

Survey Report on Access to Public and Assisted Housing for VAWA Self-petitioners, their Children, and Trafficking Victims

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Introduction

VAWA self-petitioners who are battered immigrant spouses and children of U.S. citizens and lawful permanent residents, and victims of human trafficking with continued presence or T visas are “qualified aliens,”¹ and thus they are legally eligible for public and assisted housing. Although, the U.S. Department of Housing and Urban Development (HUD) is providing access to public and assisted housing for human trafficking victims,² there has been an 18 year delay³ in HUD issuing policies and guidance to agencies and programs nationwide who administer public and assisted housing funds directing them that VAWA self-petitioners and their children are eligible to receive public and assisted housing.⁴ HUD’s failure to issue policies implementing 8 U.S.C. Section 1641(c) results in VAWA self-petitioners being precluded from accessing, or remaining and being subject to proration,⁵ in public and assisted housing units. As a result many battered immigrant spouses of U.S. citizens and lawful permanent residents who are living in public housing with their abuser are forced to choose between staying in public or assisted housing with their abuser or risk homelessness for themselves and their children.

When VAWA self-petitioners living in public or assisted housing units find the courage to obtain a protection order to remove their perpetrator from the housing unit s/he shared with the perpetrator, housing authorities allow victims with citizen or lawful permanent resident children

¹ 8 U.S.C. § 1641(c).

² Pursuant to 22 U.S.C. 7105(b), victims of human trafficking are also statutorily eligible for public benefits, including federal housing programs. Trafficking Victims Protection Act of 2000 (TVPA), 22 U.S.C. § 7105(b)(1)(A):

Notwithstanding title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, an alien who is a victim of a severe form of trafficking in persons, or an alien classified as a nonimmigrant under section 1101 (a)(15)(T)(ii) of Title 8, shall be eligible for benefits and services under any Federal or State program or activity funded or administered by any official or agency described in subparagraph (B) to the same extent as an alien who is admitted to the United States as a refugee under section 1157 of Title 8.

See also, *Coordination, Collaboration, Capacity: Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013-2017*, OFFICE FOR VICTIMS OF CRIMES, at 42, available at <http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf>. (“HHS’s Administration for Children and Families will identify partnership opportunities with HUD and youth providers to review federal policies regarding homelessness and requirements that may prevent victims of human trafficking from qualifying for available housing”).

³ For an overview of the efforts by Congress and DHS to resolve this issue, see Leslye E. Orloff, *Qualified Immigrant VAWA Self-petitioners Still Waiting for Promised Housing Assistance after 18 Years*, NIWAP, (June 2, 2014)(Attachment A).

⁴ Immigrant victims of spouse and child abuse who receive prima facie determinations in their VAWA self-petitioning cases and any of their children included in their VAWA self-petition were made statutorily eligible to receive public and assisted housing as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996, Pub. L. No. 104-208, 110 Stat. 3009-547 (codified as amended at 8 U.S.C. §§ 1101 et seq.)

⁵ If at least one member of the household has eligible status, then the family can receive pro-rated assistance.

to remain in the unit, but reduce the rent subsidy that the victim and her children receive through proration. Housing authorities treat the VAWA self-petitioner qualified battered immigrant as if she was undocumented. Instead of allowing the qualified battered immigrant victim to transfer the public or assisted housing unit to his/her own name as head of household – the treatment the battered immigrant should receive under 8 U.S.C. Section 1641(c) – housing authorities use proration to exclude him/her from the rent subsidy. Further, battered immigrant self-petitioners who do not have children or whose children are VAWA self-petitioners as well, are forced leave the public or assisted housing unit when the housing authority refuses to recognize their eligibility under 8 U.S.C. Section 1641(c). This creates severe economic hardship for battered immigrants and incentivizes staying with their abusers, and thus subjecting themselves and their children to ongoing abuse. As immigrant victims face a difficult battle for survival and recovery,⁶ not having access to secure public or assisted housing further endangers their safety and stymies their ability to free themselves and their children from abusive homes and to attain economic independence from their abuser.

Frequently, women and children who have taken courageous steps toward breaking the cycle of violence are penalized when programs essential for rebuilding their lives, such as access to public and assisted housing, are withheld. Social science research shows that immigrant survivors of intimate partner violence continue to live with or return to their abusers because dependence cannot be effectively severed until survivors are self-sufficient.⁷ Obtaining safe, secure, and permanent housing is crucial to a battered immigrant's ability to successfully escape the abuse and break the cycle of violence. Without this basic necessity, VAWA self-petitioners, their children, and trafficking victims, having no other place to call home, often feel trapped within their abusive relationships or are forced to return to their abusers.⁸

⁶ Their ability to end domestic violence, flee their abusers, and have their abusers brought to justice is hampered by language and cultural barriers, extreme isolation, a lack of information regarding their legal rights, and a lack of access to legal assistance. See, Nawal Ammar, Helene Berman, Jacquelyn Campbell, Anindita Dagueta, Mary Ann Dutton, Giselle Hass, Stephanie J. Nawyn, Leslye E. Orloff, Anita Raj, Rachel Rodriguez, Evan Stark, Jay G. Silverman, Chris M. Sullivan, David B. Thronson, Veronica Tobar Thronson, Hanna Brenner, J. Ruben Parra Cardona, and Julia L. Perilla, *Social Science Research Documents the Need for VAWA Self-Petitions and U-Visas*, (Dec. 6, 2012) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/20120531%20VAWA%20IV%20House%20Researcher%20Data%20Sign%20on%20FINAL.pdf/view>; Leslye Orloff and Olivia Garcia, *Dynamics of Domestic Violence Experienced by Immigrant Victims*, BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS (2013) available at <http://niwaplibrary.wcl.american.edu/cultural-competency/dynamics-of-violence-against-immigrant-women/1.1-Dynamics-of-Domestic-Violence-in-Immigrant-Families-MANUAL-BB.pdf/view>; Mary Ann Dutton, Leslye E. Orloff, Giselle Aguilar Hass, *Characteristics of Help Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. POVERTY LAW & POL'Y 245 (2000), available at http://niwaplibrary.wcl.american.edu/cultural-competency/dynamics-of-violence-against-immigrant-women/CULTCOMP_Georgetown-Imm-Victim-Helpseeking2000.pdf/view.

⁷ See Jody Raphael and Richard M. Tolman, *Trapped By Poverty, Trapped By Abuse: New Evidence Documenting the Relationship between Domestic Violence and Welfare*, THE TAYLOR INSTITUTE, (Apr 1997); see also Richard M. Tolman, *The Development of a Measure of Psychological Maltreatment of Women by their Male Partners*, *Violence and Victims* 4(3): 159-177 (1989).

⁸ Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L.REV. 993-1002 (1993).

In November 2013, the National Immigrant Women’s Advocacy Project at American University, Washington College of Law NIWAP conducted a nationwide survey to better understand the impact on battered immigrant self-petitioners and their children of HUD’s failure to issue policies and procedures through which battered qualified immigrants could access public and assisted housing subsidies they are legally eligible to receive under 8 U.S.C. Section 1641(c). This survey also sought information about trafficking victims’ access to public or assisted housing. Since trafficking victims had been granted access to public and assisted housing in 2000⁹ and since HUD has been implementing this access under the statute and intergovernmental agreements,¹⁰ we wanted to understand the extent to which HUD policies regarding trafficking victims had the desired effect of facilitating access to public and assisted housing.

The two-part national survey polled advocates, attorneys, government agencies, victim services, and members of the justice system on immigrant victims’ access to housing. Part 1 of the survey asked survey-takers to answer a series of questions about immigrant clients (who had been victims of domestic violence, sexual assault, child abuse, or human trafficking) who encountered, needed, or sought access to transitional and emergency housing services.¹¹ Part 2 of the survey asked survey-takers to report on VAWA self-petitioners as well as on human trafficking victims who had continued presence or a T-visa and who have needed or not needed, and who have sought access to public or assisted housing. This report presents the results of the NIWAP’s nationwide survey on public and assisted housing, and it also contains stories demonstrating the impact of not having access to public or assisted housing on qualified battered immigrant VAWA self-petitioners. The report will discuss the research data on VAWA self-petitioners and their children first (section A). Then, it will present the research data on trafficking victims (section B). Lastly, the report concludes with illustrative stories (section C).

NIWAP Survey Demographics

The survey collected information from 655 responding agencies located in 50 states and 3 U.S. territories that completed the entire two-part survey, reporting on 9,277 cases of immigrant crime victims, out of which 1,764 battered immigrant and trafficking victim clients were or had been living in public or assisted housing. The survey participants came from all regions of the United States. The Census Bureau divides the country into the following regions and divisions:

- Northeast:

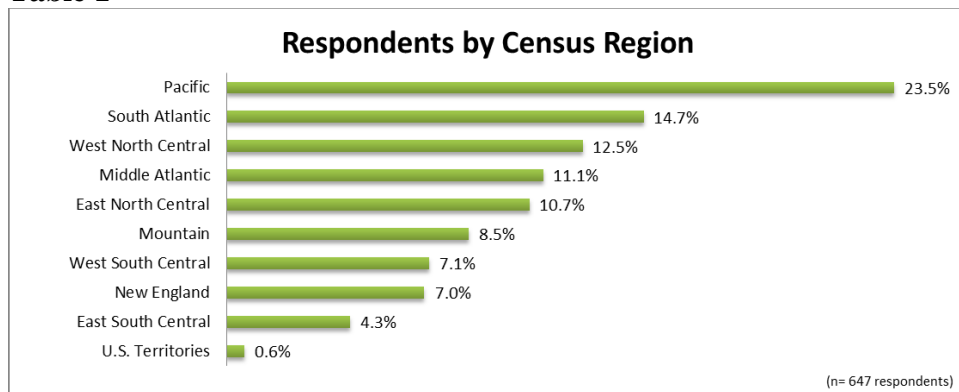
⁹ Trafficking Victims Protection Act of 2000 (TVPA), 22 U.S.C. § 7105(b)(1)(A):

¹⁰ See, *Coordination, Collaboration, Capacity: Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013-2017*, OFFICE FOR VICTIMS OF CRIMES, at 42, available at <http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf>; see e.g. CALIFORNIA ALLIANCE TO COMBAT TRAFFICKING AND SLAVERY TASK FORCE, *Human Trafficking in California*, (Oct. 2007), available at https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/Human_Trafficking_Final_Report.pdf; Janet Irrer, Michigan State Housing Development Authority, Memorandum Regarding Victims of Human Trafficking, (Sept. 13, 2013), available at <http://www.outwaynehomeless.org/?p=859>.

¹¹ For a full discussion on the data of immigrant victims of violence’s access to transitional housing, see Meaghan Fitzpatrick, Benish Anver, David Stauffer, Krisztina Szabo, & Leslye Orloff, *Access to Emergency Shelters and Transitional Housing for Battered Immigrants and Immigrant Victims of Crime*, NIWAP (May 29, 2014).

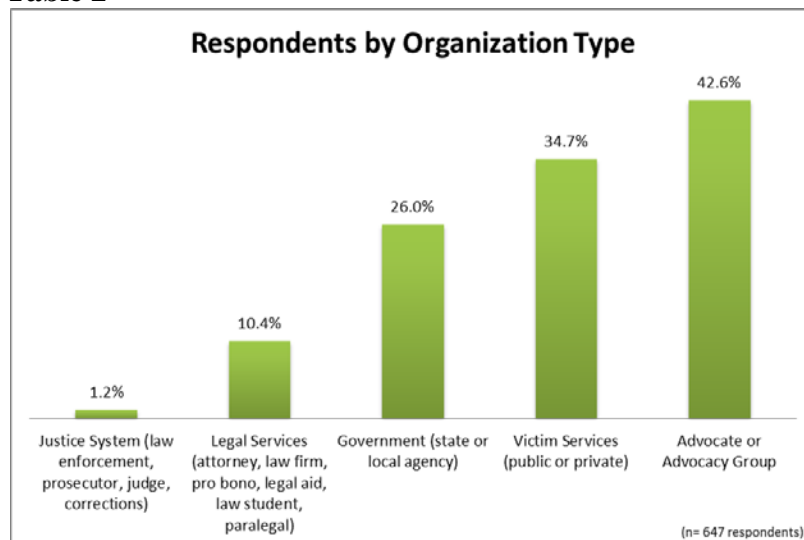
- Middle Atlantic (NY, PA, NJ)
- New England (NH, ME, VT, RI, MA, CT)
- Midwest:
 - West North Central (ND, MN, SD, NE, IA, MO, KS)
 - East North Central (WI, MI, IL, IN, OH)
- South:
 - West South Central (OK, TX, AR, LA)
 - East South Central (KY, TN, MS, AL)
 - South Atlantic (FL, GA, SC, NC, VA, DC, DE, MD, WV)
- West Region:
 - Mountain (MT, ID, WY, NV, UT, CO, AZ, MN)
 - Pacific (WA, OR, CA, AK, HI)

Table 1



Almost half (42.6%, n=279) of the respondents were advocates or advocacy groups and 34.7% (n=227) were victim services agencies helping immigrant victims of domestic violence, child abuse, and human trafficking. Government agencies comprised 26% (n=170) of the survey participants and legal service providers made up 10.4% (n=68).

Table 2



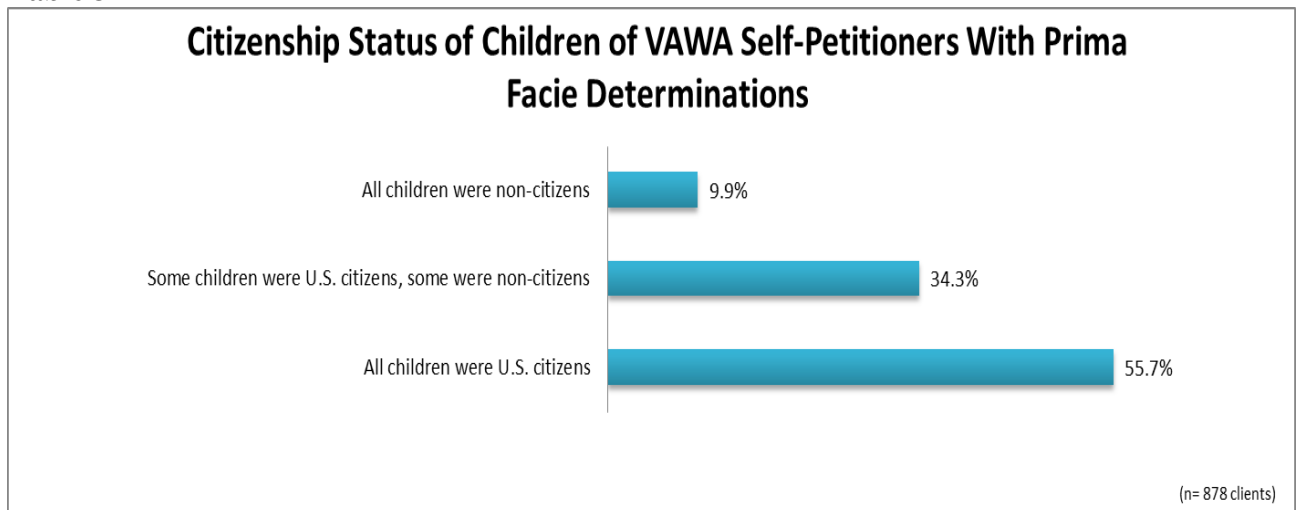
A. VAWA SELF-PETITIONERS' ACCESS TO AND NEED FOR PUBLIC OR ASSISTED HOUSING

The following section of this report is based on data documenting the experiences of 997 VAWA self-petitioners and their children who have filed their immigration case applications and received prima facie determinations. The U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS) reviews each self-petitioning case filed to determine whether the victim has filed a valid case providing evidence to support each required element of proof.¹² If so, DHS issues a prima facie determination with which VAWA self-petitioners are eligible for federal and state funded public benefits including public and assisted housing. VAWA self-petitioners who receive prima facie determinations are “qualified aliens”¹³ under federal public benefits laws pursuant to 8 U.S.C. Section 1641(c).

Profile of qualified immigrant VAWA self-petitioners who are eligible for public and assisted housing

An overwhelming majority (90.1%, n=791) of qualified immigrant VAWA self-petitioners whose cases are reported in this survey have U.S. citizen children. Almost half (44.2%, n=388) of these VAWA self-petitioners also had non-citizen children who were eligible to be included as beneficiaries in their parent’s VAWA self-petition.

Table 3



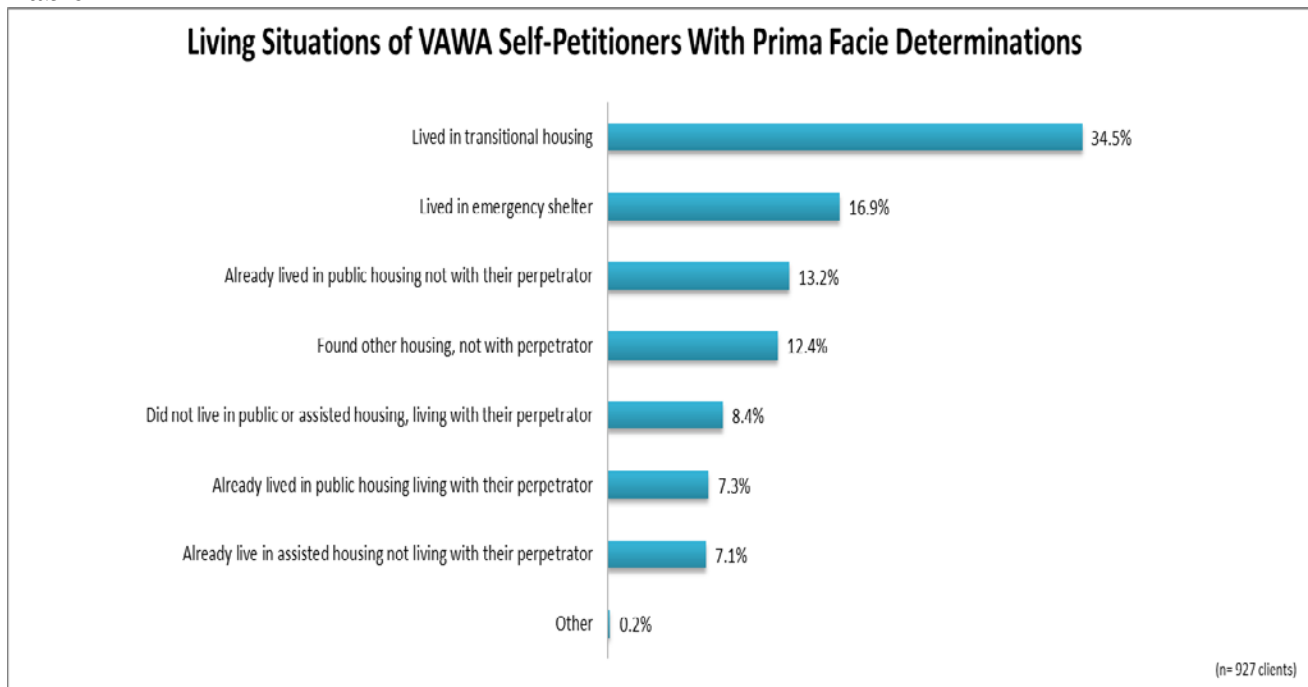
¹² Jacquelyn A. Bednarz, Field Guidance Re: Prima Facie Review of Form I-360 when filed by a Self-Petitioning Battered Spouse/Child, U.S. DEP’T OF JUSTICE, Immigration and Naturalization Service (Mar. 27, 1998), available at: http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/government-memoranda-and-factsheets/VAWA_Bednarz%20Prima%20Facie%20Memo_03.27.98.pdf.

¹³ In this report we use “qualified aliens” and “qualified immigrants” interchangeably.

Among VAWA self-petitioners, 27.6% (n=256) lived at the time of the survey or previously lived in public or assisted housing. The remaining 72.4% (n=671) live in public or assisted housing for which they were legally eligible.

- Among the VAWA self-petitioners who lived/have lived in public or assisted housing, 26.5% (n=68) lived with their abuser.
- The survey looked at the living circumstances of the 671 qualified immigrant VAWA self-petitioners who were not living in public or assisted housing and found the following:
 - 51.4% (n=476) lived/have lived in transitional housing or emergency shelters and were candidates for public or assisted housing;
 - 12.4% (n=115) found other housing and did not live with the perpetrator; and
 - 8.4% (n=78) live with the perpetrator in housing that is not in a public or assisted housing.

Table 4



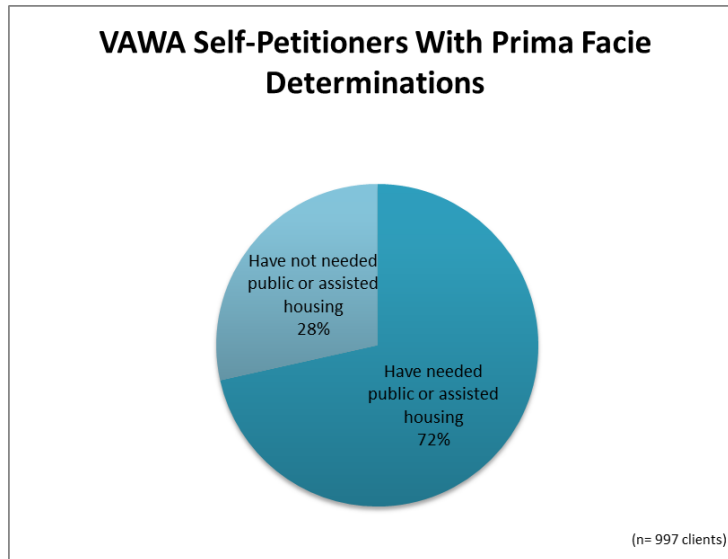
VAWA self-petitioners who are eligible for and who reported needing public or assisted housing

Among the VAWA self-petitioners surveyed, only 28% (n=284) reported not needing access to public and assisted housing. A large majority 72% (n=713) were qualified battered immigrants for whom the agencies working with them reported that they needed and would benefit from public and assisted housing.

The report also sought to learn about the crime victimization history of the qualified battered immigrants who needed access to public and assisted housing. This research found that

32.6% (n=211) suffered sexual assault in addition to being victims of the battering or extreme cruelty that was the basis for their VAWA self-petition.

Table 5



Battered qualified immigrant self-petitioners living in public or assisted housing who had children would be more likely to have a chance to remain in the unit once the perpetrator was removed, although they would be subjected to proration. For this reason the survey sought information about whether VAWA self-petitioners had children. The majority (77% n=547) of VAWA self-petitioners who reported needing public and assisted housing had children. Of those who had children, 15.9% (n=87) had one child, 39.2% (n=213) had two children, and 44.9% (n=245) had three or more children.

Table 6

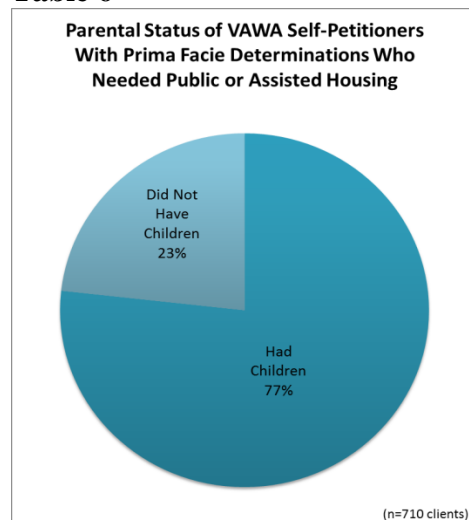
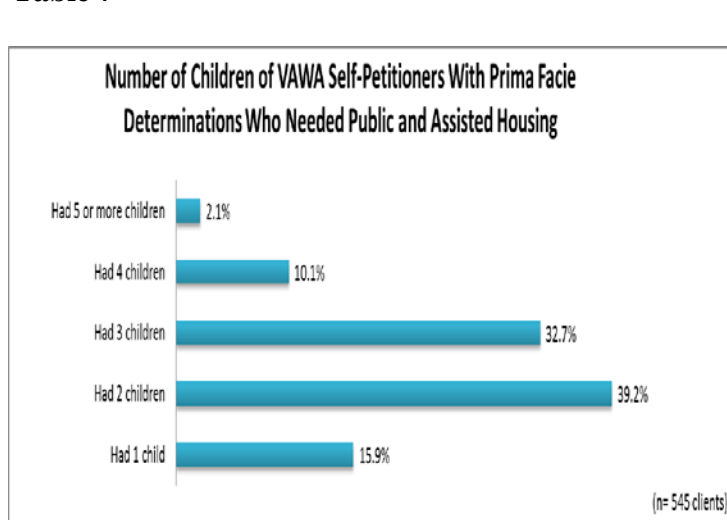


Table 7

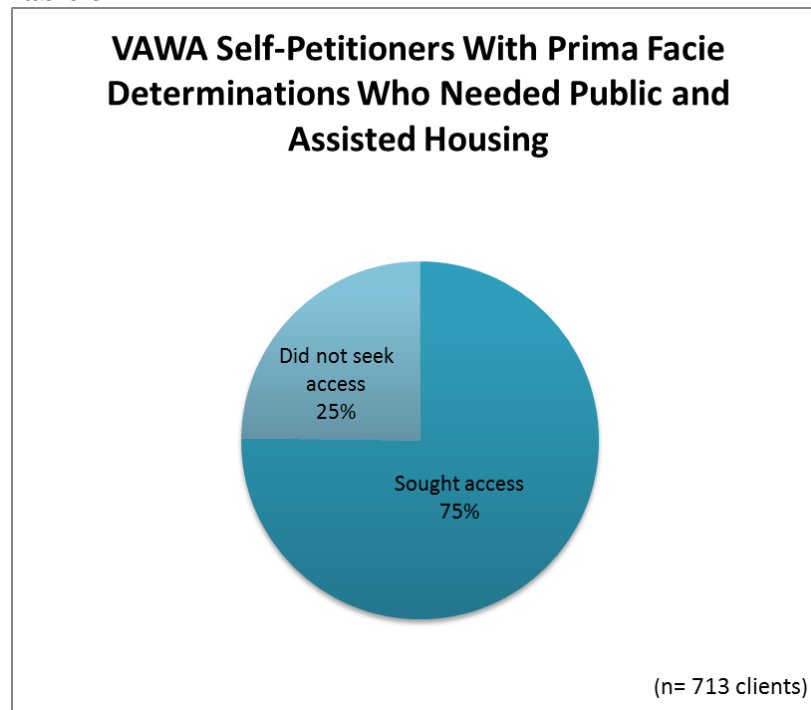


Among the 713 qualified immigrant VAWA self-petitioners who need public and assisted housing, 75% (n=535) sought access to public and assisted housing, and 25% (n=178) did not. It is clear that the lack of a HUD policy implementing battered qualified immigrants' access to

public and assisted housing contributes to victims' decisions not to seek public or assisted housing. Additionally without such policy, the application process for public and assisted housing for qualified battered immigrants is difficult and cumbersome. Those who seek public or assisted housing need assistance of trained advocates and attorneys who bring to public housing authorities detailed documentation to prove that the qualified battered immigrant victim is eligible. This documentation includes:

- A copy of 8 U.S.C. Section 1641(c);
- The 2003 Budget Bill conference language describing how HUD and DHS were to work together on facilitating access to public and assisted housing for qualified battered immigrants;¹⁴
- A copy of the letter that DHS sent to HUD in May 2005;¹⁵ and
- The prima facie determination issued by DHS to the qualified battered immigrant self-petitioner.

Table 8



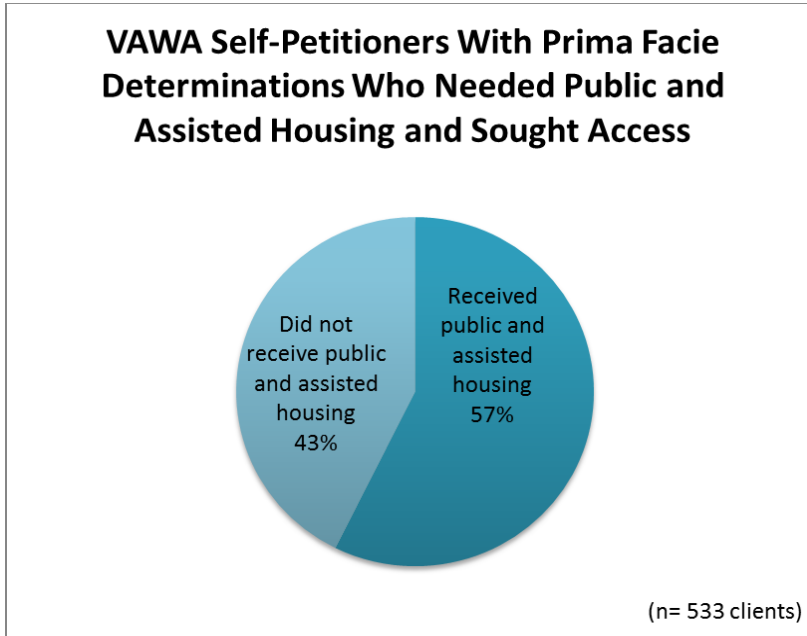
As a result of the advocacy discussed above, of the qualified immigrant VAWA self-petitioners who needed and sought access, 57% (n=304) actually received public or assisted housing. It was unclear from the survey results whether these qualified battered immigrants gained or maintained access to public or assisted housing because their citizen or lawful permanent resident children also qualified and the subsidy was prorated, or whether they gained

¹⁴ H.R. Conf. Rep. No. 108-10 at 1495 (2003) (Attachment B).

¹⁵ See Letter from Pearl Chang, U.S. Citizenship and Immigration Services, to Patricia S. Arnaudo, Director, Office of Public Housing-Management & Occupancy Division, U.S. Department of Housing and Urban Development (May 5, 2005)(Attachment C).

access as qualified battered immigrants with their rent subsidy added to the total subsidy the household received. Many other qualified battered immigrants who sought public or assisted housing were turned away (43%, n=229).

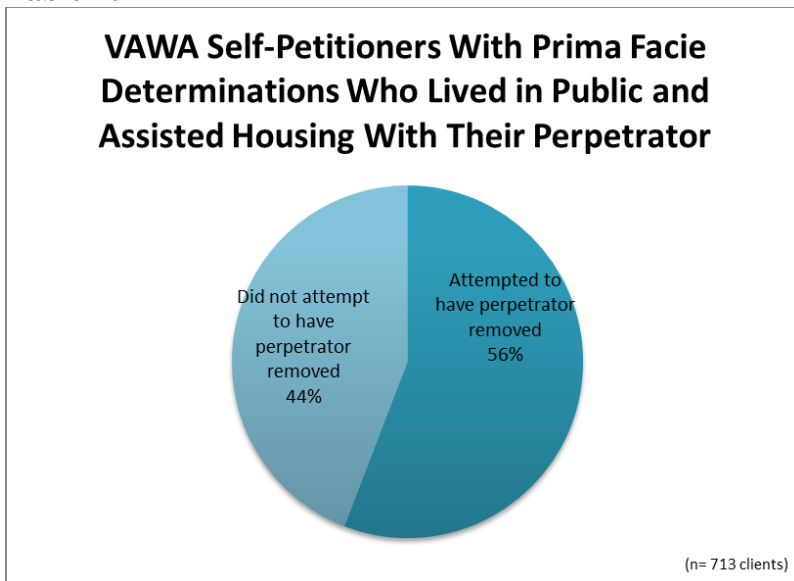
Table 9



VAWA self-petitioners who lived in public and assisted housing with their perpetrator

Among qualified immigrant VAWA self-petitioners who lived in public and assisted housing with their perpetrator, 56% (n=399) tried to have the perpetrator removed and 44% (n=314) did not attempt to have their perpetrator removed.

Table 10



For the 44% (n=314) of battered VAWA self-petitioners living in public or assisted housing who did not seek to have the perpetrator removed, the following were the three most prevalent reasons reported:

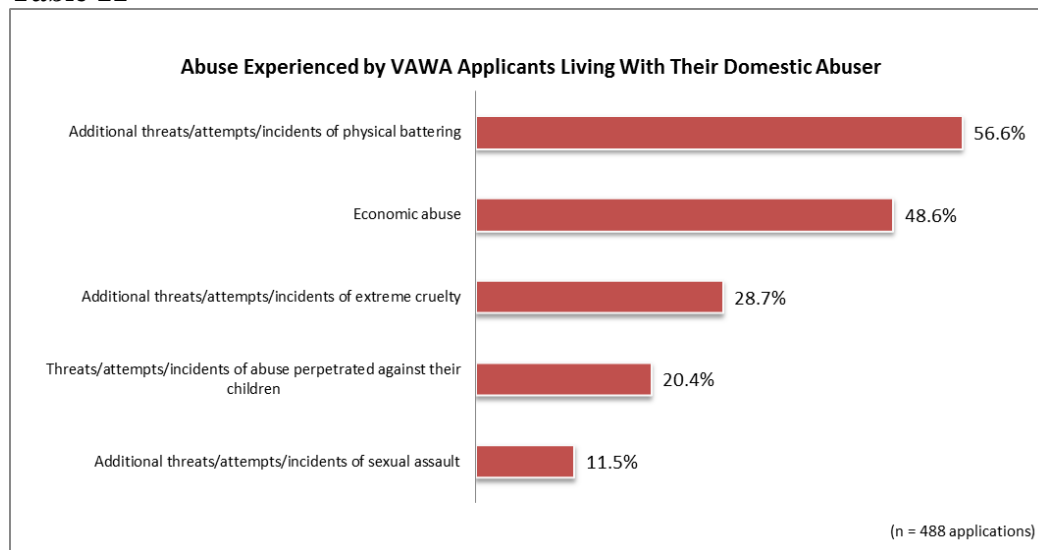
- Did not want to risk losing their housing;
- Did not know about protection orders; and
- Had difficulty in accessing the justice system.

Ongoing abuse experienced by VAWA self-petitioners who stay with their abuser

Recently, NIWAP conducted a different national research to learn about the lives and safety of battered immigrant VAWA self-petitioners awaiting DHS adjudication of their immigration cases.¹⁶ This research found that battered immigrant VAWA self-petitioners who continue to live with their perpetrators while awaiting their employment authorization experience high levels of ongoing abuse.

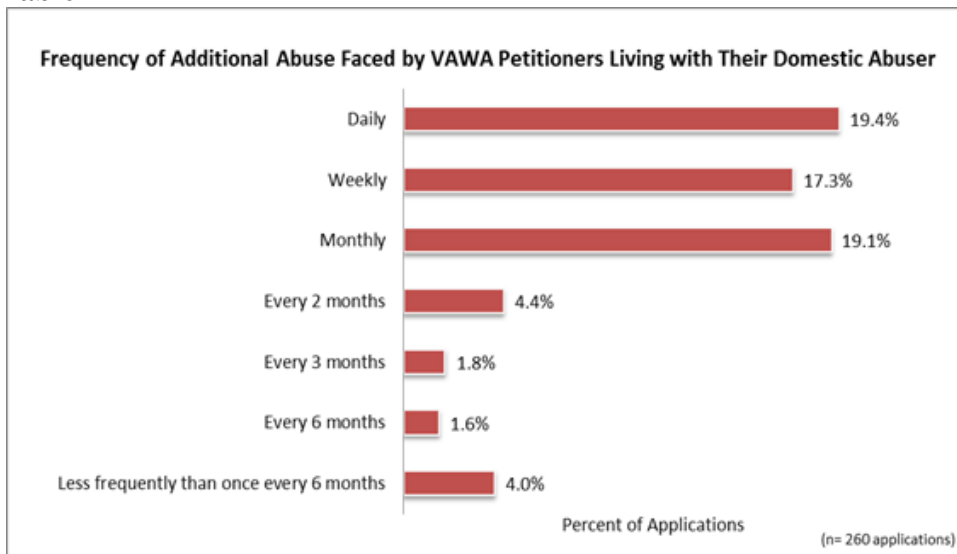
- Over half of the VAWA self-petitioners (56.5%) reported threats, attempts, or incidents of physical battering while their application was pending. This ongoing abuse was frequent with over half (55.8%) of VAWA self-petitioners who live with their domestic abuser reporting experiencing ongoing abuse at least once a month (*see* Table 12 below).
- Just under half, (48.6%) reported economic abuse; and
- Over a quarter (28.7%) reported further threats, attempts, or incidents of extreme cruelty.
- Children also become targets of abuse with 20.4% reporting that the abuser threatened, attempted to or perpetrated abuse against their children.

Table 11



¹⁶ This section contains data from NIWAP’s November 2013 Survey on Access to Work Authorization. *See* Krisztina E. Szabo, David Stauffer, Benish Anver, and Leslye E. Orloff, *Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP, at 22-23 (Feb. 12, 2014), available at <http://niwap.org/reports/Early-Access-to-Work-Authorization.pdf>. While the November 2013 NIWAP survey focused on what happens to VAWA self-petitioners (and U visa applicants) while they are waiting for work authorization, it also captured the type and frequency of abuse these immigrant victims suffer when they stay with their abusers.

Table 12



HUD’s delay in implementation of 8 U.S.C. Section 1641(c)’s congressionally created access to subsidies for the qualified immigrant victim in public and assisted housing has the result of locking battered immigrant self-petitioners and their children in households with their perpetrators for many years. Without a HUD policy implementing battered qualified immigrant access, many victims must wait until they receive lawful permanent residency through VAWA to have the public or assisted housing unit transferred into their name as head of household. This wait can be up to or longer than 3-4 years.¹⁷

B. SURVEY SUMMARY OF HUMAN TRAFFICKING VICTIMS

We included a section in the survey about trafficking victims’ access to public and assisted housing to better understand the effect of HUD’s approach to provide access to public and assisted housing for trafficking victims has on trafficking victims actually attaining access. NIWAP’s national survey collected data on the experiences of 767 human trafficking victims who have received continued presence, or have T-visas. Human trafficking victims’ legal rights to access federal benefits and services are somewhat clearer than of VAWA self-petitioners and the federal government has taken a clear position that trafficking victims should have access to available housing programs funded by HUD.¹⁸ Additionally, several state housing authorities have explicitly created policies on at the state level that assure trafficking victim access to public and assisted housing.¹⁹

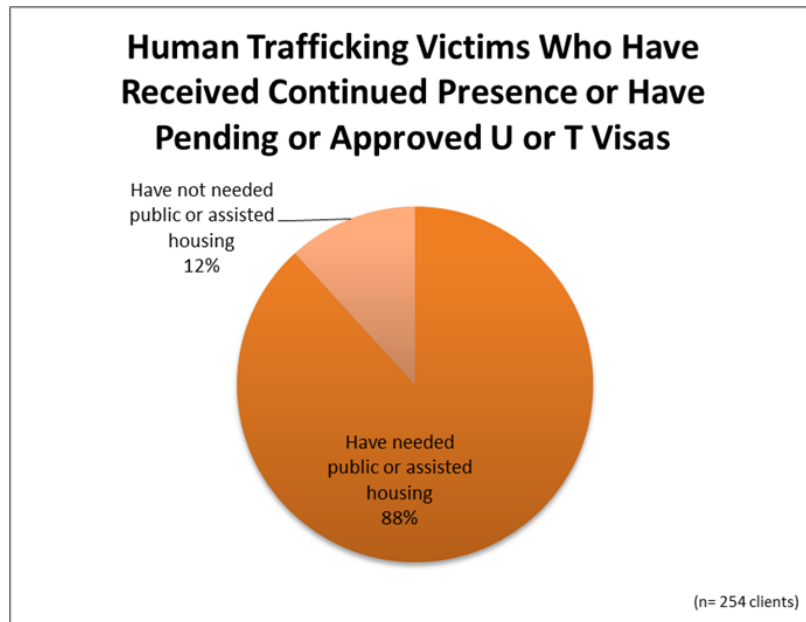
¹⁷ It can take between 6 months or over a year to adjudicate the self-petition (currently this is averaging 6-7 months). Then the victim must file for lawful permanent residency and have that application adjudicated. For many immigrant victims, particularly Mexican spouses of abusive lawful permanent residents, this can take over 3 years.

¹⁸ *Coordination, Collaboration, Capacity: Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013-2017*, OFFICE FOR VICTIMS OF CRIMES, at 42, available at <http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf>.

¹⁹ see e.g. CALIFORNIA ALLIANCE TO COMBAT TRAFFICKING AND SLAVERY TASK FORCE, *Human Trafficking in California*, (Oct. 2007), available at https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/Human_Trafficking_Final_Report.pdf; Janet Irrer, Michigan State Housing Development Authority, Memorandum Regarding Victims of Human Trafficking, (Sept. 13, 2013), available at <http://www.outwayhomeless.org/?p=859>.

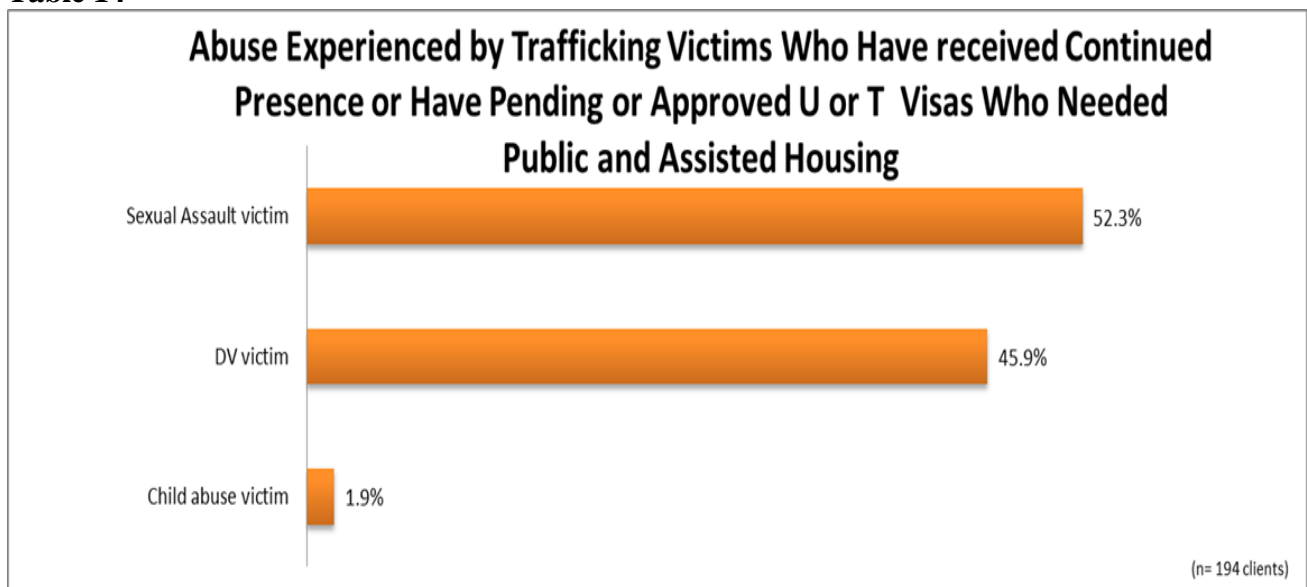
Among the trafficking victims' cases surveyed, agencies participating in the survey reported that the vast majority (88%, n=224) of human trafficking victims needed and would benefit from public and/or assisted housing. Only 12% (n=30) of the victims agencies worked with did not need access to public or assisted housing.

Table 13



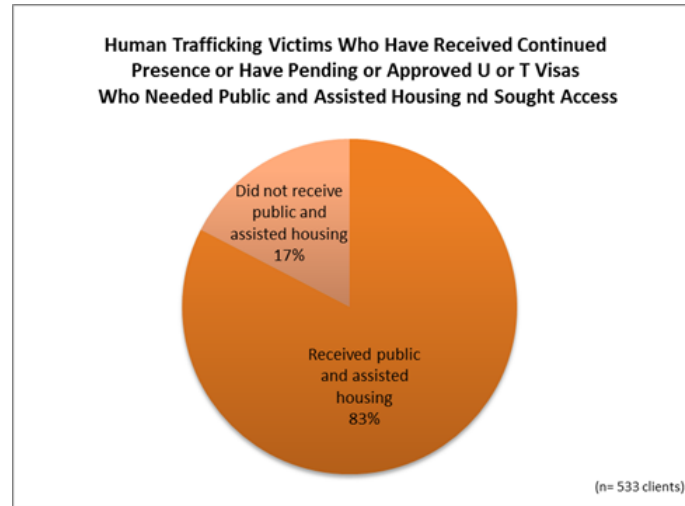
Interestingly, of the trafficking victims that agencies participating in the survey served, more than half (52.3% n=101) suffered sexual assault and 45.9% (n=89) were victims of domestic violence, in addition of experiencing human trafficking.

Table 14



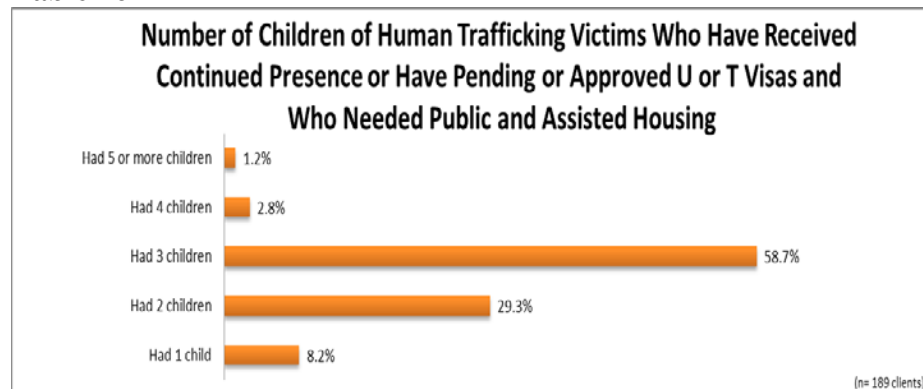
A significant majority (83% n=442) of trafficking victims who needed public and assisted housing were able to access it. However, this research also found that 17% (n=38) of human trafficking victims with continued presence, T visas or pending T visa cases were turned away from public and assisted housing. Issuing a HUD policy clarifying both battered qualified immigrants’ and human trafficking victims’ access to public and assisted housing could help facilitate access for greater numbers of human trafficking victims.

Table 15



Access to public and assisted housing is important for human trafficking victims who reported needing public and assisted housing because the vast majority had children (84% n=189). The fact that the proportion of human trafficking victims who were denied access to public and assisted housing (16% n=35), is similar to the percentage of trafficking victims reported to be turned away from public and assisted housing (17% n=38) raises a question. Whether, and to what extent, are human trafficking victims accessing public and assisted housing based on the immigration status of their children who are citizens or lawful permanent residents, rather than independently as trafficking victims? This survey did not collect data specifically on this question or on whether trafficking victims’ subsidy is being prorated similarly to what is occurring for qualified battered immigrants. Of those human trafficking victims who had children, 8.2% (n=15) had one child, 29.3% (n=55) had two children, and 62.5% (n=118) had three or more children.

Table 16



C. STORIES OF IMMIGRANT VICTIMS SHOWING THE IMPACT OF NOT HAVING ACCESS TO PUBLIC OR ASSISTED HOUSING²⁰

Many battered immigrants who are in the process of self-petitioning under VAWA are qualified immigrants eligible for federal benefits, but they are systematically denied access to public and assisted housing in their own names as head of household. The following stories represent a few examples.

Ann

Ann met her U.S. citizen husband, John, in her native Uganda, where he was the pastor at her church. Ann followed John to the U.S. and they got married. Soon after, John became extremely controlling of Ann and he isolated her from the outside world. John never applied for Ann's papers and threatened that he would have her deported if she disobeyed him. He also frequently used sexual violence to dominate Ann. Once their son was born, John also used him to control Ann. For instance, when Ann broke John's rules, he would call the police or the Department of Child and Family Services with accusations about Ann beating their baby.

Twice, Ann tried to leave John and stayed at a domestic violence shelter, but was forced to return when she reached the time limit at the shelter. Ann now had two children to support, no family in the U.S., and no friends in the area where she lived. She was ineligible for nearly all public assistance since she did not have legal status documentation. Fortunately though, while at the shelter, Ann was able to apply for legal status as a victim of domestic violence under "VAWA." She went back to her husband to await the approval of her case.

Once Ann's VAWA case was approved and after a violent incident with John, in which he tried to choke her, she once again left her husband and went to the shelter. Ann now had an open case with the Department of Child and Family Services due to John's false accusations against Ann and Ann's real accusations against John. Because the case was open, she qualified for a Section 8 Voucher through the Family Unification Program. Ann was given her own apartment and lived there with her two children for nearly two years. Ann spent this time studying English, learning basic skills, and working with an attorney on her divorce and custody case.

In June 2011, however, the Housing Authority reviewed Ann's case and told her that since she was not yet a Permanent Resident, she was ineligible for the full housing subsidy. Instead, the subsidy would be pro-rated, increasing her required contribution from \$0 to a third of the full rent. Though Ann had an approved VAWA case and work authorization, she still had to wait to apply for her Permanent Residency. Ann appealed the decision with her attorney from a legal aid agency, and as a result, the Housing Authority allowed Ann three more months of the full housing subsidy. Ann has consistently attempted to find employment in this time, but has yet been unable to do so. Ann is currently seeking assistance from social service agencies to assist her with her housing situation and is unclear how she will be able to continue to live in her apartment if she is required to pay one third of the rent.

²⁰ The names and identifying details about the cases reported here have been changed to protect the confidentiality of the victims whose stories are related here.

If the Housing Authority had never “overlooked” Ann’s immigration status when they approved her for the Section 8 Voucher, she would have almost certainly returned to the abuser once more. If Ann is unable to find a job or assistance from a social service agency in the next week or two, however, she and her children will most likely be homeless.

Lisa

Soon after arriving in the United States from Mexico, Lisa met her future husband, Pablo, a U.S. citizen. Over time, Pablo’s moods began to change and he became increasingly angry. With the hopes that Pablo would change over time, Lisa married him in 2004, but things only got worse. During their marriage, Lisa suffered constant physical, sexual, economic, psychological and emotional abuse at the hands of Pablo. He forced her to perform unwanted sexual acts. He threatened and intimidated Lisa on a daily basis; from limiting access to the telephone and finances to not allowing her to turn the heat on. Frequently, he would threaten to leave her and on occasion, he would take his belongings, clear out the fridge and leave for a couple of days only to come back and accuse Lisa of cheating.

When Lisa became pregnant, Pablo was infuriated. He routinely pushed and shoved her, even while pregnant, and at one point he hurt her so much she had to go to the emergency room. He would also repeatedly tell her he would call immigration and have her and the baby deported. At one point, Lisa went to a shelter to escape from the ongoing abuse, but she could only stay temporarily and eventually she had to return home to face more of Pablo’s wrath. Lisa repeated this cycle several times. Each time she went back to Pablo or reconciled, the abuse intensified. During another of these times, she became pregnant again.

In 2006, with the help of a non-profit legal services office, Lisa filed a I-360 application as a Self-Petitioning Spouse of a U.S. citizen under the Violence Against Women Act (VAWA). This application was approved by DHS in May 2006. She was granted deferred action and employment authorization. Lisa was finally able to permanently separate from Pablo and obtain a divorce but found herself without any stable housing. At last, she found an apartment that she could afford through a program ran by the local YWCA and Housing Authority. As part of this program, the Housing Authority used Section 8 vouchers to reduce rents for households like Lisa.

When she first moved in, the Housing Authority did not take steps to verify Lisa’s immigration status and only asked her to verify her status several months ago. On July 25, 2011, Lisa received a Notice of Ineligible Immigration status stating that the Housing Authority would pro-rate her housing subsidy and that her rent would increase from \$37.00 to \$699.00 per month. Lisa and her children are now at serious risk of becoming homeless because she cannot afford the increased rent.

Sarah

Sarah is an immigrant from Hungary who arrived to the United States in 2002 with her daughter. When she came to the United States she married a U.S. citizen named Peter. Over the course of their 3 year marriage, Peter hit, kicked, choked, and raped her on a regular basis. Peter

would even sometimes put a plastic bag over Sarah's head and choke her to the point she would lose consciousness. Peter also physically abused Sarah's daughter as well. For example, one day Peter proceeded to smother her daughter by folding a mattress over her face till she was unable to breathe, letting up just before she passed out.

Then, Sarah became pregnant and had a son with Peter. Soon after her son was born, she escaped from the abusive home because she was determined to protect her children from her unpredictable and volatile husband. The Legal Aid Foundation Los Angeles (LAFLA) placed her case with a law firm that, several years ago, successfully represented her pro bono in obtaining her VAWA self-petition. Although Sarah has since received welfare assistance, she has also had chronic housing problems over the years, and has been evicted at least twice because she has been unable to pay her rent. Last year, not long before her status adjusted to lawful permanent residence, Sarah and her children were evicted while she was attempting to transition from welfare to full-time work.

Conclusion

Having access to public and assisted housing plays a critical role in achieving victim safety, long-term recovery, and self-sufficiency for battered qualified immigrant VAWA self-petitioners, their children, and victims of severe forms of human trafficking. However, this nationwide survey conducted by NIWAP found that 43% of qualified battered immigrant VAWA self-petitioners and 17% of human trafficking victims are denied access to public and assisted housing despite eligibility under 8 U.S.C. 1641(c).

Those battered immigrants who are able to receive or continue living in public or assisted housing either do so by remaining with their abusers or because they have U.S. citizen or lawful permanent resident children who qualify for public or assisted housing. When victims are able to stay in public or assisted housing units with their children, but are subject to proration that precludes them from receiving the portion of the subsidy to which they are entitled to as qualified immigrants, victims and their children suffer economic hardships that impede their ability become self-sufficient and sever dependence on their perpetrators. Moreover, victims' inability to receive full access to public or assisted housing subsidies on their own behalf further increases their vulnerability to the perpetrator's coercive control.

The research data reported here and the stories contained in this report illustrate the dangers and hardships for battered immigrant VAWA self-petitioners and their children caused by lack of access to public and assisted housing. For almost two decades HUD has declined to issue the policy guidance needed to ensure that battered immigrant spouses and children of U.S. citizens and lawful permanent residents obtain the access to public and assisted housing that Congress believed it granted self-petitioners in 1996. Congress reiterated this belief in the conference report from the 2003 Budget Bill and directed HUD and DHS to work together to make access to public and assisted housing for VAWA self-petitioners and their children a

reality.²¹ DHS completed work on this issue and sent a letter to HUD in 2005, but HUD has failed to Act for 9 years since the issuance of the DHS letter.²²

HUD officials have based their refusal to extend access to public and assisted housing to battered immigrant VAWA self-petitioners and their children on a technical 1996 HUD legal opinion addressing the relationship between the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) as amended later by the Illegal Immigration Reform and Responsibility Act of 1996 (IIRAIRA) and section 214 of the Housing and Community Development Act of 1980 (Housing Act). In that legal opinion HUD chose to adopt the PRWORA provisions that cut some immigrants off from public housing and assisted housing, and refused to adopt other PRWORA (as amended by IIRAIRA) provisions that extended access to public and assisted housing to two new groups of immigrants including qualified battered immigrants. If HUD can interpret the Housing Act to override PRWORA while at the same time accepting “revisions” from PRWORA that add more restrictions to the Housing Act, this same approach can be taken with regard to the provisions of PRWORA and IIRAIRA that expand eligibility for public and assisted housing for categories of humanitarian immigrants.

Under the rules of statutory interpretation HUD has, and should exercise, the discretion to adopt provisions from PRWORA’s 8 U.S.C. § 1641(b) and (c), as amended by IIRAIRA, and amended again by the Trafficking Victim’s Protection and Reauthorization Act of 2008, to accept PRWORA, IIRAIRA and the TVPRA’s addition of three groups of humanitarian immigrants that Congress and DHS have strived to protect. These groups are VAWA battered qualified immigrants including VAWA self-petitioners, victims of human trafficking, and Cuban Haitian entrants.²³

HUD should issue policy guidance to all HUD funded programs administering public and assisted housing confirming that both of the following groups of immigrant crime victims are achieve the following:

- Be granted access to public and assisted housing units; and
- Be allowed to
 - Remain in public housing units they occupy
 - Receive a subsidy for their presence in the unit without being subject to proration;
 - Transfer the unit to their name as head of household

²¹ H.R. Conf. Rep. No. 108-10 at 1495 (2003) (Attachment B).

²² Letter from Pearl Chang, U.S. Citizenship and Immigration Services, to Patricia S. Arnaudo, Director, Office of Public Housing-Management & Occupancy Division, U.S. Department of Housing and Urban Development (May 5, 2005)(Attachment C).

²³ For a full discussion of statutory construction laws that apply to the conflict of laws between PRWORA and the Housing Act *see*, Leslye E. Orloff and Benish Anver, *Statutory Interpretation and Conflict of Law Issues Related to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Illegal Immigration Reform and Responsibility Act of 1996 and the Housing and Community Development Act of 1980*, NIWAP (Dec. 13, 2013)(Attachment D).

The policy should direct public and assisted housing providers and authorities to offer each of these benefits to the following groups of immigrant crime victim:²⁴

- Battered qualified immigrants as defined in 8 U.S.C. § 1641 (c) including
 - VAWA self-petitioners
 - Children of VAWA self-petitioners
 - Abused immigrant spouses and children of U.S. citizens or lawful permanent residents with family based visa petitions filed or approved²⁵ on the abused immigrant spouse or child's behalf
 - VAWA cancellation of removal and suspension of deportation applicants.
- Victims of severe forms of human trafficking²⁶ who have been granted
 - Continued presence; or
 - T visas; and
- Cuban Haitian Entrants²⁷

HUD should move swiftly to issue policy guidance to all its grantees including public and assisted housing authorities confirming that eligibility for all public and assisted housing programs for all qualified immigrants and all victims of severe forms of human trafficking who receive certifications of benefits eligibility from the U.S. Department of Health and Human Services based on continued presence or the victim's T visa case. The same rules that apply to immigrants listed in Section 214 of the Housing Act should also apply to all qualified immigrants and all victims of severe forms of human trafficking.

²⁴ For a detailed discussion on how HUD policy should be drafted to provide access to public and assisted housing for qualified battered immigrants, see Leslye E. Orloff & Soraya Fata, *Qualified Alien Immigrant Victims of Domestic Violence Access to Public and Assisted Housing: The Need for HUD Issued Guidance* (June 2, 2014)(Attachment E).

²⁵ To qualify the battered immigrant would need a prima facie determination or an approval of their family based visa petition.

²⁶ 8 U.S.C. 1641(c)(4).

²⁷ 8 U.S.C. 1641(b)(7).