1-1-2005

Violence Against Women Act Reauthorization Introduced

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by Danielle Pelfrey Duryea*

On June 8, declaring that the "backbone of our country's fight to end domestic violence and sexual assault [must not] lapse or become buried in partisan bickering," Senator Joseph Biden (D-DE) introduced legislation to reauthorize the Violence Against Women Act (VAWA).[1] VAWA will expire at the end of September 2005 if not reauthorized.

Coauthored by Senators Arlen Specter (R-PA) and Orrin Hatch (R-UT), Senate Bill 1197 would add to the landmark legislation a new subtitle devoted to housing issues. It would, further, appropriate $150 million over five years to fund collaborative efforts between domestic violence organizations and housing providers, programs to combat family violence in public, Indian and other federally assisted housing, and enhancements to transitional housing resources for survivors of domestic violence. While advocates for homeless people and domestic violence survivors applaud the proposal, however, some housing industry organizations are wary.

Background: The Violence Against Women Acts of 1994 and 2000

VAWA was originally passed in 1994 in recognition of epidemic domestic and sexual violence against women.[2] The original VAWA legislation provided grants and other financial assistance for crime prevention programs targeted at violence against women, enforcement of domestic violence and child abuse laws in rural areas, battered women's shelters, community education programs, services to sexual assault victims, and research on violence against women. It also strengthened federal penalties for sex offenders, established the National Domestic Violence Hotline, and altered evidentiary rules regarding sexual history in civil and criminal cases.

Despite the Supreme Court rejection of its federal civil remedy for victims of gender-motivated violence,[3] VAWA has survived. Reauthorization in 2000[4] and amendments in 2003[5] expanded the range of violence against women covered by the law to include dating violence and stalking as well as domestic and sexual violence, and added provisions to enhance protections for battered immigrant women, law enforcement capabilities related to violence against women, education efforts on domestic and sexual violence, and services to victims, including grants to support transitional housing services for survivors of gender-based violence.

The Violence Against Women Act of 2005: New Housing Provisions

The proposed VAWA reauthorization adds many innovations to the developments of the last decade, including a proposed new section that systematically addresses the near- and long-term housing issues faced by victims of violence. Significant Congressional findings on the issue include:

- **a strong link between domestic violence and homelessness:** 92% of homeless women have experienced severe physical or sexual abuse;
- **an existing problem of housing discrimination** against survivors of domestic violence: 150 documented eviction cases and 100 denials of housing based on domestic violence victim status in the last year alone;[6]
- a **severe lack of emergency, transitional and long-term housing options** for domestic violence victims and their children that can result in victims returning to their abusers;
- **barriers to housing access as a direct result of domestic abuse**, including lack of income, credit history and landlord references; and
- **challenges faced especially by victims of domestic violence in rural areas**, including geographical isolation, extra difficulty ensuring confidentiality, and decreased access to resources such as jobs, child care and education.

The proposed housing provisions emphasize public-private and government-advocate collaboration and would make millions of new dollars available to public housing agencies (PHAs), owners and managers of other assisted housing, and victim advocacy organizations. Title VI, Housing Opportunities and Safety for Battered Women and Children, would:

- establish $10 million in new annual grants for collaborative projects providing safe, affordable, non-time-limited housing for victims of domestic and sexual violence, including direct assistance to families as well as renovation, maintenance, and new construction of

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[1]151 Cong. Rec. S6229 (2005).

[2]Pub. L. No. 103-322, tit. IV, 108 Stat. 1902 (1994).

[3]United States v. Morrison, 529 U.S. 598 (2000) (finding that Congress lacked Commerce Clause and Fourteenth Amendment authority to enact § 13981 of the legislation).

[4]Pub. L. No. 106-386, 114 Stat. 1464 (2000).

[5]Pub. L. No. 108-21, 117 Stat. 650 (2003).

[6]*See Court Recognizes Domestic Violence Survivor's Fair Housing Challenge to Eviction*, also in this issue of *Housing Law Bulletin*.

affordable units, with priority given to linguistically and culturally specific services;

- expand an existing VAWA grant program to help survivors transition from unsafe and unstable situations to secure, permanent housing;
- require PHAs and Indian housing authorities to incorporate victims' housing needs in their five-year plans and to report programs in place that prevent violence against women and provide services to victims of violence;
- amend the public housing and Section 8 voucher programs to prevent victims of domestic and sexual violence from being evicted from or denied access to public and assisted housing on the basis of their victim status or their abusers' criminal activity;
- initiate $10 million in new annual grants to owners and managers of public and assisted housing to prevent victims of domestic and sexual violence from losing benefits or being denied opportunities to live in public and assisted housing;
- require localities to incorporate the needs of victims of domestic and sexual violence into their five-year affordable housing strategic planning; and
- protect the confidentiality of survivors within the homeless services system.

Advocate proposals that were not incorporated in the final proposed housing title include a provision that would have prohibited all housing discrimination on the basis of domestic violence victim status. Although not proposed as an amendment to the Fair Housing Act, this prohibition would have been analogous to Fair Housing Act protections against discrimination on the basis of race, color, religion, sex, national origin, familial status or disability in all housing. Among the states, Rhode Island and Washington currently have laws that prohibit landlords from discriminating against tenants who have suffered domestic violence.[7] Other states protect tenants from discrimination on the basis of their victim status in some but not all conditions of tenancy.[8]

In addition to the new Title VI, the Senate bill includes provisions to continue successful VAWA-based programs as well as to strengthen law enforcement and legal representation for victims of violence against women, prohibit cyberstalking, enhance public health and workplace responses to violence against women, address the specific needs of Native American women, and improve protections for battered and trafficked immigrant women.

Eleven housing industry organizations have objected to parts of the VAWA reauthorization bill.

Among the organizations involved in the drafting of the Senate bill were the American Bar Association, the National District Attorneys Association, the National Council on Family and Juvenile Court Judges, the National Association of Chiefs of Police, the National Sheriffs' Association, the National Coalition Against Domestic Violence, the National Network to End Domestic Violence, the Family Violence Prevention Fund, Legal Momentum (formerly National Organization for Women Legal Defense Fund), the National Alliance to End Sexual Violence, and the National Center for Victims of Crime.

Housing Industry Objects to Some Provisions

Eleven housing industry organizations—including the Public Housing Authorities Directors Association, the Council of Large Public Housing Authorities, the National Association of Housing and Redevelopment Officials, and the National Association of Realtors—have objected to parts of the VAWA reauthorization bill. Chief among their concerns are the bill's proposed changes to occupancy and evictions procedures, as well as its additional planning and reporting requirements.[9]

The industry coalition objects to the proposed VAWA reauthorization's implicit limits on PHA and property owner authority to engage in "one-strike" eviction and termination policies, which were upheld in the 2002 U.S. Supreme Court decision in *HUD v. Rucker*.[10] Under HUD rules approved in *Rucker*, a public housing tenancy can be terminated if any member of the tenant's household or any guest engages—even once—in drug-related or other criminal conduct on or off the premises.[11] Public and subsidized housing tenants can be evicted even if they were

[7]Both states forbid discrimination against tenants and rental applicants solely on the basis of their status as victims of domestic violence. R.I. GEN. LAWS § 34-37-2.4 (2005); WASH. REV. CODE § 59.18.580 (2005). Washington state law also permits tenants who inform their landlords that another tenant has assaulted them to terminate their rental agreements without further obligation if the landlord does not evict the perpetrating tenant. WASH. REV. CODE § 59.18.575 (2005).

[8]*See Federal Court Recognizes Fair Housing Act Claim, supra* note 6, for discussion of other state laws related to the housing rights of domestic violence survivors.

[9]Public Housing Authorities Directors Association, et al., Letter to Members of the Senate Judiciary and Banking, Housing and Urban Affairs Committees, *available at* http://www.nahro.org/members/news/2005/vawa.pdf.

[10]United States Dep't. of Housing & Urban Dev. v. Rucker, 535 U.S. 125 (2002).

[11]*See* 42 U.S.C. § 1437d(l)(6) (2005). For analysis of the aftermath of the *Rucker* decision, *see, e.g.*, NHLP, *One-Strike Eviction Decisions: Two Years After Rucker*, 34 HOUS. L. BULL. 143 (July 2004).

unaware of the illegal activity or even if they had taken affirmative steps to prevent the family member or guest's criminal conduct.[12] Industry organizations now argue that the bill's proposed changes to occupancy and evictions procedures could inadvertently protect household members and guests engaged in criminal activity where a tenant has claimed to be a domestic violence victim. Responding that it is perverse to evict victims on the basis of their abusers' criminal violence, domestic violence advocates believe that the bill preserves landlords' right to evict anyone engaging in criminal conduct, including abusers.

The industry organizations characterize the bill's substantive protections for Section 8 and public housing residents as in direct conflict with existing law and regulations. In addition, they claim that new federal law governing evictions could dramatically change protections for renters and owners alike in some states and localities. Advocates for the bill see no such conflicts.

Citing their extensive experience with housing assistance, PHAs also wish to be independently eligible to apply for grants to develop long-term housing for survivors of domestic violence, dating violence, sexual assault, and stalking. The current proposal permits them to be partners in coalitions seeking these grants, but does not require applicant coalitions to include a PHA.

Finally, the industry coalition claims that the bill's new reporting and planning requirements would thwart years of efforts to simplify PHA planning and reporting. The new requirements are particularly unnecessary, they claim, because many PHAs have already enacted policies specifically designed to protect victims of domestic violence from eviction and to enhance victim safety. Advocates for victims of violence respond that such self-reported, piecemeal, and uncoordinated efforts are simply insufficient.

Next Steps

The September 30 expiration date for the current Violence Against Women Act should spur quick congressional action on this bill and its companion House legislation (H.R. 2876 and H.R. 3171). The Senate bill, with thirty-two cosponsors, has been referred to that body's Judiciary Committee. Similar legislation, introduced by Representative Mark Green (R-WI) on June 14, 2005, with fifty-five cosponsors, and by Representative Zoe Lofrgen (D-CA) on June 30, 2005, with 114 cosponsors, has been referred to the House Judiciary, Education and the Workforce, Energy and Commerce, Financial Services, Agriculture, and Ways and Means Committees. Future issues of the *Bulletin* will cover the bills' progress. ■

[12] *See generally Rucker*, 535 U.S. 125 (2002). Some lower courts have proven disinclined to approve broad uses of the *Rucker* "one-strike" power and have seemed concerned both with the severity of the crime in question and with whether the tenant was aware of the criminal conduct. *See generally* NHLP, *One-Strike Eviction Decisions, supra* note 11.

New GSE Bill Would Create Affordable Housing Funds

by Anthony Ha*

The Federal Housing Finance Reform Act of 2005, H.R. 1461, 109th Cong. (2005), would establish new affordable housing funds at the government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac. The purpose of the funds would be to increase homeownership and rental housing for extremely low- and very low-income families.

Each GSE would dedicate 5% of its after-tax profits to its affordable housing fund. The initial estimate is that each of the GSEs would provide $400-$600 million to the funds in the first years and that the contribution would eventually reach $1 billion annually.[1]

Although the legislation is still in its early stages, inclusion of the funds provisions represents tremendous progress for affordable housing production.

Background

H.R. 1461 was introduced in the House Financial Services Committee by Chairman Michael Oxley. Its primary purpose is to increase federal regulation and oversight of the two GSEs. As introduced, the bill did not include any references to affordable housing funds, but during the committee's mark up of H.R. 1461, Rep. Oxley offered an amendment to establish the affordable housing funds.[2]

This followed a similar amendment proposed last year in the 108th Congress in the Senate Banking Committee by Senator Jack Reed. That amendment, which would have required Fannie Mae and Freddie Mac to set aside 5% of their pretax profits to support the financing and funding of affordable housing, was attached to a GSE regulatory bill. That bill was voted out of committee on a partisan vote but never received action on the Senate floor.[3]

The House Financial Services Committee has approved H.R. 1461 by a vote of 65-5; the Senate Banking Committee is expected to mark up similar GSE legislation shortly.

However, a House vote on the bill has been delayed until at least mid-September to allow a second committee to review the legislation. This delay is particularly worrisome because some are likely to use the additional time to muster opposition to the bill.

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[1] Letter from Sheila Crowley, President, NLIHC, to National Housing Trust Fund Campaign Partners (May 26, 2005) (re Affordable Housing Fund).

[2] The bill, as introduced, is available at http://thomas.loc.gov. Rep. Oxley's amendment is available at http://financialservices.house.gov (follow "Legislation" link).

[3] For more information about Sen. Reed's amendment, see http://www.nlihc.org/advocates/gses.htm.