



Policy Brief

The Violence Against Women Act Housing Provisions and Impacts to Indigenous Survivors of Domestic and Sexual Violence

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The STTARS Indigenous Safe Housing Center, as a new project of the National Indigenous Women’s Resource Center, aims to address the unique intersection of housing instability and homelessness and domestic and sexual violence. In 2016, the National Institute of Justice, released a study finding that 4 out of 5 Native women in the United States experience violence within their lifetimes. They are 2.5 more times likely to be sexually assaulted than other populations, 10 times more likely to be murdered on some reservations, and much of this violence is perpetrated by non-Indians (96% of AI/AN women who reported they had been the victim of sexual assault, stated that at least one of their perpetrators was a non-Indian). Additionally troubling, however, is that 38% of these women reported they were unable to access services of any kind. Housing no exception. Historical, ongoing, and serious gaps in resources persist for Native survivors of violence, despite the fiduciary and legal obligation of the federal government to assist Indian tribes in safeguarding Indian women. Certain federal laws, such as the Violence Against Women Act (“VAWA”), the Native American Housing Assistance and Self Determination Act (“NAHASDA”), the Family Violence Prevention Services Act (“FVPSA”), and the Victims of Crime Act (“VOCA”), provide funding for such resources. But are these federal laws working to meet the housing and shelter needs of Indigenous survivors in the United States?

This brief explores the Violence Against Women Act's housing provisions. The Act was reauthorized again in April of 2022 with critical improvements aimed at reaffirming Tribal sovereignty and at strengthening safety for Indian women. It also included key provisions relating to safe housing and shelter access, building off of the movement work that was accomplished in 2005 and 2013.

History of the Act's Housing Provisions

The Violence Against Women Act of 2005

VAWA was enacted in 1994, but has been reauthorized in 2005, 2013 and most recently in 2022. VAWA 2005 was the first time that we saw important housing related protections for victims of domestic violence included in the legislation. Specifically, VAWA 2005 did the following:

1. Amended the federal Public Housing and Section 8 statutes to clarify that victims of domestic violence could not be evicted from or denied housing because of their victim status;
2. Amended federal housing planning requirements to ensure that the needs of victims were considered in local planning processes;
3. Amended the McKinney-Vento Homeless Assistance Act to ensure safety and confidentiality for victims within the Homeless Management Information System (HMIS);
4. Created a new federal grant program for public housing and assisted housing agencies to address domestic violence through agency policy changes, training, and best practices;
5. Created a new federal grant program to ensure local community collaboration in developing long term affordable housing for victims; and
6. Clarified changes in federal transitional housing for victims.¹

¹ <http://www.ncdsv.org/images/impactofvawahousingfaq.pdf>

VAWA 2005 amended the Public Housing Program (42 U.S.C. § 1437d), the Housing Choice Voucher Program (42 U.S.C. § 1437f(o)), and Project-Based Section 8 (42 U.S.C. §§ 1437f(c), (d)). These new protections did not cover sexual assault survivors and only provided protections for immediate members of the victim’s family. The Act defined “immediate family member” to include: any person living with the victim and related to them by blood or by marriage; or the victim’s spouse, parent, brother, sister, child, or any person to whom the victims stands in loco parentis.

VAWA 2005 also established an exception to the federal “one-strike” criminal activity eviction rule for victim tenants. The Act explicitly stated that an incident of actual or threatened domestic violence, dating violence, or stalking did not qualify as a serious or repeated violation of the lease NOR as a good cause for terminating the assistance, tenancy, or occupancy rights of the victim. It also stated that criminal activity of the victim that directly related to their experience of domestic violence, dating violence, or stalking did not constitute grounds for termination of a tenancy. However, under the 2005 law, a landlord could demonstrate an actual or imminent threat to other tenants or those employed at or providing service to the property in the instance the tenant should not be evicted, the public housing authority/landlord could evict the victim tenant.

The Violence Against Women Act of 2013

The amendments to VAWA 2013 were hugely significant and included historic provisions for American Indian and Alaska Native women, LGBTQAI survivors, and immigrant survivors. It also codified sweeping improvements to housing protection provisions for survivors of domestic and sexual violence. For more information on how VAWA 2013 addressed violence against Native women, please see “Housing in Tribal Communities: Three Issues for Consideration of Safety for Native Women” (LaPorte, 2018).²

As a part of VAWA 2013, housing protection provisions applied to anyone who:

1. Is an actual or threatened victim of domestic violence, dating violence, sexual assault or stalking or is an “affected individual” of the victim who...

² <https://www.niwrc.org/restoration-magazine/june-2018/housing-tribal-communities-three-issues-consideration-safety-native>

2. Is living in, or seeking admission to, any covered housing entities.

VAWA 2013 also removed the VAWA 2005 requirement that the household member be related by blood or marriage to the victim, meaning that different types of kinship could be recognized to trigger the protections. According to the National Housing Law Project, this meant that VAWA 2013 would protect individuals who “simply live in the victim’s household, regardless of whether they are related by marriage or blood to the victim.”

Additionally, VAWA 2013 revised the definition of “domestic violence” to include crimes of violence committed by an intimate partner of the victim or a by a person who has cohabitated with the victim as an intimate partner.

No person could be denied assistance, tenancy or occupancy rights to housing solely on the basis of criminal activity, if that activity is directly related to domestic violence, dating violence, sexual assault, or stalking committed by a household member, guest or any person under the tenant’s control, if the tenant or affiliated individual of the tenant is the victim of domestic violence.

Like the provisions of VAWA 2005, VAWA 2013 enabled covered housing programs to bifurcate a lease to evict or terminate assistance to only those tenants or lawful occupants who engage in criminal acts of violence against an affiliated individual or others, which added a critical protection for tenants who remain in the housing because of the lease bifurcation.

Most critically, VAWA 2013 revised the certification process under VAWA 2005. The new law permitted public housing authorities, owners and managers to request that survivors certify via forms approved by the appropriate federal agency. The form must state that an applicant or tenant is a victim of domestic violence, dating violence, sexual assault or stalking; state that the incident that provides grounds for protection meets the statutory requirements; and state the name of the perpetrator (if the name is known and SAFE to provide). VAWA 2013 also expanded the forms of documentation to include one signed by a survivor and a mental health professional (under penalty of perjury). A survivor also has the option of providing an administrative record to document the abuse. Under the new law, instead of a certification form, the applicant or tenant may provide:

- (a) Documentation signed by the survivor and a victim service provider, an attorney, a medical professional, or a mental health professional in which the professional attests under penalty of perjury to his or her belief that the victim has experienced abuse; or
- (b) A federal, state, tribal, territorial, or local law enforcement, court, or administrative record.

VAWA 2013 also included a new provision mandating that each federal agency adopt a model emergency transfer plan for covered entities to utilize. The plan must allow survivors to transfer to another available and safe dwelling unit assisted under a covered housing program if: (1) the tenant expressly requests the transfer and (2) the tenant “reasonably believes” that the tenant is threatened with imminent harm and further violence if the tenant remains within the same unit, or the tenant is a victim of sexual assault and that assault occurred within 90 days before the transfer request.

Though there are other protections and improvements to be noted, the final issue for the purpose of this analysis relates to confidentiality. VAWA 2013 requires that a public housing authority, owner, or manager keep confidential the information that a survivor provides to certify victim status. This information cannot be entered into a shared database or disclosed to another entity unless the disclosure meets certain requirements (requested or consented to by the survivor in writing; required for use in an eviction proceeding to determine whether the incident qualifies as a serious or repeated violation of the lease, etc.).

Prior to 2013, housing protections under VAWA 2005, only applied to public housing, the Section 8 Housing Choice Voucher Program, Section 8 project-based housing, Section 202 housing for the elderly, and Section 811 housing for people with disabilities. VAWA 2013 expanded the list of covered housing by including covered housing entities under VAWA 2013 were those under HUD (Public Housing, Section 8 Housing Choice Voucher Program, Section 8 Project-based Housing, Section 202 Housing for the Elderly, Section 811 Housing for People with Disabilities, Section 236 Multifamily Rental Housing, Section 221 (d)(3) Below-Market Interest Rate Housing, HOME, Housing Opportunities for People with AIDS, and McKinney-Vento Act Programs), the Department of Agriculture (Rural Development Multi-Family Housing Programs) and the Department of Treasury (Low-Income Housing Tax Credit).

VAWA 2022 Housing Provisions

The table below highlights where you can find the housing provisions within the VAWA.

Section	Section Title
Section 601	Housing Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault and Stalking
Section 602	Ensuring Compliance and Implementation; Prohibiting Retaliation Against Victims
Section 603	Protecting the Right to Report Crime from One's Home
Section 604	Transitional Housing Assistance Grants for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
Section 605	Addressing the Housing Needs of Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking
Section 606	Study and Report on Housing and Service Needs of Survivors of Trafficking and Individuals at Risk for Trafficking

Section 602

Section 602 now defines standards of compliance under covered housing programs; includes detailed reporting requirements, including the number of emergency transfers requested and granted, as well as the length of time needed to process them; includes standards for corrective action plans where compliance standards have not been met; requires some form of consultation (not Tribal specific); establishes a gender-based violence office with a violence against women director (and establishes their duties); and requires each appropriate agencies to issue regulations in accordance with section 553 of Title 5 in of the U.S.C. no later than two years after VAWA 2022 is enacted.

Rather importantly, Section 602 states that no public housing agency or owner or manager of housing assisted under a covered housing program shall discriminate against any person because that person has opposed any act or practice made unlawful by the act. It also prohibits coercion, intimidation, threats, interference or retaliation against any person in the exercise/enjoyment of, on account of the person having exercised/enjoyed, or on account of the person having aided or encouraged any other person in the exercise/enjoyment of any rights or protections under the Act.

Section 605

Section 605 amends the HEARTH Act so that the definition of “homeless” means: any individual or family who 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. However, the definition also includes the following limiting language: has no other safe residence and lacks resources to obtain other safe permanent housing.

The STTARS team alongside its National Workgroup on Safe Housing for AI/AN Survivors of Gender-Based Violence is working to address the limiting language and hopes to advise policymakers regarding ways to implement that new language while centering the intersectional needs of survivors.

Section 606

This section outlines the scope of a new study on trafficking and housing insecurity/homelessness. Section 606 defines “severe form of trafficking” to be the same as that found in section 103 of the TVPA (2000). This section applies to survivors of trafficking, including severe forms of trafficking, and those at risk of being trafficked. This section requires the government to coordinate with the

“Interagency Task Force to Monitor and Combat Trafficking established under Section 105 of the TVPA (2000), the US Advisory Council on Human Trafficking, and the Secretary of HHS.

Additional Provisions to be aware of are included here:

Section	Section Title
Section 206	LGBTQ Specific Services Program (see Section B(2)(A))
Section 701	Findings for Title VII (Economic Security for Victims)
Section 704	Study and Reports on Barriers to Survivors’ Economic Security Access (See Section C(1)(B))
Title X- Improving Conditions for Women in Federal Custody	Prohibition on Placement of Pregnant Prisoners or Prisoners in Post-Partum Recovery in Segregated Housing Units (See Section 1001(C))
Title XI- Law Enforcement Tools to Enhance Public Safety	Some provisions throughout, including for Native Hawaiians.

STTARS wants to call attention specifically to §701. Just as the findings in Title IX are critically important to the Safety for Indian Women chapter in the VAWA, these findings are significant and useful in terms of addressing the financial impact of violence on survivors generally (not Tribal specific). In particular, these findings called attention to the following:

- 60% of single women lack economic security and 81 percent of households with single mothers live in economic insecurity. Significant barriers that survivors confront include access to housing, transportation, and childcare. (§701(4))
- 92% of homeless women have experienced domestic violence, and more than 50% of such women cite domestic violence as the direct cause for homelessness. Survivors are deprived of their autonomy, liberty, and security, and face tremendous threats to their health and safety. *Id.*
- The CDC reports that survivors of severe intimate partner violence lose nearly 8,000,000 days of paid work. Women disproportionately need time off to care for their health or to find safety solutions, such as obtaining a restraining order or finding housing, to avoid or prevent further violence. (§701(5)).

The findings also define economic abuse as “behaviors that control an intimate partner’s ability to acquire, use, and maintain access to money, credit, ownership of assets, or governmental or private financial benefits, including defaulting on joint obligations (such as school loans, credit card debt, mortgages, or rent). Other forms of such abuse may include preventing someone from attending school, threatening to or actually terminating employment, controlling or withholding access to cash, checking, or credit accounts, and attempting to damage or sabotage the creditworthiness of an intimate partner, including forcing an intimate partner to write bad checks, forcing an intimate partner to default on payments related to household needs, such as housing, or forcing an intimate partner into bankruptcy.” (§701(15)).

The Role of VAWA Housing Provisions in Relation to the Native American Housing Assistance and Self Determination Act

Prior to 2013, housing protections under VAWA 2005, only applied to public housing, the Section 8 Housing Choice Voucher Program, Section 8 project-based housing, Section 202 housing for the elderly, and Section 811 housing for people with disabilities. VAWA 2013 expanded the list of covered housing by including additional HUD programs and other affordable housing programs administered by the Department of Agriculture and the Department of Treasury. (<http://nhlp.org/files/VAWA-2013-Bulletin-Article-Jan-2014-updated.pdf>). VAWA 2013 now applies to the following covered housing programs in the table below.

Department of Housing and Urban Development	<ul style="list-style-type: none"> • Public Housing • Section 8 Housing Choice Voucher Program • Section 8 project-based housing • Section 202 housing for the elderly • Section 811 housing for people with disabilities • Section 236 multifamily rental housing • Section 221(d)(3) Below-Market Interest Rate housing • HOME • Housing Opportunities for People with Aids • McKinney-Vento Act programs
Department of Agriculture	<ul style="list-style-type: none"> • Rural Development multifamily housing programs
Department of Treasury	<ul style="list-style-type: none"> • Low-Income Housing Tax Credit

It is critical to note that the Indian Housing Block Grant (IHBG) under the NAHASDA has been expressly excluded from the expanded housing protections. This means that most tribal housing authorities do not have to comply with the housing provisions as expanded under VAWA 2013 and arguably represents a serious gap in survivor protections. Of course, even absent VAWA provisions, Tribes as sovereigns are able to enact housing and shelter provisions that are survivor centered and that consider unique community needs and abilities. Should the VAWA 2013 protections be expanded in 2018 to include Indian Housing Block Grants, and engagement with tribes in a government-to-government relationship be sidestepped, tribal sovereignty would be further degraded. Thus, we must understand that while VAWA 2013 housing protections are important for survivor safety, the NAHASDA is equally important for tribal sovereignty interests.

The NAHASDA reorganized the system of housing assistance provided to AI/ANs through HUD by eliminating several separate programs of assistance and replacing them with a block grant program. There are two programs authorized for Indian tribes under this Act: the Indian Housing Block Grant and Title VI Loan Guarantee, which provides financial guarantees to tribes for private market loans in order to develop affordable housing. In 2000, NAHASDA was amended to add Title VII, Housing Assistance for Native Hawaiians.

NAHASDA’s Congressional findings state (*in part*):

- “(2) there exists a unique relationship between the Government of the United States and the governments of Indian tribes and a unique Federal responsibility to Indian people;
- (3) the Constitution of the United States invests the Congress with plenary power over the field of Indian affairs, and through treaties,

statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indian people;

(4) the Congress, through treaties, statutes, and the general course of dealing with Indian tribes, has assumed a trust responsibility for the protection and preservation of Indian tribes and for working with tribes and their members to improve their housing conditions and socioeconomic status so that they are able to take greater responsibility for their own economic condition;

(5) providing affordable homes in safe and healthy environments is an essential element in the special role of the United States in helping tribes and their members to improve their housing conditions and socioeconomic status...”

These findings are critical because they highlight the continued commitment that Congress has made in recognizing its trust responsibility and in strengthening tribal sovereignty under its unique obligation to tribes. Furthermore, in recognition of the role of the trust relationship and with respect to tribal sovereignty, the NAHASDA includes a requirement for negotiated rulemaking. The Act establishes a negotiated rulemaking committee, and requires that the Secretary adapt the procedures for negotiated rulemaking in general to the *unique government-to-government relationship between the Indian tribes and the United States*, and shall ensure that membership of the committee include only representatives of the federal government and of geographically diverse, small, medium, and large Indian tribes. Any changes to NAHASDA or the two programs it established must go through this mandated process, including changes from any applicable federal statutes like the VAWA 2013 expanded housing protections.

By understanding the requirements of and reasons for the NAHASDA negotiated rulemaking provisions, as victim advocates we can begin to respect why the Indian Housing Block Grants were expressly excluded from the list of covered housing entities in VAWA 2013. It is critical for Tribes to control how needs are met in their communities, so as HUD promulgates new rules under VAWA 2022, Tribes must raise and address any foreseeable issues related to implementing housing related provisions should HUD authorize such a rule.

VAWA 2022 and HUD Dear Tribal Leader Letter

On August 16, 2022 HUD issued a Dear Tribal Leader Letter regarding implementation of the Violence Against Women Act. The letter acknowledged the survivor centered provisions included in VAWA (2005, 2013 and 2022) regarding housing. In the letter, HUD informed Tribal leadership that it was seeking Tribal input regarding the implementation of “VAWA-like” protection specifically requested Tribal feedback on the following four questions:

1. What are the challenges/barriers to helping survivors of domestic violence, dating violence, sexual assault, and stalking in HUD-assisted Tribal housing?
2. What policies do Tribes and Tribally Designated Housing Entities (TDHEs) already have in place to assist survivors?

3. Should HUD consider implementing certain policies that assist and protect survivors who reside in HUD-assisted Tribal housing? If so, what policies would they be? Please note that HUD would conduct extensive Tribal consultation before implementing any such policies.
4. Are there resources HUD could provide to help Tribes and TDHEs protect survivors?

STTARS Responses to HUD Questions

1. What are the challenges/barriers to helping survivors of domestic violence, dating violence, sexual assault, and stalking in HUD-assisted Tribal housing?

The barriers facing survivors of gender-based violence in HUD-assisted Tribal housing are best characterized as structural. The following list exemplifies some of this (but is meant to be merely illustrative):

- Housing can be time-capped;
- Requirements to maintain housing are overburdensome;
- Funding is limited and does not meet the disparate need of AI/AN/NH survivors
- Housing is not habitable;
- Housing inventory is severely limited;
- Rent is exceptionally high and increasing;
- Economic and community development and lack of jobs or employment impacts on maintaining and sustaining housing
- COVID related assistance is ending;
- Eviction moratoriums ended; and
- Western practices are pervasive (either as part of funding requirements or around the idea of maintenance/care/access/sustainability/affordability/etc.).

Some Tribal codes include provisions that mirror western practice, which are not always survivor centered (but may also be in place due to the disparate funding issue). For example:

- Nuisance Ordinances;
- One-Strike Laws;
- Expedited Eviction Codes (usually related to substance misuse);
- Requirement of certain disclosures (prior convictions/other application disclosures regarding systems interactions);

- Financial barriers to accessing housing (application fees, prior evictions, lack of employment);
- Access to information can be limited or restricted by internet access/sometimes not publicly available;
- Rigid rules around care/maintenance of housing units;
- Rigid rules regarding pets (prohibition against pets);
- Limitations regarding who can reside in a unit;
- Citations and fines for garbage/maintenance/upkeep;
- Lack of ADA compliance or similar regulations/ordinances; and
- Substance abuse/misuse policies (need a clean UA)

The major issue with many of the provisions above is that emphasis is placed on protection of an asset (the housing unit), rather than on the survivor. Additional barriers include non-Native /not trauma-informed property management companies, decentralization of codes/ordinances and regulations (due to the intersectionality of gender-based violence and housing), rules relating to children (curfews/ punitive treatment of parents), non-Native Organizations serving as Tribally Designated Housing Entities, terminology that is problematic (“needy family” programs), and views of survivors generally.

2. What policies do Tribes and Tribally Designated Housing Entities (TDHEs) already have in place to assist survivors?

Many Tribes have laws and policies that are in place which center the survivor experience. For example:

- Codes/policies that consider survivor economic impacts, such as domestic violence paid leave;
- Codes/policies that have eviction protections, such as no “self-help” laws (a landlord cannot carry out an eviction without a court order);
- Codes/policies that reflect compliance with the Violence Against Women Act 2013 and 2022 (non-compulsory for Tribes who receive only IHBG funding);
- Codes/policies that create enforceable minimum standards for rental properties (fines for violations);
- Codes/policies that reflect intersectional practices (minor clothing allowance ordinances, low barrier applications, childcare provisions, etc.);
- Codes/policies that include provisions that promote dignity and autonomy (elder protections/paths to permanency/provisions that clearly state the duty to care for one another);
- Codes/policies that consider AI/AN/NH survivors’ unique safety and confidentiality needs; and

- Codes/policies that represent low barrier access (applications fees waived or low or provided for, case management that is rooted in dignity, respect and trust, and language access).

Many Tribes also have codes in place that memorialize the central role of culture in housing. With culture being THE core protective factor for AI/AN/NH people, policies that are reflective of this, are inherently survivor centered.

3. Should HUD consider implementing certain policies that assist and protect survivors who reside in HUD-assisted Tribal housing? If so, what policies would they be? Please note that HUD would conduct extensive Tribal consultation before implementing any such policies.

First and foremost, Tribes are sovereign. HUD should not implement any rules without meaningful and consistent consultation with Indian Tribes and absent full compliance with NAHASDA and the Federal Trust Responsibility. Meaningful consultation occurs when the rules are reflective of the testimony provided, not merely a box indicating some form of consultation occurred.

At a minimum policies enacted:

- Must take into account the impact of the pandemic on AI/AN/NH survivors, Tribes, Tribal Housing Authorities and Tribally Designated Housing Authorities;
- Should be implemented concurrently with full and adequate funding for NAHASDA (funding which meets the trust relationship of the federal government to Tribes, meets the fiduciary standard, and addresses past funding disparities (which are severe));
- Must respect and prioritize the safety and cultural needs of AI/AN/NH survivors;
- Must respect and prioritize tribal self-determination;
- Must consider the historical and ongoing impacts of colonization on Tribal housing and access to safe housing and shelter for AI/AN/NH survivors;
- Must increase access to safe housing and shelter for AI/AN/NH survivors;
- Should create adequate funding sources for Tribes and Tribal programs to be able to build, staff, maintain and sustain domestic violence shelters;
- Should create incentives, but not penalties, for Tribes who implement policies that are consistent with VAWA 2013 and VAWA 2022;
- Should consider the diversity of Tribal communities, their unique needs and their many strengths;
- Should ensure funding for concurrent services for survivors that are culturally-based;

- Should uphold NAHASDA;
- Must include the right to appeal;
- Should consider the unique geographic and existing infrastructure in Tribal communities; and
- Should not be implemented without adequate training and technical assistance to grantees.

4. Are there resources HUD could provide to help Tribes and TDHEs protect survivors?

Yes. Examples include (not an exhaustive list):

- Flexible funding;
- Funding for application fees, deposits for first and last;
- Transportation vouchers;
- Funding to keep survivors in their current home;
- Funding opportunities that address intersectional issues (childcare, health, mental and behavioral health, food, sanitation, clean water, internet access, etc.); and
- Consistent and frequent training regarding gender-based violence, including trauma-informed and culturally grounded approaches

Funding Limitations

It is imperative to understand that in Indian country, while shelter access is still critically needed, it is woefully underfunded. Nationally, there are over two-thousand (2,000) domestic violence shelters, but less than fifty (50) shelters are tribally created, tribally run, or provide tribally minded programs. In Indian Country, the disparate need for housing and shelter, the exponential rates of violence, and the impact of COVID/climate crisis leave survivors without options for accessing safe living conditions. This is a serious dereliction of the Federal Trust Responsibility that the United States government has with Tribes. Although shelters provide a means to address these issues, they are primarily funded by the Family Violence Prevention and Services Act, which utilizes a formula to determine tribal funding based on population. Population-based formula funding mostly results in incredibly small grants for Tribes that do not provide enough funding for a single FTE (full time employee), let alone a domestic violence shelter. This is a hugely problematic result considering FVPSA is otherwise a prevention-based means of providing life-saving services and resources to survivors. The National Indigenous Women's Resource Center and its partner organizations are calling for an increase to tribal FVPSA funding (which remains unauthorized since 2015) to 12.5%.

The Violence Against Women Act also provides funding for shelters, most notably for transitional housing and rapid re-housing. However, these resources remain largely unavailable in Indian country. VAWA 2022 included an increase in funding to the transitional housing grant funds, from .25% to .50%. These funds are used by states and non-Indian programs as well, and the vast majority of this funding does not reach Indian country.

The Crime Victims Fund (“CVF”), which is established by the Victims of Crime Act (“VOCA”), can be utilized for housing and shelter related resources. The CVF is probably the most adequately funded pool of federal dollars discussed in this brief. Pulling from criminal restitution funds, the CVF also has the added benefit of little public scrutiny. The execution of the Act, however, has largely excluded Tribes from accessing this funding since the Act’s inception in 1994. Legislative fixes to VOCA (such as the “Survive Act”) continuously stall in Congress, and until 2018, there had never been a tribal specific allocation of this funding despite the fact that the restitution funds from the disproportionate number of crimes against Native women most certainly contribute to the CVF. In 2018, for the first time ever, Congress set aside 3% of the CVF for grants to Indian Tribes, which made 156 million dollars available to Tribal governments and tribally designated programs. However, the 3% set aside was placed into an omnibus bill and while Congress has still been setting aside funds for Indian Tribes out of the CVF, without a congressional fix, this money may not be sustainable.

NAHASDA authorized the Indian Housing Block Grant (“IHBG”) program, a formula grant and the largest source of federal funding for housing development and housing assistance in Indian country. Additionally, the Act authorized the Indian Housing Loan Guarantee Fund which allows tribes to leverage their Block Grant funds to obtain federally guaranteed loans from private banking institutions. In general, Tribes benefit from these grant programs, but the Act’s funding has not increased since the program’s inception in FY 1998, creating a significant barrier to meaningful housing access in Indian country for many Tribes. The Broken Promises Report from 2016 highlighted that NAHASDA operated at a year-over-year deficit due to both inflation and the rising demand for housing in tribal communities. NAHASDA remains woefully underfunded; and this issue has simply compounded since the pandemic and climate crisis related impacts. In 2022, NAHASDA received a 20% increase in funding, but the increase does not reconcile underfunding for the past 24 years, nor does it adequately account for the rise in construction costs, the pandemic, the impacts of climate crisis on both construction and land/shelter availability, nor does it account for the incredible rates of inflation over the past year.

The Role of Tribal Governments in Tribally Issued Housing Regulations That Protect Survivors

The work we do must be survivor centered, so we must find ways to address survivor needs while advocating for policy reform that respects tribal sovereignty and imagines an Indigenous future where safe housing is a reality for all. Through continuing to strengthen tribal sovereignty, we can best address the needs of survivors in AI/AN communities. We can utilize a framework that **contemplates future survivors, or better yet, helps to prevent future violence.**

Regardless, it is clear that tribal victims in public housing run by tribal housing authorities or TDHEs funded by IHBGs will continue to experience a gap in protections that non-Native survivors utilizing public housing assistance do not, at least not from a regulatory standard. The question of how to address this issue remains, but is one that the STTARS Indigenous Safe Housing Center is working to address through its clearinghouse project (more information can be found here.)

One option, as contemplated previously in 2018 and in the workgroup report from 2020, is to amend (through the legislative process at the federal level) VAWA to include public housing assistance that is funded by IHBGs as covered entities. Again, ***this is not an acceptable reform***. With VAWA 2022 having just been reauthorized, it is also highly unlikely. But we do need to be diligent and ensure that HUD rules that are promulgated from VAWA 2022, must still comply with the negotiated rule making process that NAHASDA mandates. Another good example of where this might be problematic if Tribes are not consulted with, is in regards to the amended definition of homelessness in the MVHA. Where we see that limiting language of “has no other safe residence” and has no other “resources to obtain safe residence” could potentially just mean that housing for survivors in Indian country remains as it is: overcrowded/doubled-up, sub-standard, and more expensive.

A second and more viable option, which further supports tribal sovereignty, is for tribal governments who receive IHBGs to include survivor protections within their respective tribal housing codes. It should be noted that there are tribal housing codes do not include protections for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking. Some housing codes are outdated; some are harmful. Examples (illustrative, not exhaustive) of harmful provisions in tribal housing codes include the following:

1. Records of disturbance to neighbors by any household member as a basis for denial;
2. Denial for any past convictions;
3. Eligibility based on anyone in household over age 13 with a criminal history
4. One-strike eviction policies;
5. Evictions from private housing;
6. Evictions due to death or other circumstance (in which the deceased’s presence is otherwise relied on for continued access);
7. Restrictive pet policies; and
8. Rigid rules resulting in fines/contempt findings/and even litigation.

Tribal housing codes can be amended to remove harmful provisions and include provisions that prioritize survivor safety. Examples (illustrative, not exhaustive) of survivor-centered provisions that can be included in tribal housing codes include:

1. Emergency transfer provisions;
2. Lease bifurcation options;

3. Self-certification provisions;
4. Early lease termination;
5. Confidentiality requirements around victim status;
6. Prohibitions on denials of assistance to victim based on criminal activity, when that activity is related to instances of abuse suffered by victim;
7. Domestic violence leave policies (related to a survivors continued employment); and
8. Policies that reflect different kinships/relationships.

Looking Past VAWA

Public tribal housing assistance and shelter access is critical and life saving for AI/AN survivors of abuse. AI/AN survivors must have access to housing assistance and to shelter that protects them, that respects their autonomy and dignity as Native people, and that considers the unique challenges that survivors face due largely to external factors that are both historical and ongoing.

Tribes, as sovereigns, are in the best possible position to ensure the safety and wellbeing of their membership.

Additional Resources:

STTARS 2022 HUD Consultation Guidance (link)

View National Workgroup on Safe Housing for American Indian and Alaska Native Survivors of Gender-Based Violence: Lessons Learned: <https://n8ve.net/RpedO>

Fact Sheet: Reauthorization of the Violence Against Women Act (VAWA): <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/16/fact-sheet-reauthorization-of-the-violence-against-women-act-vawa/>

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1. *See generally* 42 U.S.C.A. §14043e-11 (West 2014)
 2. <http://nhlp.org/files/VAWA-2013-Bulletin-Article-Jan-2014-updated.pdf>
 3. *Id.*
 4. *Id.*
 5. 42 U.S.C.A. §14043e-11(b)(3)(A) (West 2014).
 6. 42 U.S.C.A. §14043e-11(b)(3)(i) (West 2014).
 7. 42 U.S.C.A. §14043e-11(c)(3)(A) (West 2014).
 8. 42 U.S.C.A. §14043e-11(c)(3)(B) (West 2014).
 9. <http://nhlp.org/files/VAWA-2013-Bulletin-Article-Jan-2014-updated.pdf>
 10. *Id.*
 11. 42 U.S.C.A. § 14043e-11(c)(4) (West 2014).
 12. 42 U.S.C.A. § 14043e-11(a)(3) (West 2014).
 13. https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/nahasda
 14. *Id.*
 15. *Id.*
 16. P.L. 104-330
 17. Page 3, <https://www.huduser.gov/portal/sites/default/files/pdf/HousingNeedsAmerIndians-ExecSumm.pdf>

18. *Id* at 1.

19. *Id*.

20. *Id*.

21. *Id*.

22. *Id*.

23. *Id*. at 5.

24. *Id*. at 6.

25. http://www.ncai.org/FY2019_Presidents_Budget_Analysis7.pdf

26. *Id*.

27. <https://docs.house.gov/billsthisweek/20180319/BILLS-115SAHR1625-RCP115-66.pdf>

28. Page 9, <https://www.huduser.gov/portal/sites/default/files/pdf/HousingNeedsAmerIndians-ExecSumm.pdf>