

E&A Team, Inc. Presents...

Conquering VAWA Compliance



Presented by:
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Gross

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The logo for E&A TEAM INC. is displayed. It features a stylized house silhouette with a dark blue roof and a white body. Inside the house, the letters "E&A" are written in a large, dark blue, serif font. Below the house, the words "TEAM" and "INC." are written in a smaller, dark blue, sans-serif font, with "INC." in a smaller size and positioned to the right of "TEAM".

E&A
TEAM INC.

CONQUERING FAIR HOUSING COMPLIANCE

Program

HOME &
LIHTC

2016 Surve

2018
Research
Update

Challenge

2017

LIHTC Compliance Challenges

Many state housing finance agencies have stepped up and assumed the role of the appropriate agency by issuing guidance and instruction for implementing VAWA protections for LIHTC projects within their state.

noncompliance with VAWA does not trigger credit recapture of previously claimed credits, nor does it prevent the owner from continuing to claim credits.

Per the VAWA statute, further guidance and rulemaking is needed by the appropriate agency as it relates to:

- **Appropriate Agency Approved VAWA Certification**
- **Model Transfer Plan**
- **Reasonable time for requalification or to find new housing as it relates to lease bifurcation.**

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LIHTC Compliance Challenges, cont.

Reasonable Time

One contributing factor to this challenge is the lack of guidance from the IRS regarding the definition of “reasonable time” as it relates to the time period allowed for an ineligible household finding new housing.

HUD, in their final rule, stated that generally 90 days must be provided to remaining tenants to find alternate housing. *(Shorter time restraints apply to some HUD programs, such as Section 202/211, Section 202/8, HOPWA, etc. See HUD’s final rule for complete information, page 80772, section F.)*

This time frame can trigger a larger concern for the LIHTC owners when bifurcations resulting in ineligible households occur around the end of the owner’s tax year.

challenges may be encountered whenever a member is removed from a household.

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Example – Student Noncompliance as a Result of VAWA Lease Bifurcation

Stacy resides at Laurelwood Hills Apartments, a tax credit project where the owner's taxable year end is 12/31.

Stacy's lease was bifurcated on 12/15/2017. As a result of a bifurcation, Stacy's household is now a full-time student household and no student exception is met. If Stacy's household is still occupying the unit on 12/31/2017, the unit is considered out of compliance as of the last day of the owner's tax year. The unit should not be included as a low-income unit when determining the buildings applicable fraction for 2017, thereby reducing the amount of credit that the owner can claim for 2017.

Eligible Basis X **Applicable Fraction**
= **Qualified Basis**

Qualified Basis X **Applicable Credit %**
= **Annual Tax Credit**

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Example: Student Noncompliance as a Result of VAWA Lease Bifurcation in Year One

Lakeview Apartments:

- New Construction – 9% Applicable Credit %.
- Placed in service 10/1/2016.
- Owner deferred credits to 2017.
- Taxable year end is 12/31.
- 10 Units – all same size
- Target Applicable Fraction: 100%
- Eligible Basis: \$400,000
- Annual Credit: \$36,000

Andy moved into unit #105 on 3/5/2017, which was the first year of credit period. Andy's lease was bifurcated on 12/15/2017. As a result of a bifurcation, Andy's household is now a full-time student household and a student exemption is met.

If unit #105 is later occupied by a qualified household, the unit may be treated as a LIHTC unit, however, the owner will not receive the full credit. When a LIHTC unit is added after year one of the credit period, the owner does not receive the accelerated portion of the credit, and instead can only claim 2/3rd of the credit. This is ultimately calculated by multiplying the increase in qualified basis by 1/3rd of the applicable credit percentage (4% or 9%).

$$400,000 \times 90\% \times 9\% =$$

32,400 Annual Credit

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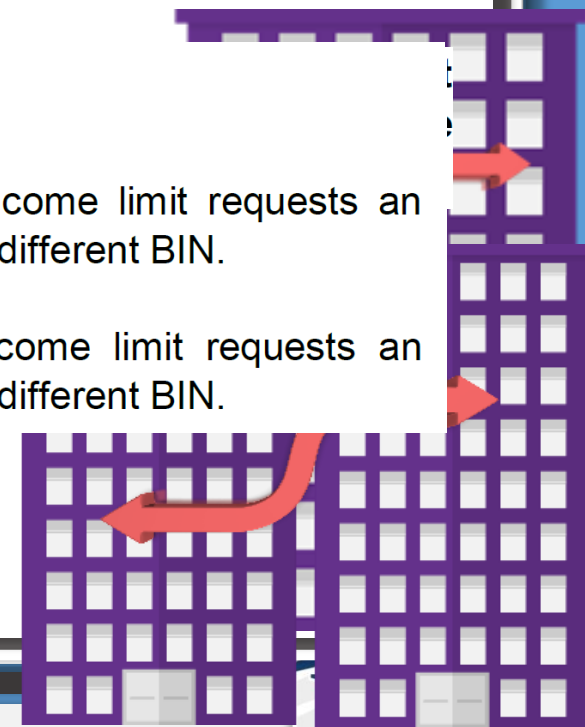
LIHTC Compliance Challenges, cont.

Unit Transfers

Transfer challenges may be encountered when:

- Multiple Building Projects (per IRS Form 8609 8(b) election)
A household whose income exceeds 140% of the applicable income limit requests an emergency transfer to another unit, and the only available unit is a different BIN.
- Not a Multiple Building Projects (per IRS Form 8609 8(b) election)
A household whose income exceeds the current applicable income limit requests an emergency transfer to another unit, and the only available unit is a different BIN.

recertification.



b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?



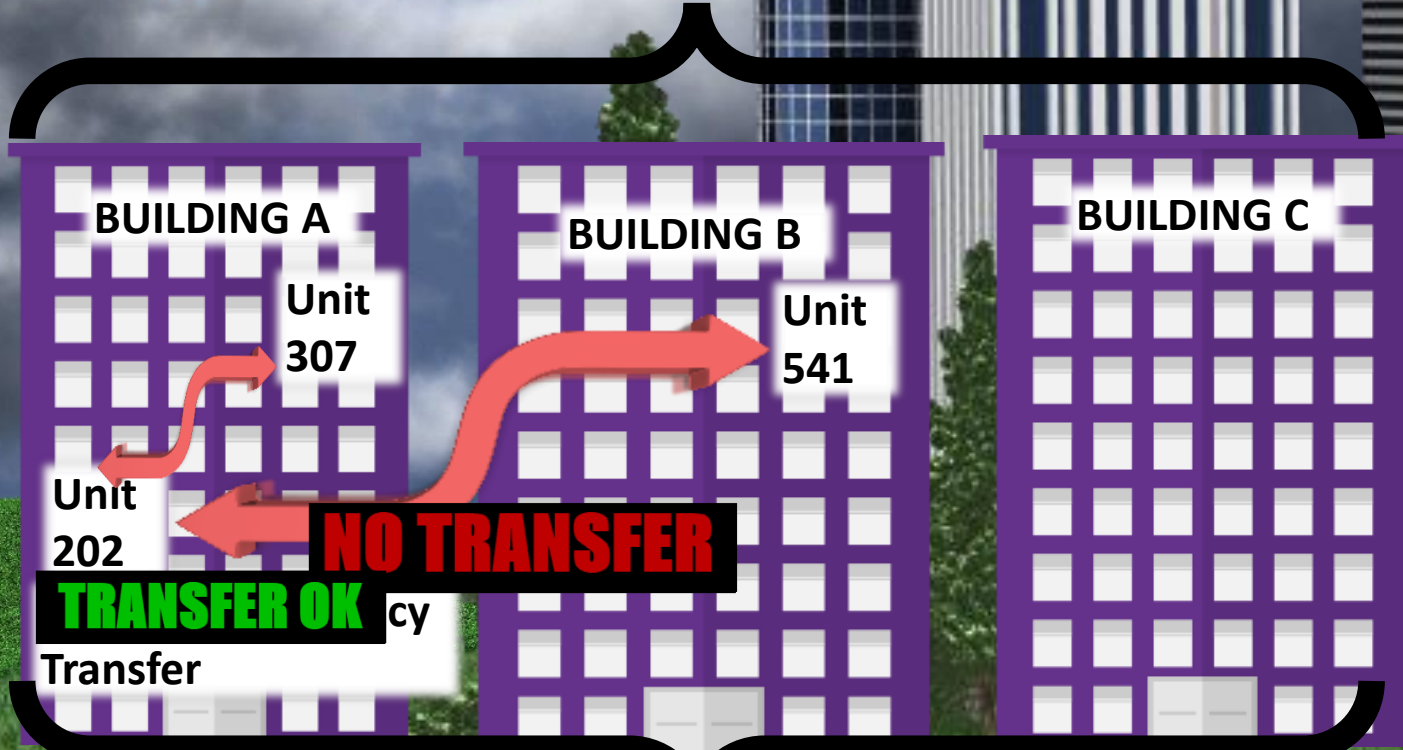
Yes

No



ONE

PROJECT



b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?

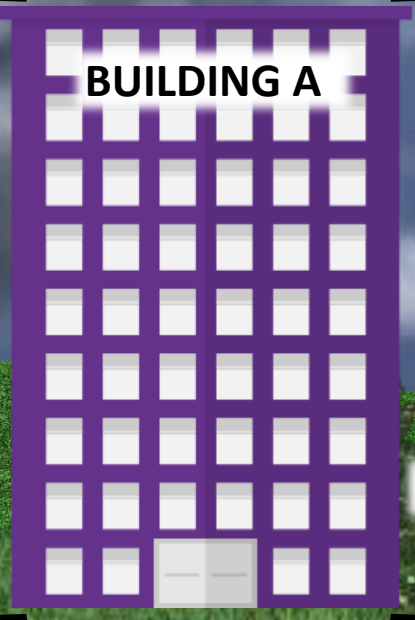
Yes

No

ONE PROJECT

ONE PROJECT

ONE PROJECT



BUILDING A

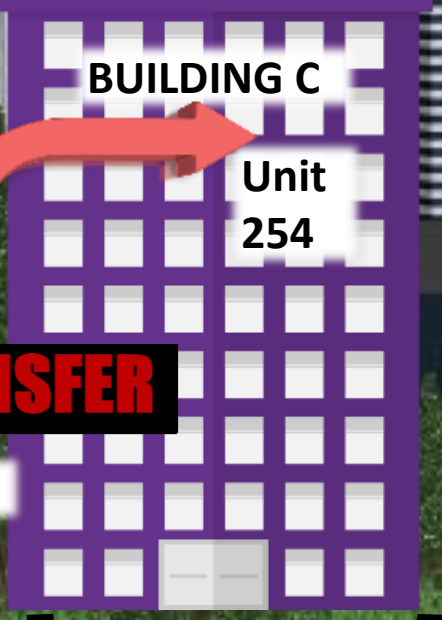


BUILDING B

Unit 401

Unit 315

TRANSFER OK
Request Emergency transfer



BUILDING C

Unit 254

NO TRANSFER

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Compliance is never easy when more than one type of housing program applies to a project. How are projects with layered funding affected by VAWA requirements?

HUD Programs:

For programs regulated by HUD, including HOME, we look to § 5.2001(b)(2) for guidance, which states, “Where assistance is provided under more than one covered housing program and there is a conflict between VAWA protections or remedies under those programs, the individual seeking the VAWA protections or remedies may choose to use the protections or remedies under any or all of those programs, as long as the protections or remedies would be feasible and permissible under each of the program statutes.”



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MAINTAINING COMPLIANCE



Notice of Occupancy Rights: HUD's Notice of Occupancy Rights, Form 5380, is to be used by all covered programs under VAWA including LIHTC.

VAWA Certification Form:

As the IRS has not developed a VAWA Status Certification form, the HUD Form 5382 must be used.

Model Emergency Transfer Plan:

HUD Requires that Participating Jurisdictions (PJ) develop and implement an Emergency Transfer Plan and make the determination of whether a tenant qualifies for the transfer under the plan for HOME-assisted projects committed funds on or after December 12, 2016.

The IRS has not developed a model Emergency Transfer Plan, however, for the LIHTC program the owner/agent would be making the determination of whether the tenant qualifies for a transfer under the plan.

For HOME/LIHTC units committed HOME funds before December 16, 2016, the owner/agent could make the determination of whether a tenant qualifies for an emergency transfer under an Emergency Transfer Plan.

For HOME/LIHTC units with HOME funds committed on or after December 16, 2016, the PJ would make the determination of whether the tenant qualifies for a transfer under the plan.

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2016 Survey

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2017



Protections Delayed:

State Housing Finance Agency Compliance
With The Violence Against Women Act

Contributors

Emergency Call Centers, Inc.

National Legal Center

National Center for Justice Assistance

National Institute for Trial Advocacy, Inc.

National Housing Law Center

National Housing Law Services

Sojourner Truth National Center of Poverty Law

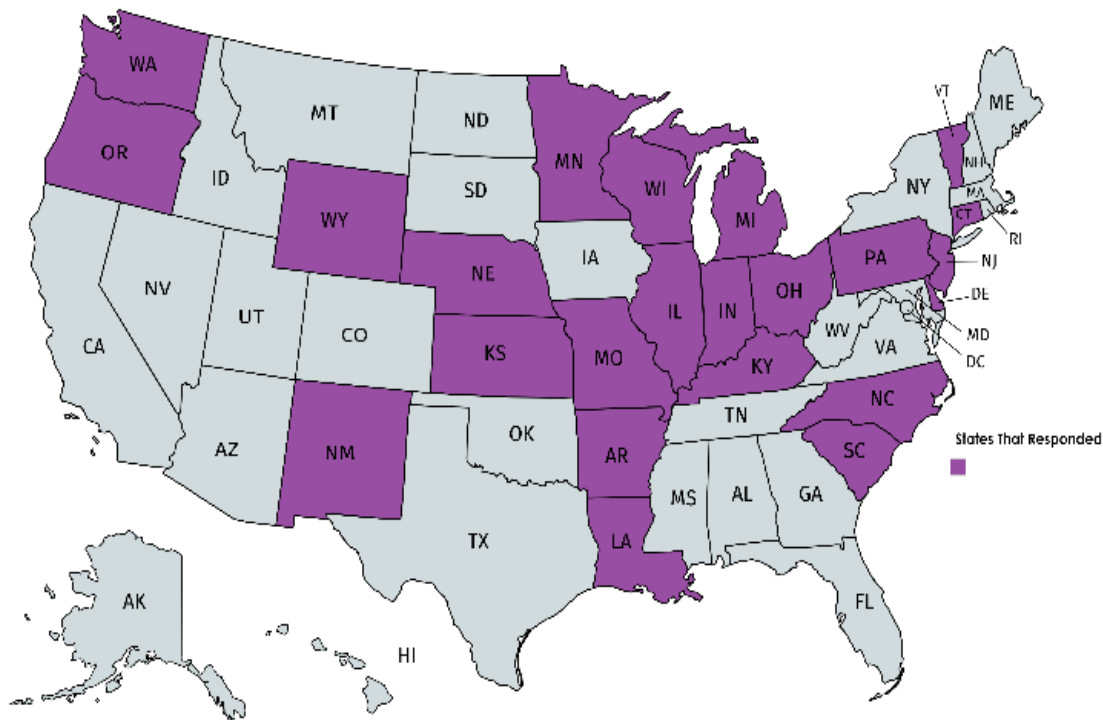
Protections Delayed

Survey Method:

The distributed survey included nine questions. The results are based on the information self-reported by the HFA, no independent verification was conducted.

Survey Response:

The survey was distributed to all 50 states, and 23 responses to the survey were received.



Created with mapcarta.net

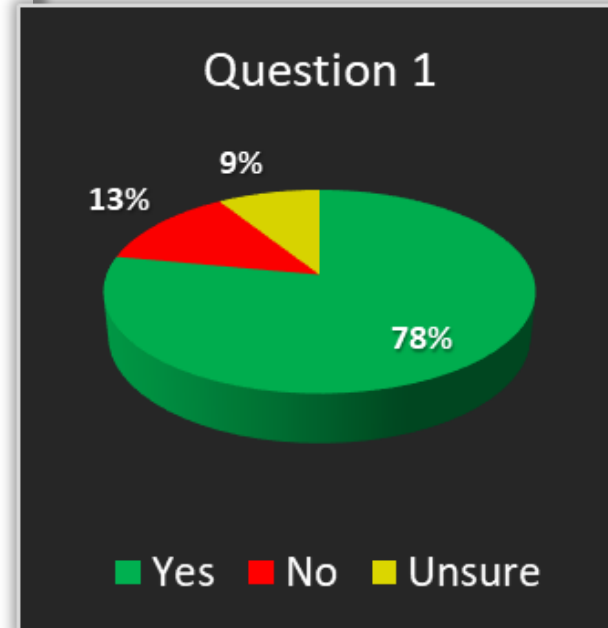
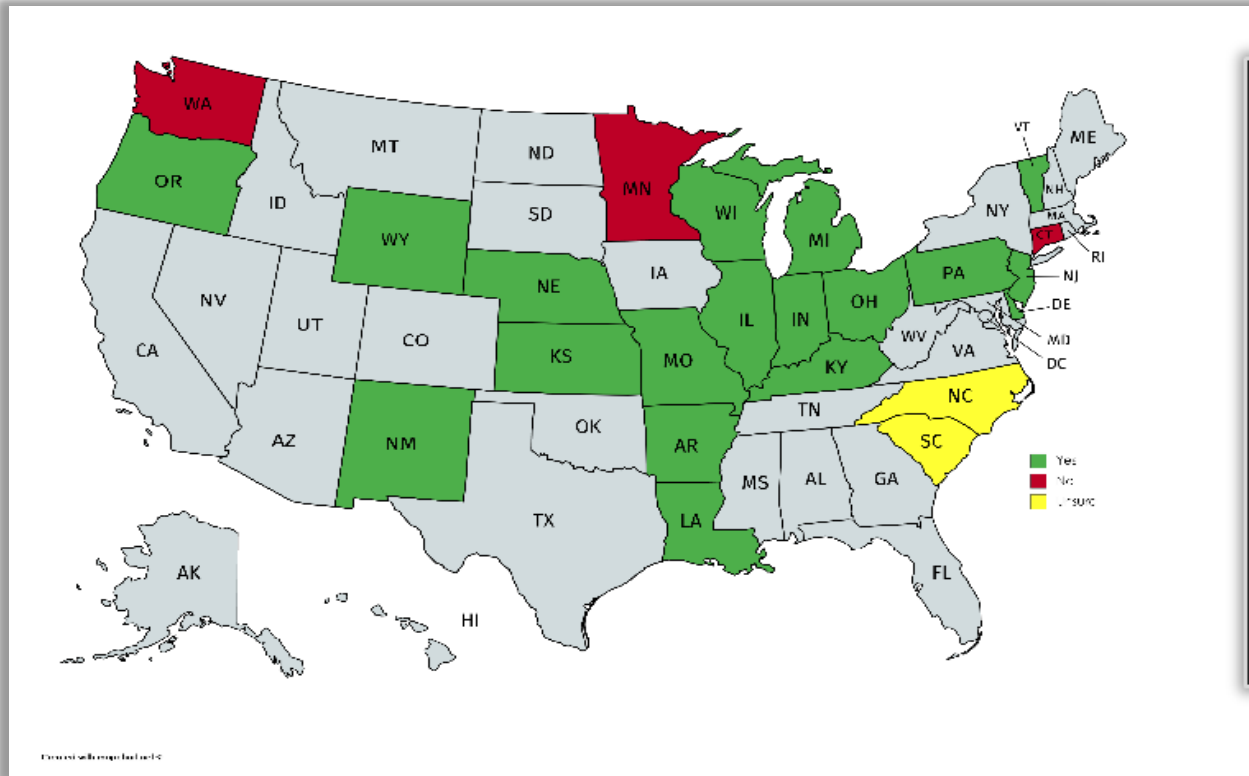


Protections Delayed: State Housing Finance Agency Compliance With The Violence Against Women Act

Contributors

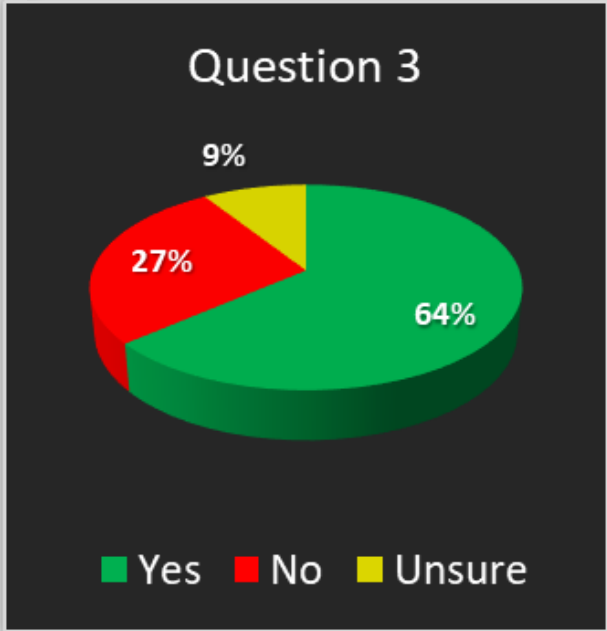
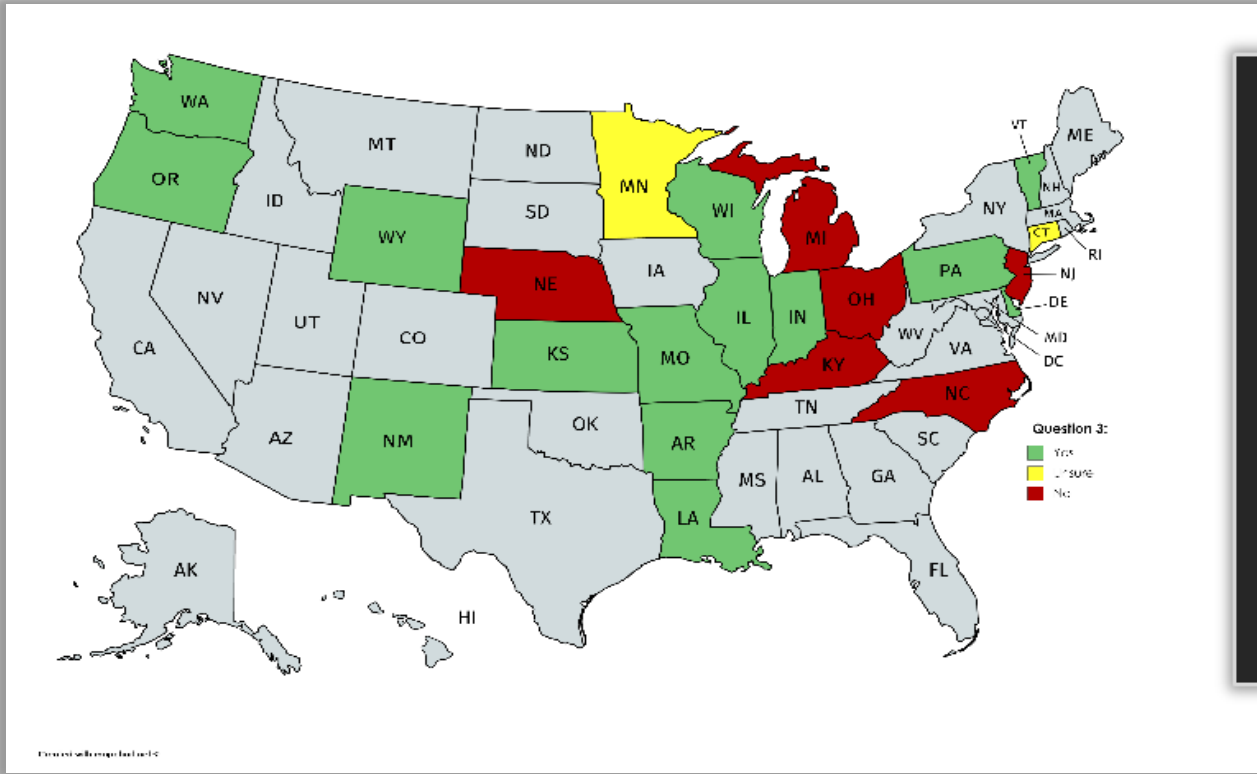
American Civil Liberties Union
National Immigrant Justice Center
Eastern Institute for Child Sexual Abuse
National Institute for Child Development Studies
Baker College of Podiatric Health Professions
Prostate Cancer Research Foundation
Sagehen Shelter National Center of Forensic Law

Q1 - Have you taken, or do you plan to take, any actions to inform residents of LIHTC properties of this change and the new protections, including the prohibition on evicting a victim based on these offenses?



- ➔ Protections Delayed /Page 10
- 18 of the 23 responding state housing finance agencies reported that they have taken, or plan to take, actions to inform residents of LIHTC properties of VAWA 2013's new protections. Of the responding agencies that have taken or plan to take steps, 11 have already taken action to inform residents of VAWA 2013's new protections, while 7 have not yet taken action but plan to do so in the near future. Some agencies, including Illinois, have also taken affirmative steps to train owners and agents in VAWA compliance and best practices for supporting tenants who are victims of domestic and/or sexual violence.

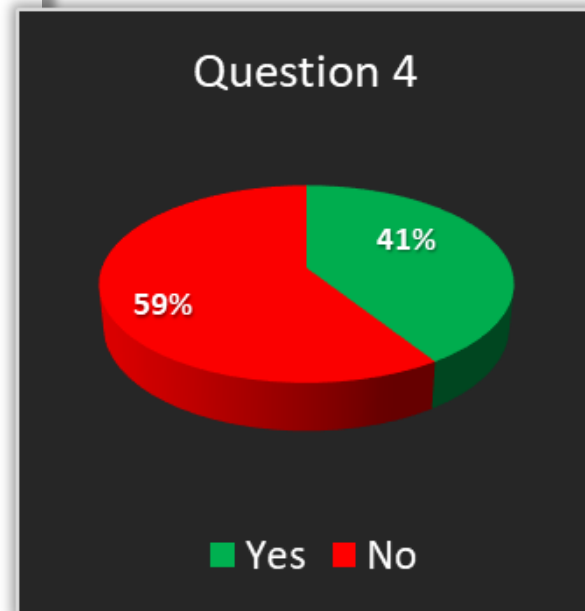
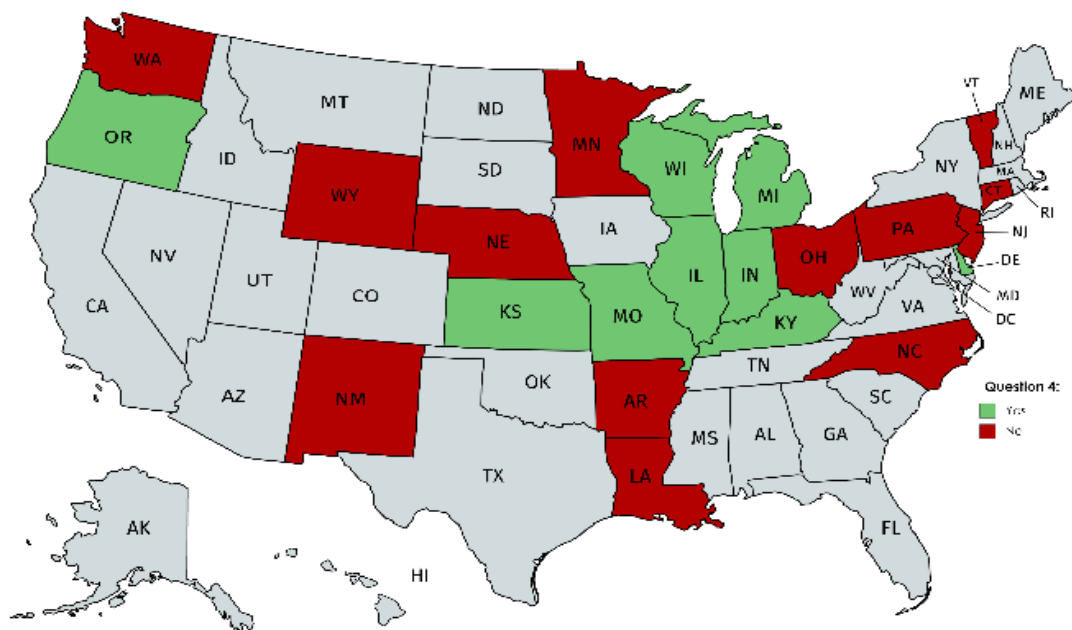
Q3 - If an owner is not in VAWA compliance and it has not been corrected after notice, do you reserve the right to bar the owner from applying again for LIHTC?



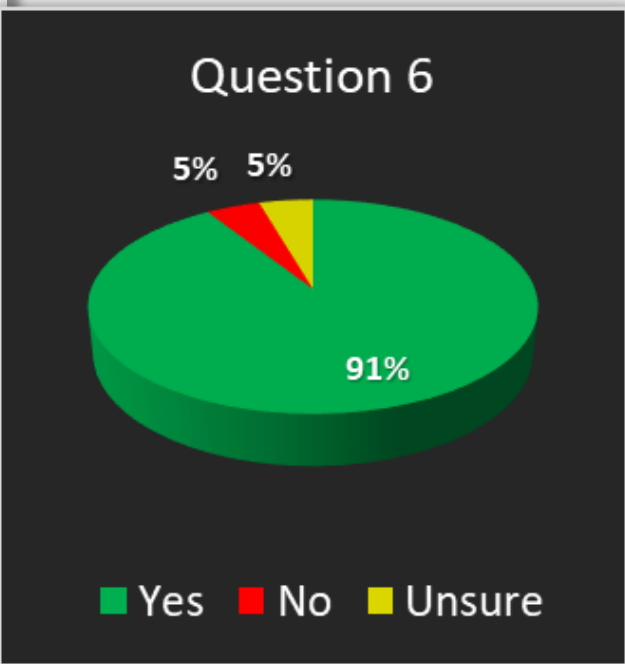
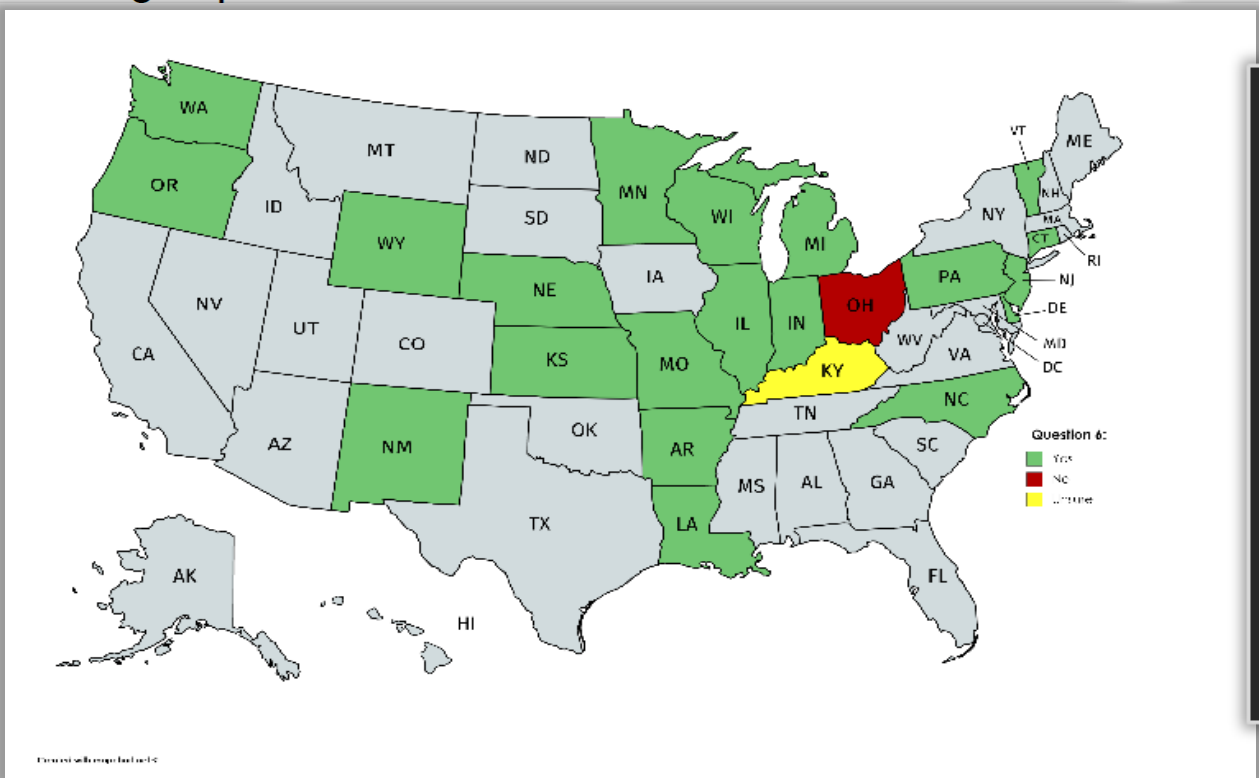
➔ Protections Delayed /Page 11

- 15 of the responding agencies reserve the right to bar owners from applying for LIHTC if they are noncompliant with VAWA and have not come into compliance after having been given notice. In Illinois, owners who are not in compliance with VAWA regulations and requirements are subject to negative scoring and/or a mandatory fail. Missouri and New Mexico further clarified in their responses that they reserve the right to bar owners, but attempt to differentiate between willful noncompliance and noncompliance that can be corrected through further education. Some agencies—including those in Nebraska, New Jersey, Minnesota, and North Carolina—reported that they are not certain that barring owners for VAWA noncompliance is within the scope of authority extended to state housing finance agencies and are waiting on additional guidance from Treasury.

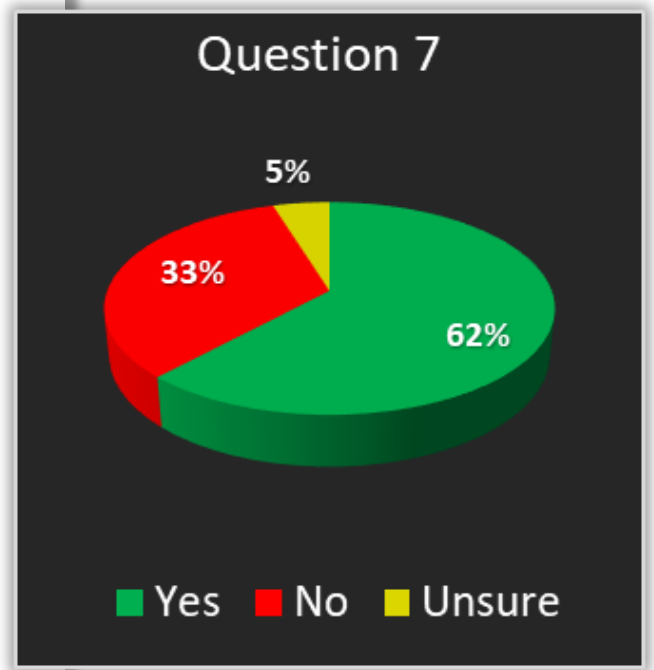
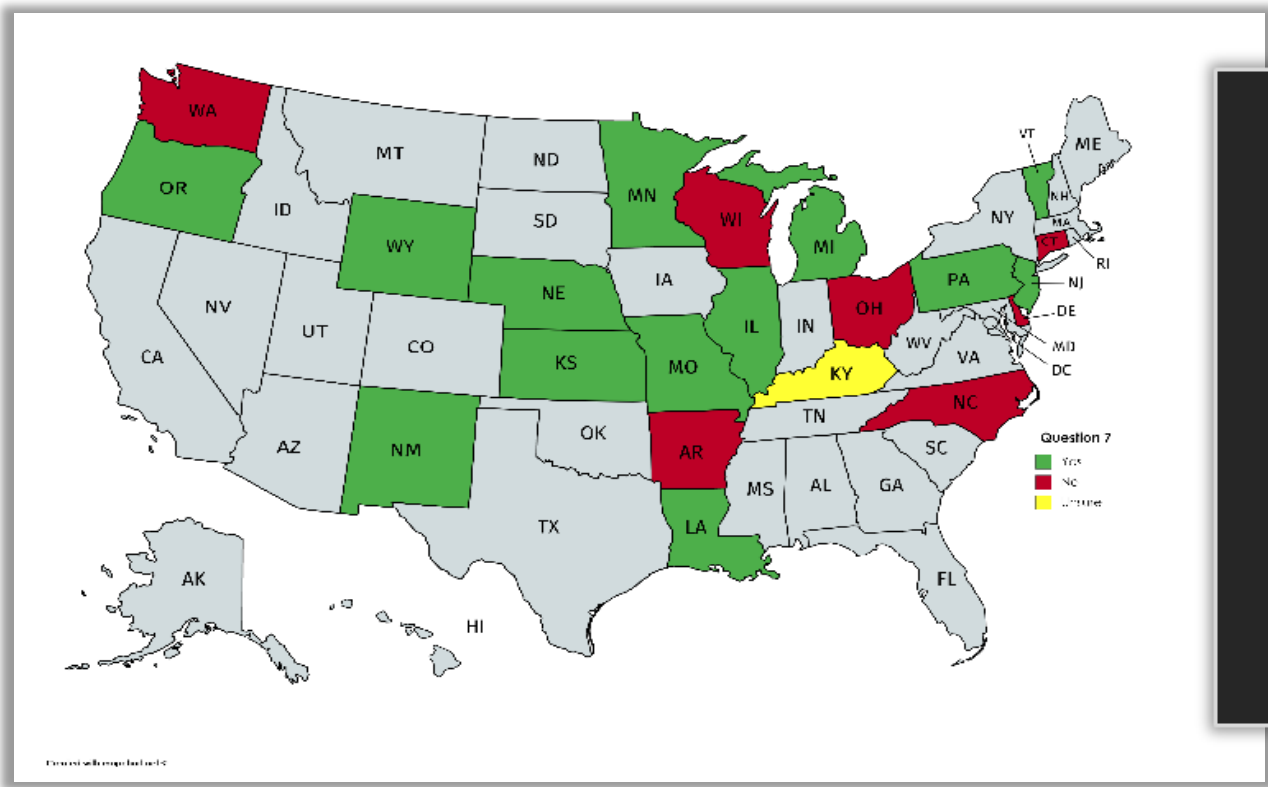
Q4 - Does your LIHTC tenant selection plan review include VAWA compliance?



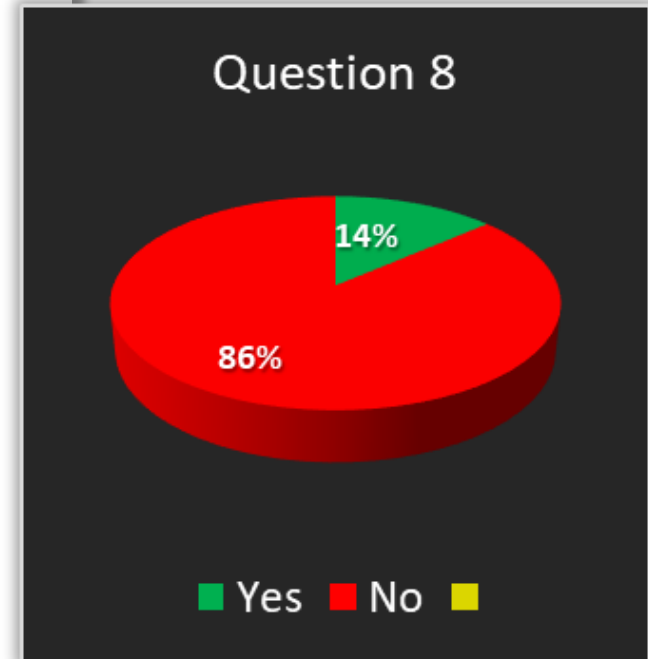
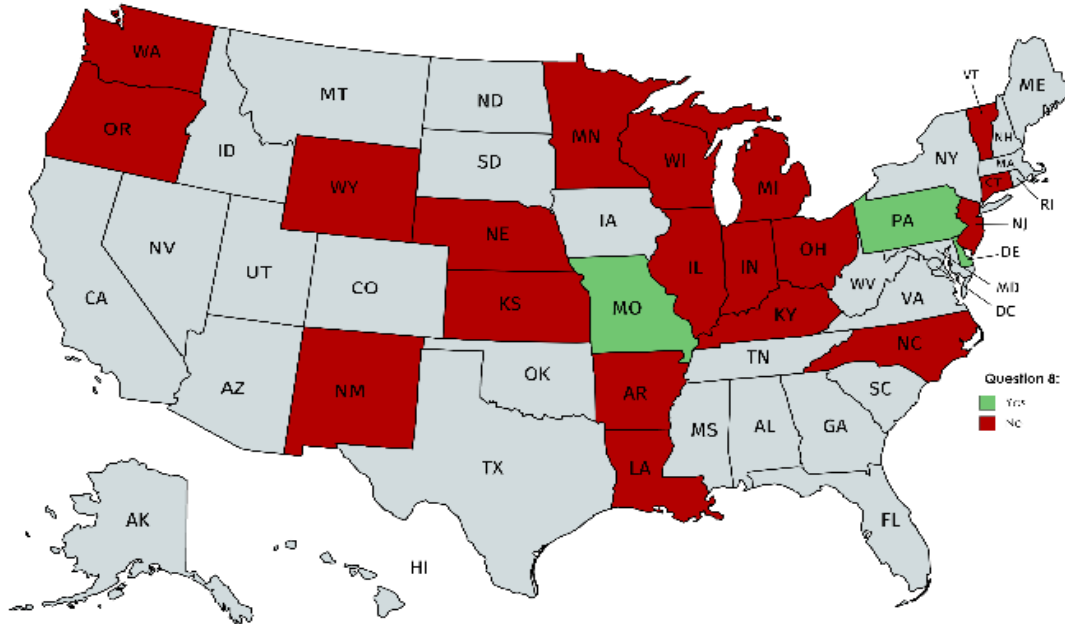
Q6 - Have you taken any actions, or plan to take any actions to inform owners, developers, or management agents of LIHTC housing about this change, and how they can support residents working to protect themselves from violence?



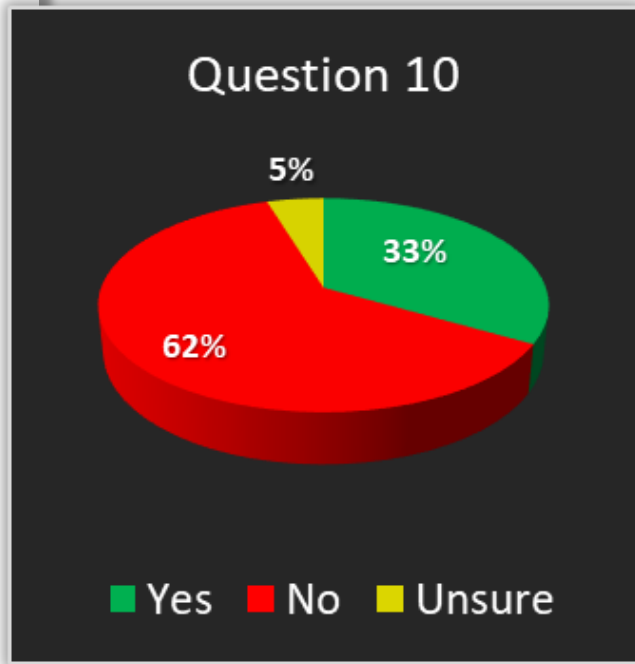
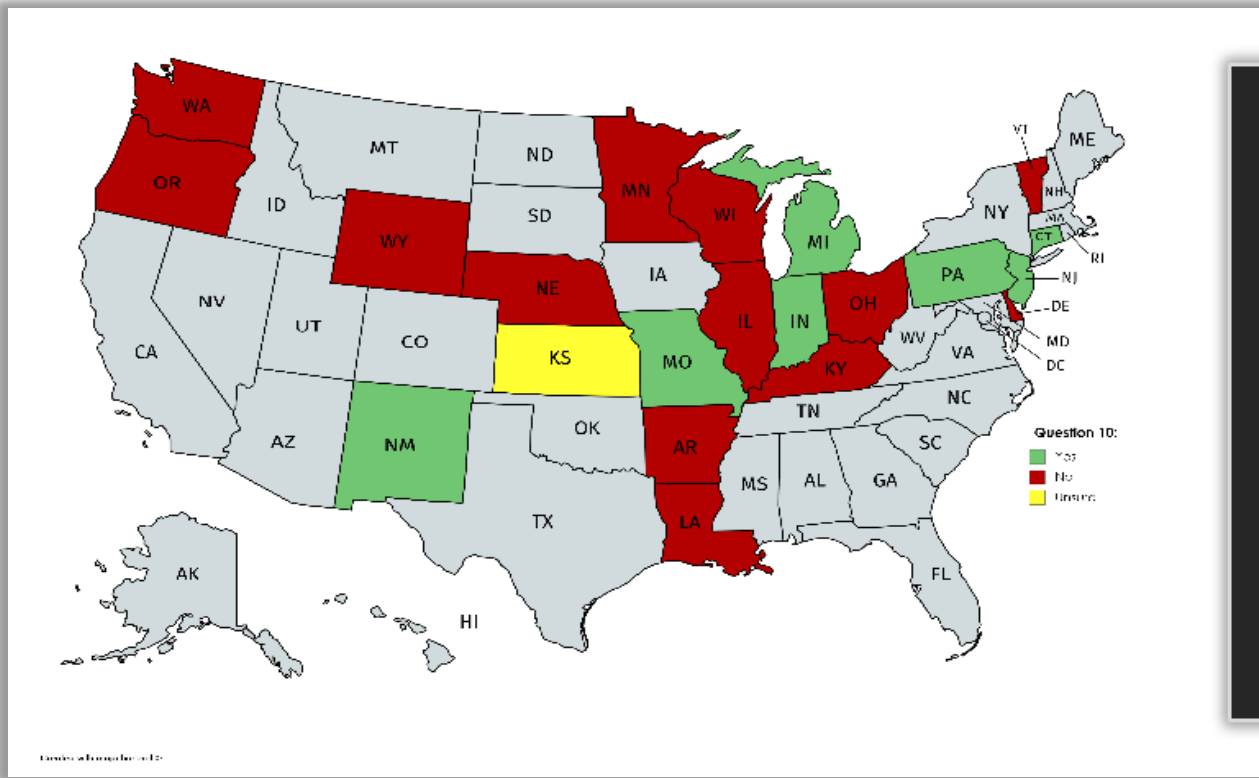
Q7 - Have you conducted, or plan to conduct, any trainings for owners, developers, or management agents for LIHTC housing about how they can implement procedures to ensure that the applicable VAWA provisions are being followed at their properties?



Q8 - Have you made any changes to your Qualified Allocation Plan to encourage VAWA compliance, such as incentives for developers who demonstrate they are actively implementing procedures to ensure they are complying with VAWA's requirements or which disqualifies owners/managers who have a history of violating the provisions of VAWA?

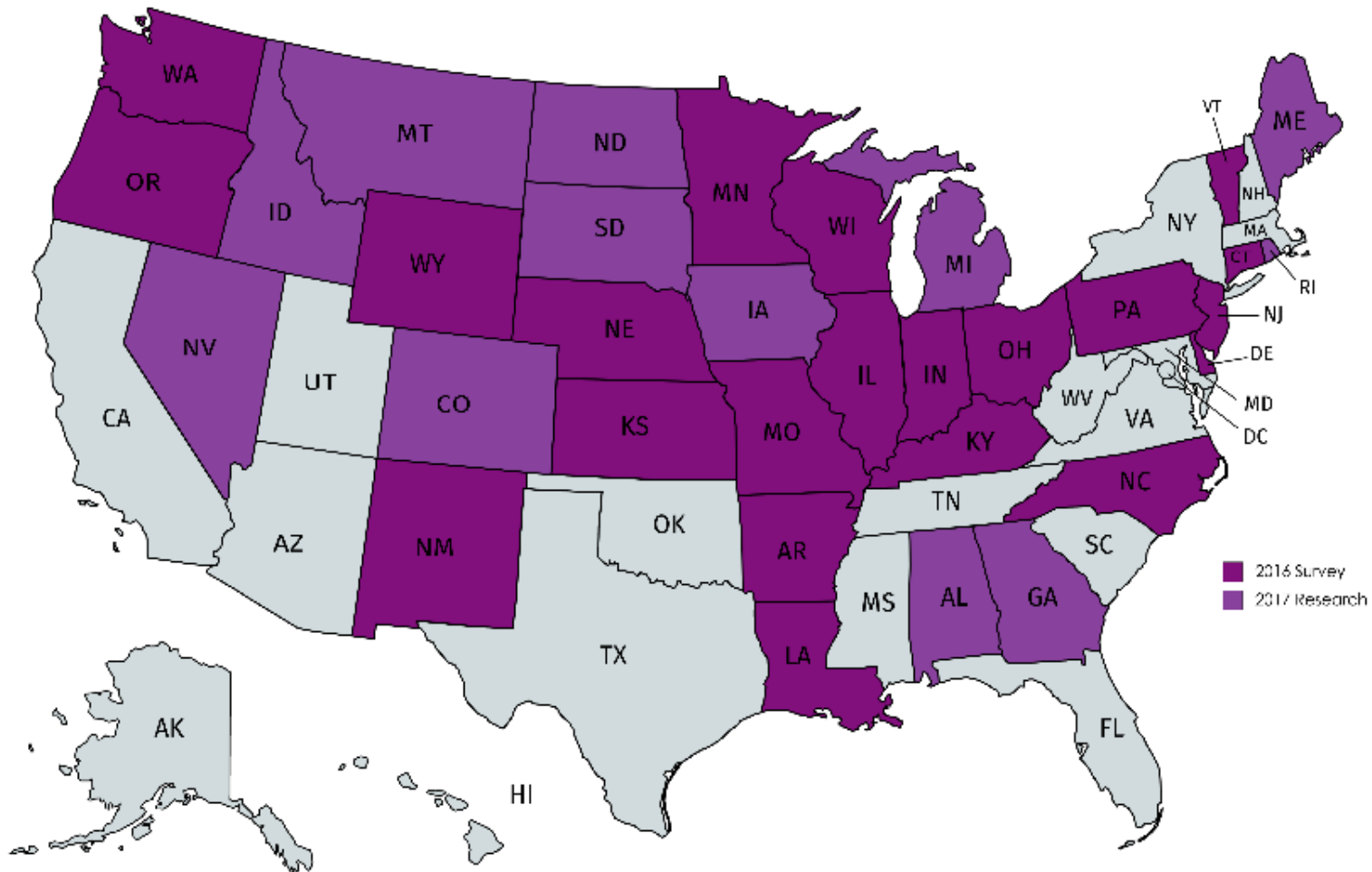


Q10 - Have you revised your annual owner certification form to specifically mention compliance with VAWA?



Combined Results

Combining survey results with subsequent research shows at least 33 states are taking some steps to implement VAWA 2013!



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2016 Survey

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2018 VAWA Research



2018 QAPs to Date

20 QAPs were reviewed.

- 7 QAPs include victims of domestic violence, dating violence, sexual assault, or stalking under the QAP selection criterion for tenant populations with special housing needs;
- 4 QAPs stated that a VAWA incident is not good cause for eviction
- 6 QAPs include language regarding emergency transfers
- 1 QAPs includes language regarding notices similar to HUD-5380 and HUD-5382
- 3 QAPs included a basic non-discrimination statement

70% of the QAPs reviewed included VAWA in some form!

2018 VAWA Research



Respond to 2018 Survey here:

<https://www.surveymonkey.com/r/2SSQY9V>

Only 10 States have responded to the survey

AZ	NM
DE	ND
IA	OR
LA	UT
NV	WA

Email me and I will send
you the link

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