nuisance.
- Not limited to VAWA covered persons or covered housing providers.
- Reporting and certification requirement by state and localities receiving CDBG funding.
- Jurisdictions must review their policies & not violate VAWA.

VAWA Enforcement Authority

VAWA 2022 - The Secretary of Housing and Urban Development and the Attorney General shall implement and enforce this chapter consistent with, and in a manner that provides, the rights and remedies provided for in the Fair Housing Act.

VAWA Complaint Process

FHEO Notice 2023-01:

- Authority derived from the FHA enforcement scheme;
- Violations as of October 1, 2022 (or continuing through) can be brought through the FHEO complaint process;
- SOL: 1 year from termination of conduct, continuing violation, or permissive jurisdiction after one year.
- Use existing [HUD FHEO complaint form](#) until HUD VAWA specific form finalized;

VAWA Compliance Reviews

Federal agencies have until March 2024 to incorporate this new federal compliance review process into existing processes through regulations.

The U.S. Department of Housing and Urban Development Housing Discrimination Complaint Process: An Overview

Office of Fair Housing and Equal Opportunity

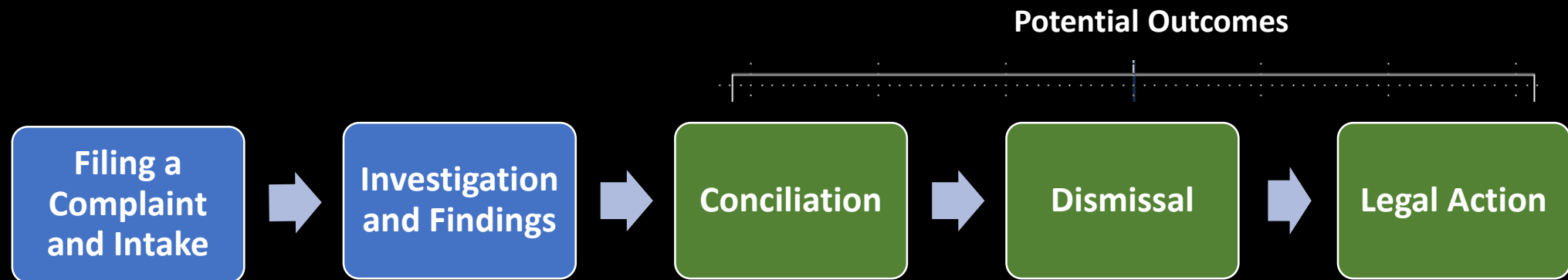


Combating Housing Discrimination: An Overview of FHEO's Enforcement Process

As part of its mission to eliminate housing discrimination, HUD's Office of Fair Housing and Equal Opportunity (FHEO) enforces several laws. (E.g. **The Fair Housing Act**, Title VIII of the Civil Rights Act of 1968, **Section 504 of the Rehabilitation Act of 1973**, and others)

- This includes cases where multiple laws are implicated, which we refer to as multijurisdictional cases.
- The 2022 reauthorization empowered FHEO to enforce the Violence Against Women Act (VAWA) using the same processes it uses to enforce the FHA.

The Complaint Process Under the Fair Housing Act: An Overview



Complaint Origination

- Complaints originate in one of two ways:
 1. Secretary Initiated
 2. Individual Complaint
- Complaints of potential housing discrimination can be filed in several ways:



Online



Mail



Phone

800-669-9777 or
800-877-8339 (TTY)

Step 1: Intake

❖ When an individual reports possible discrimination, FHEO staff will determine whether a formal complaint can be filed under the Fair Housing Act or other laws it enforces.

❖ FHEO staff will interview individuals involved to determine whether discrimination may have occurred and whether HUD has *jurisdiction* under the Act.

“Jurisdiction” encompasses several elements:

1. *Standing (aggrieved person)*

2. *Timeliness*: The FHA provides that a complaint must be filed “within one year” of the most recent act of discrimination. (24 CFR 103.5)

3. The *Respondent* and the *Dwelling* (place of potential discrimination) must be covered by the Act

4. The *Act* of alleged discrimination (i.e., the “issue at hand”) and the alleged *bases* of discrimination must constitute illegal practices as defined by the Act.

Step 2: Investigation

Investigator

- HUD will assign one or more investigators to investigate the allegations made in the complaint.

Process

- After receiving a complaint, the investigator(s) will seek further information on relevant factors:
- E.g. timeline of events, the locations of events, any people who were present when events occurred, relevant documents, etc...

Notification

- HUD will provide the party against whom the complaint has been filed notice and an opportunity to respond to the allegations.

Evidence

- HUD may gather evidence in many ways, including interviewing parties and witnesses, getting documents, and inspecting properties.

Things to know once complaint is filed

Complainants and those associated with them are **protected against retaliation.**

This can be the subject of its own fair housing complaint.

Parties can engage in conciliation

- This can result in resolution of the case through a conciliation agreement or a voluntary compliance agreement.
- Participation is voluntary.
- Monetary and non-monetary relief.
- HUD will try engage funding recipients to reach voluntary compliance agreement if one of its “compliance authorities” is implicated.

Example VAWA conciliations

- Two cases conciliated by FHEO
 - California Case
 - Denied housing opportunity because of past violations stemming from survivor status
 - Housing provider did not inform of right of appeal, or rights as a survivor of dating violence
 - Agreement requires fixing policies, putting complainant at top of waitlist, establish VAWA rights coordinator, and **pay monetary compensation for the survivor.**
 - Nevada Case
 - Emergency Transfer request when being stalked by partner
 - Allegation that housing provider asked for excessive documentation and threatened to revoke voucher
 - HUD investigation revealed lack of an emergency transfer plan, and policies that did not comply with VAWA for certifying survivor status, and documenting emergency transfer requests.
 - Agreement requires fixing policies, developing emergency transfer plan, conducting training, and **monetary compensation for survivor.**

Step 3: Findings

After the investigation, a finding will be issued	Type of finding depends on the authorities in the Complaint	“Determination of Reasonable cause” (FHA or VAWA) will lead to Charge of Discrimination	“Letter of Finding” (504, ADA, T6) : opportunity for review and additional conciliation before enforcement	If HUD finds believes discrimination did not occur, it will provide a brief statement of findings.	Regardless of determination, parties can request a copy of the Final Investigative Report which details the evidence gathered in the case.
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For more information, visit [HUD’s complaint process page](#)

Step 4: Adjudication

Charge

If HUD issues a charge of discrimination (FHA or VAWA), both parties to a complaint have 20 days to decide whether to elect to transfer the case to federal court.

Referral

If either party elects this option, HUD will refer the case to the Department of Justice.

Administrative Law Judge

- If no party chooses this option, the charge is heard by a HUD Administrative Law Judge

A Note on VAWA



2022 reauthorization added VAWA to FHEOs list of authorities to enforce.



VAWA cases could already enforced under FHA when analyzed as sex discrimination.



Uses same enforcement process as the Fair Housing Act



Includes new types of violations

E.g., Core protections in covered housing program, anti-retaliation, right to report (covered housing program not necessary)

Filing an FHEO Complaint

File online at: <https://www.hud.gov/fairhousing/fileacomplaint>

What Information is Helpful?

- A timeline of the events
- Documents related to interactions with the entity that caused harm
- Copies of any correspondence or decisions
- Names of any witnesses
- Any other records or evidence to support your claim

But Remember:

- NONE of the above is necessary, a brief description of the allegation is enough for HUD to start the intake process

Common Scenarios

Scenario #1

You work at a local domestic violence and sexual assault organization. Despite your efforts to educate the local public housing authority on gender based violence, the housing authority has a practice of evicting survivors because of damage to their units caused by the perpetrator.

Poll Question: Does the eviction of a survivor for damage to a unit caused by a perpetrator violate VAWA?

- 1) Yes
- 2) No
- 3) Not Sure

Scenario #1 - continued

Yes, a covered housing owner cannot evict a survivor for the damage caused to their unit by a perpetrator or for the cost associated with repairing that damage.

A survivor or the domestic violence and sexual assault organization could file a complaint with HUD's Office of Fair Housing.

Scenario #2

A resident reports to her property manager, a covered housing provider, that she was sexually assaulted on the premises and is requesting an emergency transfer. The property manager says that they have to first investigate before they can consider the emergency transfer request. The property manager asks the resident's neighbors if they witnessed the sexual assault.

Poll Question: Do the property manager's actions violate VAWA?

- 1) Yes
- 2) No
- 3) Not Sure

Scenario #2 – cont'd.

Yes, the property manager's actions violate VAWA.

1. Information provided by the resident, including the fact that they are a VAWA survivor, is to be held in strict confidence and not shared with others or entered into any shared databases unless the resident consents in writing or is required to use it for eviction proceedings or otherwise required by law.
2. The provider also cannot demand third-party proof of any kind, unless there is conflicting information about the violence. Regardless, interviewing of potential 3rd party witnesses would never be permitted.
3. The survivor could file a complaint with HUD's Office of Fair Housing.

Scenario #3

An applicant on the public housing waiting list had their application come up for review. The local public housing authority sent them a notice denying their application, stating that their poor credit history was the reason for the denial. The applicant called the housing authority and shared that they were in a domestic violence relationship with someone who controlled their finances, ruined their credit by taking out credit cards in their name. They asked for their application to be reconsidered. The housing authority said they were not willing to do that.

Poll Question: Did the housing authority's denial of housing violate VAWA?

- A. Yes
- B. No
- C. Not Sure

Scenario #3 – cont'd.

Yes, the PHA's actions violate VAWA.

1. Providers are prohibited from denying admission/termination/eviction an applicant/tenant/program participant based on an adverse factor (such as a criminal record, credit history, eviction or rental history) if determined that the adverse factor is a direct result of domestic violence, dating violence, sexual assault, or stalking.
2. Failure to provide a copy of the Notice of Occupancy Rights and VAWA Self-Certification Form with the written denial.
3. The survivor could file a complaint with HUD's Office of Fair Housing.

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Questions and Answers

(place questions in the Q & A box)

Materials and Resources

HUD Information on VAWA

- HUD's VAWA resource page
- New HUD **complaint form** including VAWA
- HUD Self Certification Form 5382 (comes in 15 different languages) <https://www.hud.gov/sites/documents/5382>.
- HUD Notice of Occupancy Rights Form 5380
<https://www.hud.gov/sites/documents/5380.docx>

National Resources

- **American Civil Liberties Union Women's Rights Project, Safe at Home:** [aclu.org/other/safe-home](https://www.aclu.org/other/safe-home)
- **National Housing Law Project** nhlp.org/OVWgrantees
- **National Alliance for Safe Housing** nashta.org
- **National Domestic Violence Hotline:** (1-800-799-7233, 1-800-787-3224 (TTY) thehotline.org
- **National Law Center on Homelessness and Poverty** nlchp.org
- **National Network to End Domestic Violence** nnedv.org
- **Rape, Abuse & Incest National Network** rainn.org
- **Safe Housing Partnerships (clearinghouse of information)** safehousingpartnerships.org

National Resources

- **Resource Sharing Project** resources on sexual assault and housing: resourcesharingproject.org
- **National Sexual Violence Resource Center (NSVRC)** resources on housing and sexual violence: nsrvc.org
- **OVW Resource Page:** tribal, state, and territory sexual assault coalitions: justice.gov/ovw/localresources.
- **Freedom Network USA:** freedomnetworkusa.org
- **Collaboration Toolkit for Anti-Trafficking and Housing Programs:** freedomnetworkusa.org/uploads/toolkit
- **Housing Options for Survivors of Trafficking:** freedomnetworkusa.org/housing-options
- **An Introduction to Human Trafficking for Housing Providers:** <https://youtu.be/To2RTrbwS60>

State and Local Resources

- **State & Local housing protections for survivors in your area**, see NHLP's [Housing Rights of Domestic Violence Survivors: A State and Local Law Compendium](#)
- **Womenslaw.org**: A project of the National Network to End Domestic Violence, provides state-specific legal information and resources for survivors of domestic violence. womenslaw.org
- For more information about state or local legal services, please visit: <https://www.ncsc.org/topics/legal-services/legal-aid-pro-bono/state-links.aspx> or <https://www.lawhelp.org/find-help>
- For more information about state domestic violence coalitions, please visit: <http://bit.ly/NNEDVcoalitions>

National Toolkits/Brochures

- **HUD's new resource page.**
- Community Based Advocate Toolkit: How to make sure your clients have safe housing
 - https://www.nationalallianceforsafehousing.org/wp-content/uploads/2019/05/Survivor-Housing-Protections_NonLegalAdvocateToolkit-Final-5-14-19.pdf
- [NHLP VAWA Brochure](#) (link includes brochures in Spanish & English, FAQs, and newsletters).