

Violence Against Women Act, Part 2: Legal Protections for Survivors

Thank you for participating. The event will begin shortly...



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Learning Objectives

- Understand VAWA's housing protections and remedies for survivors.
- Develop working knowledge of HUD FHEO's new enforcement authority, including complaint filing and investigative processes, under VAWA.
- Identify potential legal remedies for survivors under VAWA.
- Recognize common VAWA legal issues and scenarios in housing to be able to direct survivors to access appropriate assistance.

Reminders

- ❑ This event is being recorded.
- ❑ Materials, including the slide deck and resources, are posted on www.HUDExchange.info/NFHTA.
- ❑ Event recording will be available about two weeks after the event.
- ❑ Submit questions in the Q&A box at any time during today's event.

INTRODUCTION TO VIOLENCE AGAINST WOMEN ACT (VAWA) AND FHEO'S VAWA COMPLAINT PROCESS

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Information Provided for Purposes of NFHTA Training, January 18, 2023, Only

LEARNING GOALS

- Understand the basic rights survivors have under VAWA
- Develop awareness of overlapping authority between Fair Housing Act and VAWA
- Begin to identify facts indicating a possible VAWA violation
- Know how to file a VAWA complaint with HUD
- Gain awareness of HUD's VAWA resources

INTRODUCTION TO VAWA'S HOUSING PROTECTIONS

- VAWA was enacted in 1994 and amended multiple times.
- HUD's implementing regulations for VAWA's protections, rights, and responsibilities are codified in 24 CFR part 5, subpart L, and related provisions in HUD's program regulations (“HUD's VAWA regulations”).
 - These regulation implement VAWA as amended through VAWA 2013.
- VAWA Reauthorization Act (VAWA 2022) was included as part of the Consolidated Appropriations Act of 2022.
- The amendments that VAWA 2022 makes to the Housing Rights Chapter of VAWA build on 2013 and 2016 amendments to strengthen VAWA's housing protections for victims of domestic violence, dating violence, sexual assault, or stalking (VAWA violence/abuse).

VAWA 2022: ENFORCEMENT

- 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 2022: COMPLIANCE AND HUD'S IMPLEMENTATION

- Includes a requirement to conduct compliance reviews (more information forthcoming).
- Resources available (see slide at the end).
- HUD is seeking Paperwork Reduction Act (PRA) approval on updated HUD-provided forms.
 - Comment period now closed.
- HUD issued a Federal Register Notice, “FR–6330–N–01 The Violence Against Women Act Reauthorization Act of 2022: Overview of Applicability to HUD Programs.”
 - HUD is accepting public comments as of the time of this training:
<https://www.regulations.gov/docket/HUD-2023-0002>
- Further information to follow.

HUD'S COVERED HOUSING PROGRAMS UNDER VAWA 2013 (24 CFR 5.2003)

- Section 202 Supportive Housing for the Elderly (12 U.S.C. 1701q);
- Section 811 Supportive Housing for Persons with Disabilities (42 U.S.C. 8013);
- Housing Opportunities for Persons With AIDS (HOPWA) program (42 U.S.C. 12901 et seq.);
- HOME Investment Partnerships (HOME) program (42 U.S.C. 12741 et seq.);
- Homeless programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 et seq.), including the Emergency Solutions Grants (ESG) program; the Continuum of Care (CoC) program; and the Rural Housing Stability (RHS) Assistance program;
- Multifamily rental housing under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)) with a below-market interest rate (BMIR) pursuant to section 221(d)(5);
- Multifamily rental housing under section 236 of the National Housing Act (12 U.S.C. 1715z-1);
- HUD programs assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); specifically, public housing under section 9 of the 1937 Act (42 U.S.C. 1437d), tenant-based and project-based rental assistance under section 8 of the 1937 Act (42 U.S.C. 1437f), and the Section 8 Moderate Rehabilitation Single Room Occupancy; and
- The Housing Trust Fund (12 U.S.C. 4568).

COVERED HOUSING PROGRAMS, CONTINUED (CHP)

- VAWA covers Low Income Housing Tax Credits (LIHTC); certain USDA and VA housing programs.
- VAWA 2022 added the Direct Loan program under Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and Housing Trust Fund (previously only regulatory).
- VAWA 2022 adds a provision for any other Federal housing programs providing affordable housing to low- and moderate-income persons by means of restricted rents or rental assistance, or more generally providing affordable housing opportunities, as identified by the appropriate agency through regulations, notices, or any other means (referred to as a “catch all” provision).

WHAT DOES VAWA DO? - NONDISCRIMINATION

An applicant for assistance or tenant assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of VAWA violence/abuse, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy. 24 CFR 5.2005(b)(1)

CORE PROTECTIONS

- The non-discrimination provision is considered a “core protection” of VAWA.
- “Core protections” apply regardless of whether there is a rental housing, landlord-tenant relationship (e.g., HUD-funded shelters, temporary housing, short-term supported housing, and safe havens).
- This operates similarly to non-discrimination protections under fair housing/civil rights laws enforced by HUD, prohibiting discrimination “on the basis of” or “as a direct result of” (i.e., because of) VAWA status.

DIRECT RESULTS - INTRODUCTION

The non-discrimination provision provides that VAWA protections apply “on the basis of or as a direct result” of VAWA violence/abuse.

- Straight-forward example:
 - Someone is a survivor of dating violence. The housing provider is prohibited from evicting them because they do not want survivors of dating violence living in their housing (e.g., thinks the person will be a “troublemaker”).
- But what if the housing provider gets noise violations because of this dating violence?
 - Even if housing provider states that they are evicting the person for this reason, that is prohibited under VAWA, because the person is being evicted as a direct result of VAWA violence/abuse (dating violence).

UNDERSTANDING “DIRECT RESULTS” - ADVERSE FACTOR

- Prohibits denying assistance or admission, terminating participation in, or evicting a tenant based on an adverse factor, if the adverse factor is determined to be a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.
- Adverse factor, on its surface, may appear unrelated to VAWA violence/abuse and may seem like a legitimate reason that a housing provider can take an adverse action.
- However, the presence of an adverse factor may be due to an underlying experience of domestic violence, dating violence, sexual assault, or stalking.
- HUD has list of adverse factors in guidance.

NOTIFICATION OF OCCUPANCY RIGHTS

- Must be provided with each denial of assistance/admission, provision of assistance/admission, and any notification of eviction or termination of assistance.
- Based on model form provided by HUD, Form 5380

CONSTRUCTION OF LEASE TERMS

- An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as:
 - (1) A serious or repeated violation of a lease executed under a covered housing program by the victim or threatened victim of such incident; or
 - (2) Good cause for terminating the assistance, tenancy, or occupancy rights under a covered housing program of the victim or threatened victim of such incident.

DOCUMENTING ABUSE

Housing Provider can accept a survivor's oral representation that they are or have been the victim of domestic violence, dating violence, sexual assault, or stalking,

OR

Housing Provider can request that the survivor provide documentation that they are or have been the victim of domestic violence, dating violence, sexual assault, or stalking.

ACCEPTABLE FORMS OF DOCUMENTATION

Acceptable Forms of Documentation:

- (1) The HUD VAWA self-certification form.
- (2) Law enforcement, court, or administrative agency record (includes police report).
- (3) Documentation provided by a professional.
 - Signed by an employee, agent, or volunteer of a victim service provider, attorney, medical professional, or a mental health professional from whom the victim has sought assistance relating to the abuse or the effects of the abuse.
 - Signed by the applicant/tenant.
 - Specifies, under penalty of perjury, that the professional believes in the incident of abuse and that it meets the VAWA definition of domestic violence, dating violence, sexual assault, or stalking.
- (4) Statement or other evidence (at the housing provider's discretion).

REQUESTS FOR DOCUMENTATION

- Housing Provider's request for documentation of abuse must be made in writing. Merely providing a certification form is insufficient (e.g., providing it with a packet of other forms and information)— request for documentation must expressly be in writing.
- Survivor has 14 business days from the request to provide the documentation, though the housing provider is free to provide an extension.
 - Regardless of this time period, may be necessary to grant a reasonable accommodation if the survivor is a person with a disability.
- Housing Provider must accept whichever of the four acceptable forms of documentation that the survivor chooses to submit.
- Housing Provider can only require documentation of abuse that is not a self-certification if there is conflicting information (e.g., certification forms from two household members that each claim they are survivors and naming the other household member as the abuser).
 - Survivor has 30 days to provide this, in the case of conflicting information.

EMERGENCY TRANSFER

- VAWA 2013 required HUD to adopt a model emergency transfer plan that allows victims to transfer to another available and safe dwelling unit to protect their safety.
 - Safe unit: A unit that the victim believes is safe.
 - Available unit: a unit that is not occupied and is available to tenants given program requirements and possible considerations that may be applicable, such as eligibility requirements, unit restrictions, or term limitations.
- Each Covered Housing Program (CHP) needs to adopt their own emergency transfer plan based on HUD's model.
- Prior to VAWA 2013, many survivors would face a situation where they either move and lose their affordable housing or keep their affordable housing and risk facing further abuse.
- VAWA 2013's Emergency Transfer provision allows survivors to be safe and keep their affordable housing.

EMERGENCY TRANSFER: ELIGIBILITY

Qualifies for an emergency transfer if:

(1) They expressly request the transfer,

AND, EITHER

(2) Reasonably believes there is a threat of imminent harm from further violence if they remain within the same dwelling unit,

OR

(additionally, if survivor of sexual assault)

(3) In the case of a survivor of sexual assault, the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer.

EMERGENCY TRANSFER: INTERNAL EMERGENCY TRANSFER

- Must allow internal emergency transfer when a safe unit is immediately available.
- An internal emergency transfer is a move to another unit assisted under the same program where the tenant would not be categorized as a new applicant. For example, a move from one public housing unit to another public housing unit owned by the same PHA.

EMERGENCY TRANSFER: EXTERNAL EMERGENCY TRANSFER

- An external emergency transfer refers to an emergency transfer to another unit or form of assistance where the tenant would be categorized as a new applicant. For example, a move from a public housing unit owned by one PHA to a public housing unit owned by another PHA.
- The emergency transfer plan must describe reasonable efforts the covered housing provider will take to assist a tenant who wishes to make an external emergency transfer when a safe unit is not immediately available.
- Can seek both an internal and external emergency transfer at the same time.

LEASE BIFURCATION

- CHP may bifurcate a lease in order to remove or terminate assistance to an abuser who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking while allowing the victim to stay.
- CHP's choice.

LEASE BIFURCATION: REASONABLE TIME

- Where the individual who was evicted or for whom assistance was terminated was the eligible tenant, those who remain in the unit have a reasonable time to:
 - Establish eligibility for the same program;
 - Establish eligibility for another covered housing program; or
 - Find alternative housing.
- The default reasonable time period is 90 days, although the specific time period can vary by covered housing program.

CONFIDENTIALITY

- Any information submitted to a CHP, including the fact that an individual is a survivor, shall be maintained in strict confidence.
- Emergency Transfer Plan needs to incorporate strict confidentiality measures to ensure that the CHP does not disclose the location of the dwelling unit to the person who committed or threatened to commit VAWA violence/abuse.

PROHIBITION ON RETALIATION

- Applies to PHAs, owners, managers of assisted housing under a covered housing program.
- Cannot discriminate against anyone who exercises VAWA rights or testified, assisted, or participated 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.

RIGHT TO REPORT CRIME AND EMERGENCIES

- Protects right of landlords, homeowners, tenants, residents, occupants, guests, and applicants for housing to seek law enforcement or emergency assistance.
- Cannot penalize or take action against someone who exercises these rights, including:
 - (A) actual or threatened assessment of monetary or criminal penalties, fines, or fees;
 - (B) actual or threatened eviction;
 - (C) actual or threatened refusal to rent or renew tenancy;
 - (D) actual or threatened refusal to issue an occupancy permit or landlord permit; and
 - (E) actual or threatened closure of the property, or designation of the property as a nuisance or a similarly negative designation
- Not limited to VAWA survivors/covered housing programs.
- Additionally, reporting and certification requirement by covered governmental entities (receives funding under Section 106 of the Housing and Community Development Act of 1974).

THE FAIR HOUSING ACT & VAWA

Fair Housing Act	VAWA*
- Protected characteristics: race, color, national origin, sex (including SOGI), religion, familial status, & disability	- Protects survivors of domestic violence, dating violence, sexual assault and stalking (regardless of sex, sexual orientation, or gender identity)
- Prohibits housing discrimination because of protected characteristic	- Prohibits violation of the previously described VAWA rights (non-discrimination or others, e.g., ET, docs)
- Covers most housing	- Covered housing program

Cases could have facts that support complaint filing and investigation under both the Fair Housing Act and VAWA

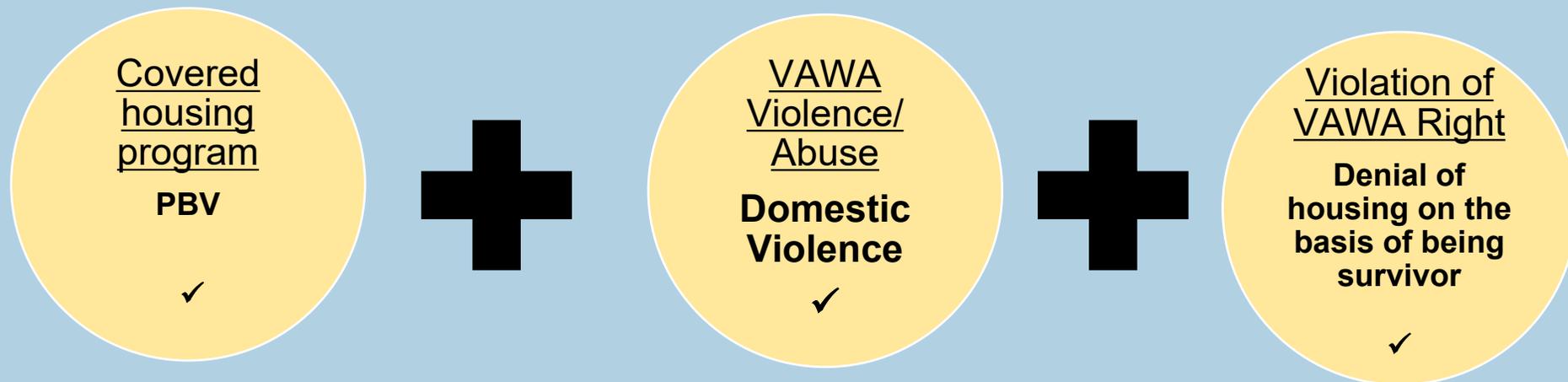
* Right to report crime: this right is not limited to survivors of VAWA violence/abuse in covered housing programs

COMPLIANCE AUTHORITIES & VAWA

- Protection of civil rights in HUD programs.
 - Apply when there is HUD Federal financial assistance.
 - But, VAWA does not apply to all types of Federal financial assistance.
- Compliance authorities enforced by HUD in programs and activities receiving HUD Federal financial assistance include:
 - Title VI (Race, Color, National Origin);
 - Section 504/ Title II of the ADA (Disability);
 - Age Discrimination Act (Age);
 - Section 109 (Race, Color, National Origin, Sex, Religion); and
 - Title IX (Sex).
- Cases could have facts that support complaint filing and investigation under both a compliance authority and VAWA.

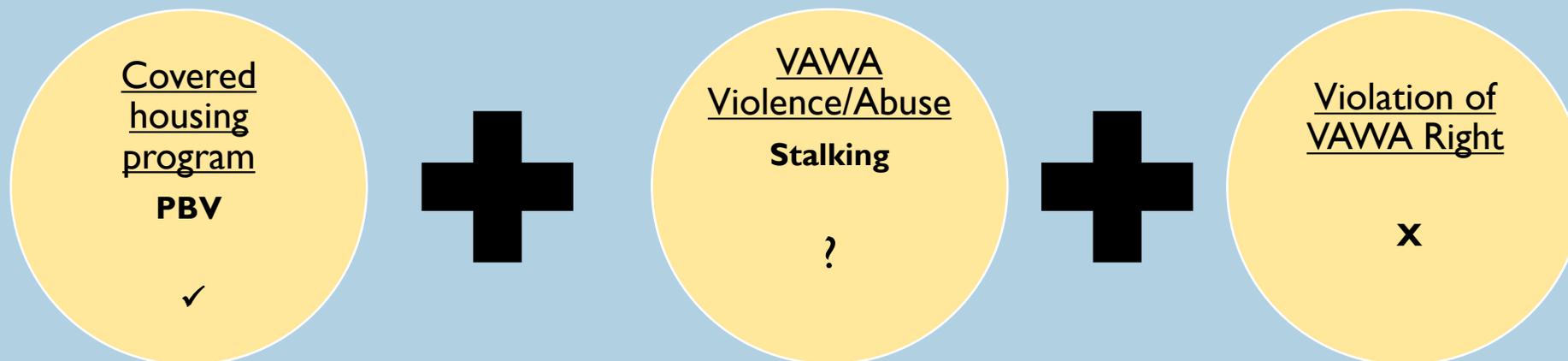
VAWA EXAMPLE: CORE PROTECTIONS

- Laurence applies for a project-based voucher development and informs the project owner that he is a survivor of domestic violence.
- Laurence wants to move into this housing development with his two children to leave their current housing situation.
- The next day, he hears from the owner that he cannot move into the available unit because the owner is worried that his former partner will cause disturbances at the property.



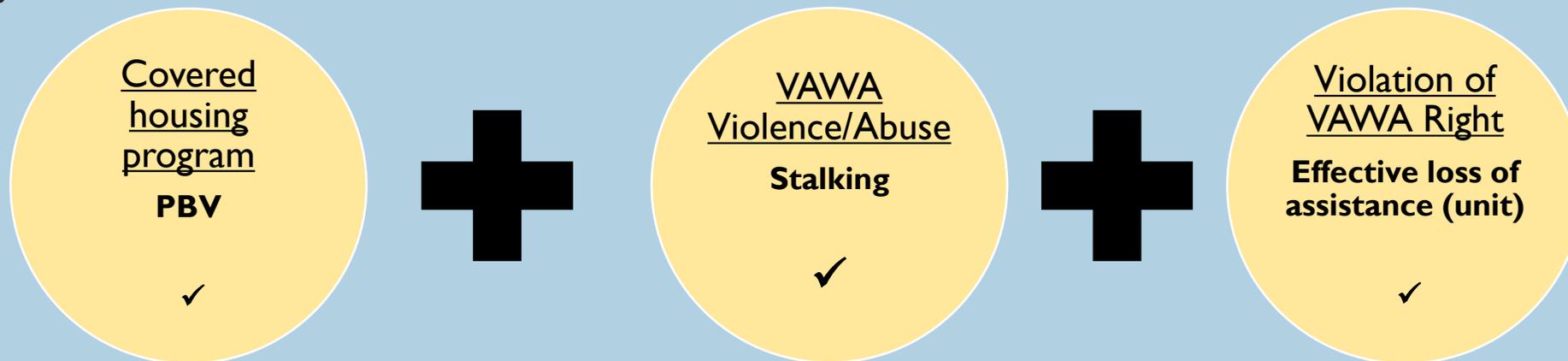
VAWA EXAMPLE: NOT ACTIONABLE

- Maria lives in project-based voucher housing.
- Maria complains to her landlord that Bob, the maintenance worker, makes her uncomfortable because he watches her through the security cameras in the hallway outside her unit.
- Maria claims that her VAWA rights have been violated because Bob is sexually harassing her.



SAME FACTS EXCEPT...(MARIA)

- Bob continues to watch Maria on cameras; he stops her in the hallway almost every time she tries to leave her unit.
- He leaves her “gifts” and notes on her door.
- When he enters her unit to fix her leaking sink, he notices a form she has filled out with her phone number and he starts to text her at odd hours in the evening and repeatedly asks her for dates.
- Maria complains about Bob to her landlord who tells her that she should be flattered Bob has such a crush on her and if she did not want sexual attention to not wear such revealing clothing or respond when he talks to her.
- Maria is so uncomfortable and fearful that Bob can access her unit that she feels she can no longer safely live there.



FHEO COMPLAINT PROCESSING

- Intake: HUD accepts VAWA complaints for investigation and enforcement
 - Using Fair Housing Act complaint process, 42 U.S.C. §§ 3610; 3612; 24 C.F.R. Part 103
 - Assesses jurisdiction: SOL, CHP, VAWA violence/abuse, violation of a VAWA right
 - SOL: file no later than 1 year after occurrence or termination of the VAWA violation
- Investigation: HUD investigates complainant's allegations, gives notice and opportunity to respond to respondent, gathers evidence
- Conciliation: voluntary agreement between parties and approved by HUD FHEO
- Determination: reasonable cause to believe discrimination occurred/did not occur
- Enforcement: Charge of Discrimination
 - Administrative law hearing handled by HUD attorneys or election to federal district court handled by DOJ attorneys

ADMINISTRATIVE HEARING FINDING A VAWA VIOLATION: AVAILABLE RELIEF

- Compensation for actual damages, including out-of-pocket expenses, physical injury and emotional distress damages and lost housing opportunities.
- Permanent injunctive relief, such as an order to comply with VAWA.
- Equitable relief, such as making housing available to the complainant or ordering a transfer.
- Payment of reasonable attorney's fees if the complainant hired a private attorney.
- Payment of a civil penalty to vindicate the public interest.

* If a party elects and the matter is heard in federal district court, the court may order similar relief, and include punitive damages. See 42 U.S.C. 3612(o) and (p).

WHO CAN FILE A COMPLAINT

- Aggrieved persons:
 - Any person who claims to have been injured by a discriminatory practice under VAWA or who believes they will be injured by such practice that is about to occur. See 42 U.S.C. 3602(i); 24 C.F.R. 103.9.
 - Includes family members and organizations such as domestic violence nonprofits that assist survivors.

POLL: ENFORCEMENT ON BEHALF OF SURVIVORS

Have you/your organization been involved in:

- Direct legal action against a housing provider or other respondent on behalf of survivors of VAWA violence/abuse.
- Direct services to survivors of VAWA violence/abuse.
- Both.
- Neither.

SUBMIT A DISCRIMINATION COMPLAINT

[Home](#) / [FHEO Home](#) / [File a Complaint – Main Page](#)

[File a Complaint](#)

[How to File a Complaint](#)

[Information About Filing a Complaint](#)

[Retaliation Is Illegal](#)

[Assistance for Persons with Disabilities](#)

ABOUT FHEO

FILE A COMPLAINT



FHEO'S DISCRIMINATION CLAIM FORM



Housing Discrimination Claim Form

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity

QUESTION 1

Why do you believe someone discriminated against you, someone you live with, or someone you sought to live with?

Choose at least one reason. You can choose more than one.

- Because of race
- Because of color
- Because of religion
- Because of national origin (including limited English proficiency)
- Because of disability
- Because of sex (this includes, but is not limited to, discrimination because of gender, actual or perceived gender identity or sexual orientation)
- Because of familial status (this includes children under 18 years old, pregnancy or seeking legal custody)
- Retaliation, intimidation, or interference related to exercising a fair housing right (such as filing a complaint) or helping others to do so
- Other reason (explain below)

FHEO'S DISCRIMINATION CLAIM FORM, CONTINUED

QUESTION 5

***What happened?**

Summarize the events and why you believe you experienced housing discrimination because of race, color, national origin, religion, sex, disability, or familial status. For example: Were you refused an opportunity to rent or buy housing? Denied a loan? Told that housing was not available when in fact it was? Treated differently because of the presence of minor children? Denied a disability-related reasonable accommodation? Evicted because of your sexual orientation? Terminated from participating in a housing-assistance program? Treated differently or denied services by a state, local government, public housing agency, or other organization that may receive money from HUD? Describe the reasons you believe discrimination occurred, any evidence you might have and provide the names of witnesses (if any).

HUD VAWA RESOURCES

- Violence Against Women Act, text of statute (housing protections): [34 U.S.C. § 12291](#); [34 U.S.C. §§ 12471-12496](#)
- HUD Initial Implementation Guidance: “[The Violence Against Women Act Reauthorization Act of 2022: Overview of Applicability to HUD programs](#)” (88 FR 321)
- HUD’s 2016 Final Rule: “[Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs](#)” (81 FR 80724)
- HUD’s Office of Multifamily Housing Program Guidance (H 2017-05): “[Violence Against Women Act \(VAWA\) Reauthorization Act of 2013 – Additional Guidance for Multifamily Owners and Management Agents](#)”
- HUD’s Office of Public and Indian Housing Program Guidance (PIH-2017-08): “[Violence Against Women Reauthorization Act of 2013 Guidance](#)”
- FHEO VAWA
webpage: https://www.hud.gov/program_offices/fair_housing_equal_opp/VAWA
- FHEO’s Online Complaint Form:
https://www.hud.gov/fairhousing/fileacomplaint%20#_How_To_File

HUD VAWA RESOURCES, CONTINUED

- HUD VAWA Forms
 - [HUD-5380](#) Notice of Occupancy Rights Under the Violence Against Women Act
 - [HUD-5381](#) Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
 - [HUD-5382](#) Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation
 - [HUD-5383](#) Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
 - [HUD-91067](#) Section 8 VAWA Lease Addendum

VIOLENCE AGAINST WOMEN ACT (VAWA)

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LEARNING GOALS

- Understand additional critical areas impacting survivors under the 2022 VAWA Reauthorization and HUD's Interim Guidance released for comment January 4th
- Explore common challenges survivors experience when trying to access or maintain safe housing
- Apply understanding of critical areas impacting survivors and common challenges for survivors to scenarios from the field

VAWA 2022 - Additional Critical Areas Impacting Survivors

VAWA REAUTHORIZATION 2022

Definitions (key amendments to language)

- Domestic violence was specifically amended to include any felony or misdemeanor crimes committed under the family or domestic violence laws of the jurisdiction receiving grant funding
- Domestic violence definition amended to include technological abuse, economic abuse, and a pattern of any other coercive behavior committed, regardless whether it constitutes a felony or misdemeanor crime

VAWA REAUTHORIZATION 2022

According to HUD's Interim Guidance (released for comment January 4th)

- Specific acts that VAWA 2022 made explicitly part of the VAWA domestic violence definition (such as economic abuse) can be reasonably interpreted to be covered by HUD's existing VAWA regulations which applies to covered housing programs and covered housing providers.

VAWA REAUTHORIZATION 2022

Definition of homeless under McKinney-Vento Homelessness Assistance Act (“McKinney-Vento”)

- Applies to programs under McKinney-Vento including Emergency Solutions Grants (“ESG”) and Continuum of Care (“CoC”) Program (McKinney-Vento funding often funds homeless and housing service providers in a community. Service providers funded through the local CoC can provide homelessness prevention, rapid re-housing, emergency shelters, transitional housing, safe haven, permanent supportive housing, coordinated entry, as well as a range of housing support services).

VAWA REAUTHORIZATION 2022

“(b) Domestic Violence, Dating Violence, Sexual Assault, Stalking, And Other Dangerous, Traumatic, Or Life-Threatening Conditions Relating To Such Violence.— Notwithstanding any other provision of this section, the Secretary shall consider to be homeless any individual or family who—

“(1) is experiencing trauma or a lack of safety related to, or fleeing or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous, traumatic, or life-threatening conditions related to the violence against the individual or a family member in the individual’s or family’s current housing situation, including where the health and safety of children are jeopardized;

“(2) has no other safe residence; and

“(3) lacks the resources to obtain other safe permanent housing.”;

VAWA REAUTHORIZATION 2022

According to HUD's Interim Guidance (released for comment on January 4th)-

- ESG and CoC recipients may implement the new definition prior to HUD rulemaking, provided that they update the relevant written standards and policies as needed to reflect the new statutory criteria.

VAWA REAUTHORIZATION 2022

Sec. 603: The Right to Report Crime & Emergency Aid

- Came in response to growing concerns that local crime-free programs and nuisance property ordinances were interfering with the right to report crime or seek emergency assistance.
- Those programs and ordinances often penalize tenants who called the police or sought help, with localities arguing that frequent calls are a “nuisance” or violation of the crime-free lease addendum. Landlords risked fines or loss of their housing unless tenants were evicted.
- These programs and ordinances thus chill all tenants and landlords from reaching out for help or emergency assistance for themselves or others.

What Are Crime-Free Programs & Nuisance Property Ordinances?

Crime-Free Programs: typically require property owners to execute crime-free lease addendums w/ tenants; mandatory criminal background checks of tenants/applicants; mandatory landlord training; participation may be mandatory or voluntary.

What Are Crime-Free Programs & Nuisance Property Ordinances?

Nuisance Property Ordinances: broad definition of “nuisance” conduct; allegations of nuisance behavior, which may include calls to the police, obligates landlord to “abate the nuisance” or evict the entire household; potential fines, fees, condemnation, loss of rental property license.

Crime-Free Programs & Nuisance Property Ordinances' Impact on Survivors

Survivors often must make a choice between seeking safety away from their abusers or remaining housed.

- Gender-based violence, is often life-threatening – survivors shouldn't be dissuaded from getting help;
- Neighbors often call police in response to domestic violence;
- Despite efforts to remove the perpetrator from home, abusers stalk, harass, coerce, break-in, etc. – *traditional consent to entry not applicable*;
- Survivors rightly fear homelessness, eviction, loss of custody, in response to the enforcement of these laws and programs.

Crime-Free Programs & Nuisance Property Ordinances – Survivors of Color

- **In a Milwaukee, WI study of a nuisance ordinance, A tenant living in a majority Black neighborhood was 3x more likely to receive a nuisance citation than a tenant in a majority White neighborhood who also had violated the ordinance.**
- Black women experiencing violence overwhelmingly targeted for enforcement.
- Not viewed as “true victims.”

Crime-Free Programs & Nuisance Property Ordinances – The Role of Race

- Give police unchecked discretion to reinforce racial boundaries and target Black & Brown communities for eviction;
- Permit white neighbors to use police/police calls to control the behavior of their Black and Brown neighbors, by threatening their housing stability should they not behave in a way considered “acceptable”;
- Discriminatory policing flourishes because the threshold for nuisance enforcement is so often low - a few calls to the police, even if they do not result in an arrest, charge, or conviction;
- Evictions destabilize families and make it difficult for them to secure new housing.

Crime-Free Programs & Nuisance Property Ordinances – Impact of Persons with Disabilities

“Individuals with disabilities often require emergency services, such as suicide hotlines, to get assistance with medical issues that result from their disability. [Crime-free programs and Nuisance Property Ordinances] ... force people with physical or mental disabilities to make an impossible choice between calling 911 and risking eviction or foregoing medical assistance in a crisis.”

When Disability is a “Nuisance”: How Chronic Nuisance Ordinances Push Residents with Disabilities out of their Homes, A. Jarwala, S. Singh, Harvard Civil Rights-Civil Liberties Law Review, <https://harvardcrcl.org/wp-content/uploads/sites/10/2019/07/54.2-Jarwala-Singh.pdf>

Crime-Free Programs & Nuisance Property Ordinances – Potential Legal Challenges

- VAWA, Sec. 603 (if CDBG funding) or VAWA housing provisions (if a covered housing program);*
- Fair Housing Act;*
- Title VI of the Civil Rights Act;*
- Section 109 of the Housing and Community Development Act;*
- Section 504 of the Rehabilitation Act;*
- Constitutional Claims.

SCENARIO 1

POLL QUESTION

Scenario 1: A local domestic & sexual assault organization reaches out to you, the local fair housing program, for assistance. They operate a housing program for survivors. The police have been called to their property three times in the last year, in response to a perpetrator attempting to gain entry. The local police department informs them that under the town's crime-free program, they will be fined for each police call and must evict the tenants involved in the police call, who the organization says were either not involved in the incidents or were the victims. If they fail to evict those tenants, the police said that their property could be condemned or they could lose the ability to rent housing in the community.

Poll Question: Can the town enforce its crime-free program against the domestic violence and sexual assault organization and its tenant/clients?

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

POLL QUESTION ANSWER

Poll Question: Can the town enforce its crime-free program against the domestic violence and sexual assault organization and its tenant/clients?

Answer: No, the town cannot enforce its local crime-free program against the domestic violence and sexual assault organization based upon the calls to the police. If the town is a recipient of Community Development Block Grant (“CDBG”) funding, it’s actions to penalize the tenants and the domestic violence & sexual assault organization could violate Sec. 603 of VAWA. As well, penalizing survivors and groups that work with them for seeking help from domestic violence would likely have a disparate impact on women, who make up the vast majority of survivors, and constitute sex discrimination in violation of the FHA. It is unlikely that the town could advance a legitimate, non-discriminatory reason for deterring survivors and others from seeking help.

The fair housing organization could assist the domestic violence & sexual assault organization and any of its survivor/tenants with filing a HUD complaint against the town.

**SURVIVOR RIGHTS UNDER
VAWA COMMON
CHALLENGES:
A DEEPER DIVE**

SURVIVOR RIGHTS UNDER VAWA COMMON CHALLENGES – DEEPER DIVE

Discrimination Protections –

- Survivors cannot be denied admission, be evicted/threatened with eviction, or have their assistance terminated/threatened with termination because of the violence committed against them/trauma they experienced.
- Covered housing providers often skirt these obligations by attempting to evict for reasons that are directly related to the violence (i.e., damage to the property, perpetrator trespass or presence in the unit, absence from the unit, failure to pay rent).

SURVIVOR RIGHTS UNDER VAWA COMMON CHALLENGES – DEEPER DIVE

Adverse Impact and Direct Result–

Housing providers are prohibited from denying assistance or admission, terminating participation in, or evicting 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.

SURVIVOR RIGHTS UNDER VAWA COMMON CHALLENGES – DEEPER DIVE

Adverse Impact and Direct Result– HUD Notice PIH-2017-08 examples (not full or exhaustive list)

Credit History -

- Forcing a survivor to obtain credit, including credit cards for the perpetrator's use
- Using a survivor's credit or debit card without permission, or forcing them to do so

Poor Rental History -

- Property damage
- Noise complaints
- Harassment
- Eviction

Criminal Record -

- Forcing a survivor to write bad checks, misuse credit, or file fraudulent tax returns
- Property damage
- Theft
- Disorderly conduct

SCENARIO 2

POLL QUESTION

Scenario 2: A tenant had a HUD Section 8 tenant-based voucher. They applied for housing, but their application was denied. When they followed up with the property manager to ask why their application was denied, the property manager noted that there was an arrest on their record for property damage and an eviction filing. The tenant then shared that they were for many years in a domestic violence relationship, and that the eviction and property damage arrest were as a result of the violence and economic abuse that they experienced. The tenant asked for their application to be reconsidered. The property manager said they were not willing to do that, stating that the arrest and eviction filing, were automatic reasons to deny an application.

Poll Question: Was there an adverse factor, in this scenario, that directly connected to domestic violence, sexual assault, dating violence or stalking?

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

POLL QUESTION ANSWER

Poll Question: Was there an adverse factor that directly connected to domestic violence, sexual assault, dating violence or stalking?

Answer: Yes.

- Housing providers are prohibited from denying assistance or admission to an applicant/tenant/program participant based on an adverse factor (such as a criminal record, credit history, rental/eviction history) if determined that the adverse factor is a direct result of domestic violence, dating violence, sexual assault, or stalking.
- The tenant explained the connection between the abuse and the adverse factors.
- Use of the arrest is also contrary the 2016 HUD Criminal Records Screening Guidance.
- VAWA protections apply because of the Section 8 voucher.
- The tenant could file a HUD complaint under VAWA and the FHA.

SURVIVOR RIGHTS UNDER VAWA COMMON CHALLENGES – DEEPER DIVE

Notice -

All tenants/program participants must get a Notice of Occupancy Rights (HUD Form 5380) and VAWA Self Certification Form (HUD Form 5382) (*available in 15 different languages*) -

- When an applicant is denied admission/assistance.
- When someone is admitted/given assistance.
- With any notification of eviction/assistance termination.
- Who is to provide the notice depends on the particular housing program.

SCENARIO 3

POLL QUESTION

Scenario 3: An applicant on the public housing waiting list finally had their application reviewed after a 10 year wait. The local public housing authority sent them a written notice denying their application for housing and permanently removed them from the housing authority's waitlist. The written notice of denial stated that their poor credit history was the reason for the denial of housing and attached the credit report. 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. Based upon that new information, they asked for their application to be reconsidered. The housing authority said they were not willing to do that and to seek housing elsewhere, stating the poor credit was a legal reason for denying housing.

Poll Question: Was the tenant supposed to receive a Notice of Occupancy Rights and VAWA Self-Certification Form from the housing authority when they were denied housing?

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

POLL QUESTION ANSWER

Poll Question: Was the tenant supposed to receive a Notice of Occupancy Rights and VAWA Self-Certification Form from the housing authority when they were denied housing?

Answer: Yes.

- Under VAWA, all tenants/program participants must get a Notice of Occupancy Rights (HUD Form 5380) and VAWA Self Certification Form (HUD Form 5382) (*available in 15 different languages*) -
 - When an applicant is denied admission/assistance.
 - When someone is admitted/given assistance.
 - With any notification of eviction/assistance termination.
- If the tenant files a HUD complaint for admission denial, they could and should include this lack of Notice & Certification Form.

SURVIVOR RIGHTS UNDER VAWA

COMMON CHALLENGES – DEEPER DIVE

Emergency Transfers –

- Housing providers have differing program and structural requirements/operations and those may change or alter how they are able to operationalize the technical requirements of VAWA.
- This is a common issue because it means there is no one size fits all approach to ensure the technical requirements under VAWA are met by housing providers.
- HUD-5381 - Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking is a critical foundation, but alone, is not operational. Partnerships are key.

SURVIVOR RIGHTS UNDER VAWA COMMON CHALLENGES – DEEPER DIVE

Common Issues with ETs–

Covered housing providers

- Don't have emergency transfer plans, don't make them available to tenants, functionally lack a plan;
- Deny transfer requests based upon their perception of safety or trauma, require additional proof, or play detective;
- Try to mandate that survivors take units they consider to be safe or punish survivors who do not accept transfers to unsafe units;
- Mandate transfers when survivors experience violence at their property;
- Do not partner with domestic violence, sexual assault, or culturally specific organizations in order to support survivors.

SURVIVOR RIGHTS UNDER VAWA COMMON CHALLENGES – DEEPER DIVE

Documentation –

- HUD **does not** require housing providers to request documentation to certify that a tenant/program participant is a survivor.
- **Survivor determines which documentation to provide** and only needs to provide **one** form of documentation.
 - Narrow exception – if there is conflicting evidence, the housing provider can ask (in writing) for third party documentation within 30 days (and provide extensions as needed)
 - Housing providers **cannot** engage in their own additional fact finding (i.e. talking to staff, residents, employers, etc.)

SCENARIO 4

POLL QUESTION

Scenario 4: A resident tells a property manager in a Permanent Supportive Housing ("PSH") program funded by a local CoC, that they were sexually assaulted by their supervisor at work. The property manager was trained on VAWA and let the resident know that they had protections under VAWA, including the option of seeking an emergency transfer. The property manager shared what the process looked like from start to finish. The resident told the property manager that they wanted to move forward with an emergency transfer because they did not feel safe in their unit. The property manager told the resident that prior to moving ahead with an emergency transfer, they needed documentation to show that they are a sexual assault survivor, specifically they needed to provide a protection order. The manager also says that the resident can only move into a new unit in a different zip code, which the manager will solely determine if it is safe for them. Both of these requirements are in the property's Emergency Transfer Plan.

Poll Question: Can the housing provider in this scenario, tell the resident what kind of documentation they needed to provide to certify the violence and/or trauma? Yes

- A. No
- B. Maybe
- C. Not sure

POLL QUESTION ANSWER

Poll Question: Can the housing provider in this scenario, tell the resident what kind of documentation they needed to provide to certify the violence and/or trauma?

Answer: No.

- The survivor determines the documentation they will provide, not the housing provider. The survivor can self-certify using the VAWA Self-Certification Form 5382 (comes in 15 different languages).
- Housing providers can also move forward with an emergency transfer without documentation to certify the violence and/or trauma. They are not required to request documentation.
- If a housing provider insists/requires third party documentation, the survivor could file a HUD complaint.
- The housing provider also cannot decide what kind of unit is safe for a survivor and could also file a HUD complaint on those grounds.
- Neither mandate should be in the Emergency Transfer Plan.

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](https://www.nhlp.org/OVWgrantees)
- National Alliance for Safe Housing [nashta.org](https://www.nashta.org)
- National Domestic Violence Hotline: (1-800-799-7233, 1-800-787-3224 (TTY) [thehotline.org](https://www.thehotline.org)
- National Law Center on Homelessness and Poverty [nlchp.org](https://www.nlchp.org)
- National Network to End Domestic Violence [nnedv.org](https://www.nnedv.org)
- Rape, Abuse & Incest National Network [rainn.org](https://www.rainn.org)
- Safe Housing Partnerships (clearinghouse of information) [safehousingpartnerships.org](https://www.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>

National Toolkits/Brochures

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 (English, Spanish):

<https://www.nhlp.org/initiatives/protections-for-survivors-of-domestic-and-sexual-violence/>

State and Local Legal Protections Specific 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>

National, State and Local Resources

(Connecting with organizations supporting survivors of trauma/violence)

State-wide or U.S. Territory Domestic and/or Sexual Assault Coalitions

<https://nnedv.org/content/state-u-s-territory-coalitions/>

Sexual Assault

https://www.nsvrc.org/organizations?field_organizations_target_id=All&field_states_territories_target_id=127&page=1

Survivors with Disabilities

<https://www.ndrn.org/about/ndrn-member-agencies/>

Stalking

<https://victimsofcrime.org/getting-help/>

Deaf Survivors of Abuse

<https://vawnet.org/sc/organizations-deaf-survivors-abuse>

National, State and Local Resources

(Connecting with organizations supporting survivors of trauma/violence)

Immigrant Survivors

<https://vawnet.org/sc/immigrant-women-and-domestic-violence/organizations>

Indigenous Survivors

<https://www.niwrc.org>

Asian and Pacific Islander Survivors

<https://www.api-gbv.org>

Latina Survivors

<https://esperanzaunited.org/en/knowledge-base/>

National, State and Local Resources

(Connecting with organizations supporting survivors of trauma/violence)

Black/African-Americans, African immigrants, Afro-Caribbeans, and Afro-Latinx Survivors

<https://ujimacommunity.org>

LGBTQI+ Survivors

<https://vawnet.org/sc/organizations-focused-dv-lgbtq-communities>

Survivors of Color

<https://takingbackourselves.org/resources-women-of-color>

Sexual Assault Survivors of Color

<https://sisterslead.org/resources/all-local-communities-of-color-sexual-assault-organizations/>

Homeless and Housing Organizations/CoCs

<https://www.nhipdata.org/continuums>

QUESTION & ANSWER

Enter questions into the Q&A box

CLOSING

- Slide presentation and recording of this event will be available on HUD Exchange
- Visit the NFHTA website for upcoming events and trainings: www.hudexchange.info/nfhta
- Evaluation and Feedback: Please complete the training survey

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