

Access to Emergency Shelters and Transitional Housing for Battered Immigrants and Immigrant Victims of Crime

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The National Immigrant Women’s Advocacy Project (NIWAP), American University Washington College of Law, conducted a nationwide survey of advocates, attorneys, government agencies, victim services, and members of the justice system, who were asked 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 housing services. Additionally, the latter part of the survey asked those same individuals to report on Violence Against Women Act (VAWA) self-petitioners, as well as on human trafficking victims who had pending or approved U or T visas, who have or have not needed and who sought access to public and assisted housing.

This paper will provide an overview of survey participants and will focus on reporting, analyzing, and making policy recommendations regarding the data collected on transitional housing.¹ The survey sought to discover what immigrant survivors of domestic violence, sexual assault, human trafficking and child abuse are being asked to prove to be able to gain access to transitional housing and whether they are allowed to prove eligibility using the “any credible evidence” standard of proof akin to evidentiary standards used for VAWA immigration cases.²

Short-term shelter is a service that the U.S. Department of Justice (DOJ) has concluded is necessary to protect life and safety and, therefore, is available to help all persons in need of such services without regard to immigration status.³ Short-term shelter includes emergency shelters and transitional housing, which the U.S. Department of Housing and Urban Development (HUD) deemed necessary for the protection of life and safety for the homeless and for victims of domestic violence, sexual assault, human trafficking, and for children who have been abused, abandoned, or who are runaways.⁴ Transitional housing provides not only an immediate safe

¹ See KRISZTINA E. SZABO, DAVID STAUFFER, & LESLYE E. ORLOFF, SURVEY REPORT: ACCESS TO PUBLIC AND ASSISTED HOUSING FOR VAWA SELF-PETITIONERS, THEIR CHILDREN, AND TRAFFICKING VICTIMS (June 2, 2014)(for full discussion on the data of battered immigrant access to public and assisted housing) (publication pending).

² Leslye E. Orloff, Kathryn C. Isom, and Edmundo Saballos, *Mandatory U-visa Certification Unnecessarily Undermines the Purpose of the Violence Against Women Act’s Immigration Protections And Its “Any Credible Evidence” Rules – A Call For Consistency*, 11 GEO. J. GENDER & L. 619, 627 (2010), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/other-immigration/any-credible-evidence-standard/Any%20Credible%20Evidence%20-%20Orloff.pdf/view>.

³ Final Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation (A.G. Order No. 2353-2001), 66 Fed. Reg. 3613 (Dep’t of Justice Jan. 16, 2001)(Hereinafter “AG Order on Life and Safety Services”), available at: http://niwaplibrary.wcl.american.edu/public-benefits/unrestricted-benefits/AG_order.protection_life_or_safety.pdf

⁴ Letter from Andrew Cuomo, Secretary, Dep’t of Housing and Urban Development, to HUD Funds Recipients (Jan. 19, 2001) (Hereinafter “2001 HUD Letter”), available at: <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf/view> (Immigrant victims of sexual assault receive access to emergency and transitional housing if they are homeless or at risk of homelessness. Immigrant victims of human

haven that allows victims to remove themselves and their children from the abuse they have suffered, but also provides victims with the opportunity to rebuild their lives and gain independence over time. These essential programs are especially important to battered immigrants and immigrant crime victims; many individuals who stay in abusive relationships and workplaces often do so because they are financially dependent on their abuser. As Senator Jeff Bingaman (D-NM) noted in his support for access to transitional housing in VAWA 2000, “[t]ransitional housing assistance will provide these victims and their families with temporary housing while they regain their financial independence.”⁵

Due to language, cultural, and economic barriers, battered immigrants and immigrant crime victims, particularly women and children, face extensive hurdles they must overcome to improve their quality of life and achieve safety. Frequently, women and children who have taken courageous steps toward breaking the cycle of violence are penalized when programs essential to rebuilding lives shattered by violence are withheld. Access to emergency shelter and transitional housing provides a safe haven necessary for battered immigrants and immigrant crime victims to successfully leaving abusive homes and workplaces where they have suffered sexual assault, human trafficking, and other criminal activities perpetrated by their employer or human traffickers.

Housing is a primary concern for most women living with violence as it directly impacts the victim’s ability to leave an abusive relationship. When considering the impact of housing on victims, Senator Patrick Leahy (D-VT) noted that, “[a]t a time when the availability of affordable housing has sunk to record lows, transitional housing for victims is especially needed.”⁶ Without the ability to secure temporary and transitional housing, victims are rendered unable to successfully leave abusive homes. He also noted that, “[t]oday more than 50% of homeless individuals are women and children fleeing domestic violence.”⁷ Victims of violence too often face a choice between homelessness and continued violence if they stay with their abusers. Among homeless women, 92% have experienced severe physical or sexual abuse at some point in their lives and 63% have been victims of intimate partner violence as adults.⁸ When the only other option for victims and their children is homelessness, most victims are forced to return to their abusers due to a lack of other housing options.

trafficking, based on the facts of their particular case, gain access based on the 2001 HUD letter and/or under Section 107 of the Trafficking Victims Protection Act of 2000, Pub. L. 106-386, 114 Stat. 1464 § 107 (codified at 22 U.S.C. § 7105(b)(1)(A) (hereinafter “TVPA 2000”)).

⁵ 146 CONG. REC. S10223 (Statement of Sen. Jeff Bingaman) (Oct. 11, 2000), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/vawa-legislative-history/congressional-record-violence-against-women-act/congressional-record-vawa-2000/Oct%20%2011%202000%20Congressional%20Record%20VAWA%202000%20Senate.pdf>

⁶ 151 CONG. REC. S13750 (Statement of Sen. Patrick Leahy) (Dec. 16, 2005), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/vawa-legislative-history/congressional-record-violence-against-women-act/congressional-record-vawa-2005/VAWA%20III%20Congressional%20Record%20Leg%20History.pdf>

⁷ *Id.*

⁸ See generally Ellen L. Bassuk, MD, Sharon Melnick, PhD., & Angela Browne, PhD, *Responding to the Needs of Low Income and Homeless Women Who are Survivors of Family Violence*, 53 J. AM. MED. WOMEN’S ASS’N. 57 (1998).

Congress has recognized the importance of transitional housing in assisting victims seeking relief from violence against women related crimes. In 2005, the reauthorization of VAWA expanded the existing transitional housing program to include victims of sexual assault, dating violence, and stalking in addition to battered women and children.⁹ In 2005, Congress also extended the length of time victims could receive services from transitional housing programs to match the duration of stay authorized by HUD funded programs¹⁰ and continued funding for transitional housing programs.¹¹ This decision was made to save the lives of battered women as “transitional housing allows women to bridge the gap between leaving violence in their home and becoming self-sufficient.”¹² However, the level of appropriations for transitional housing has remained well below the amount authorized by congress resulting in an increased need for funding to be divided equitably to all vulnerable populations.¹³

Undocumented immigrants are a uniquely vulnerable population. Undocumented immigrant victims of battery, domestic violence, and sexual abuse face many obstacles to accessing and using victims’ services such as language barriers, fear of deportation, and intentional misinformation regarding their immigration status provided by their abusers. Immigrant victims of domestic violence, human trafficking, runaway, abused or abandoned children and immigrants who are homeless or are at risk of homelessness, including those who

⁹ Violence Against Women Reauthorization Act of 2005, Pub. L. No. 109-162, § 602(a)(1)(B) & (C) (2005) (hereinafter “VAWA 2005”).

¹⁰*Id.*; see also 151 CONG. REC. S13764 (Dec. 16, 2005) (“[c]hanges include...extending the length of time for receipt of benefits to match that used by HUD transitional housing programs”), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/vawa-legislative-history/congressional-record-violence-against-women-act/congressional-record-vawa-2005/VAWA%20III%20Congressional%20Record%20Leg%20History.pdf> .

¹¹ VAWA 2005 at § 602(a)(1)(D)(6)(A) (2005); see also 151 CONG. REC. S13764 (Dec. 16, 2005) (The provision increased the authorized funding for transitional housing programs from from \$30,000,000 to \$40,000,000”), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/vawa-legislative-history/congressional-record-violence-against-women-act/congressional-record-vawa-2005/VAWA%20III%20Congressional%20Record%20Leg%20History.pdf>; Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54, § 602(2)(D)(i) (codified at 42 U.S.C. § 13975(g)(i)) (The provision reduced the authorized level of funding for transitional housing from \$40,000,000 to \$35,000,000) (hereinafter “VAWA 2013”).

¹² 151 CONG. REC. S13750 (Statement of Sen. Patrick Leahy) (Dec. 16, 2005), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/vawa-legislative-history/congressional-record-violence-against-women-act/congressional-record-vawa-2005/VAWA%20III%20Congressional%20Record%20Leg%20History.pdf>

¹³ NATIONAL NETWORK TO END DOMESTIC VIOLENCE (NNEDV), CHART: VAWA AND OTHER RELATED PROGRAMS APPROPRIATIONS FOR FISCAL YEARS '10, '11, '12, '13, AND '14, available at: http://nnedv.org/downloads/Policy/FY14_AppropsChart.pdf (Annual funding appropriated for the transitional housing program has remained between \$18,000,000 in 2010 and \$25,000,000 in 2013). See also *McKinney-Vento Homeless Assistance Grants*, NAT'L ALLIANCE TO END HOMELESSNESS, (noting that the President’s FY 2015 Budget Proposal included a 14 percent increase to the McKinney-Vento Homeless Assistance Grant program to reach \$2.405 billion and to meet the goal of ending chronic homelessness by the end of 2016), available at: [http://www.endhomelessness.org/pages/mckinneyvento_HAG_\(last_visited_June_2,_2014\)](http://www.endhomelessness.org/pages/mckinneyvento_HAG_(last_visited_June_2,_2014)). The American Recovery and Reinvestment Act of 2009 also provided a one-time boost in funding for transitional housing programs for victims of domestic violence, sexual assault and stalking by adding 50 million dollars. See *American Recovery and Reinvestment Act of 2009 (ARRA or “Stimulus Bill”)*, Pub.L. 111–5, Feb. 17, 2009, 123 Stat. 115.; see also, *VAWA and Other Related Programs Appropriations for Fiscal Years '12, '13, '14, and '15: Campaign for Funding to End Domestic and Sexual Violence*, NAT'L NETWORK TO END DOMESTIC VIOLENCE, (updated March 6, 2014), available at: http://nnedv.org/downloads/Policy/CampaignAppropsChart_FY15_withAuthLevels.pdf

are undocumented, are legally eligible for emergency shelter or transitional housing. Access to emergency shelter and transitional housing became available to victims of human trafficking beginning in 2001 following passage of the Trafficking Victims Protection Act (TVPA).¹⁴ HUD policies establishing access to emergency shelter and transitional housing for undocumented battered immigrants, runaway, abused or abandoned children and the homeless were issued in 2001 and remain in effect to date.¹⁵

NIWAP conducted a nationwide survey to determine the extent to which immigrant crime victims and battered immigrants are able to access transitional housing. The survey identified barriers that exist in accessing transitional housing and the impact on victims and their children when they are denied access. Despite the issuance of policy guidance by HUD in 2001 declaring eligibility, both undocumented immigrant crime victims and immigrant victims in the process of gaining legal immigration status under the VAWA¹⁶ and the Trafficking Victims Protection Act (TVPA)¹⁷ are facing substantial barriers in their attempts to access transitional housing. In light of the results of the survey, NIWAP recommends that the 2001 HUD policy guidance should be reaffirmed and expanded to explicitly provide access to transitional housing to all immigrant victims of domestic violence, sexual assault, dating violence, stalking, human trafficking, and other U visa listed crimes while maintaining access for the homeless and runaway, abandoned or abused immigrant children.

This report will analyze the current experiences of immigrant victims of crime seeking access to transitional housing based on the findings from the nationwide survey and the law that is currently in place. Part I of this report will identify the relevant law ensuring access to life saving transitional housing programs for all persons, regardless of immigration status. Federal statutes have addressed this issue and Congress has made it clear that access to housing is necessary to the protection of life and safety of a victim and cannot be closed to persons in the United States who are non-citizens. Part II will discuss the research findings on access to transitional housing for immigrant crime victims and battered immigrants from the nationwide survey conducted by NIWAP of service providers across the country. One critical finding of the survey is that undocumented immigrant victims of crime and victims, who are in the process of obtaining or who have been granted VAWA, T and U visa immigration protections, are systemically denied access to transitional housing in communities throughout the country (See Table 8). This report will also discuss the most commonly cited reasons for improper determinations of ineligibility, as reported by the service providers surveyed across the country.

¹⁴ TVPA 2000, 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.

¹⁵ See generally 2001 HUD Letter, available at: <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf>.

¹⁶ Immigration and Naturalization Act (INA) § 204(a)(1)(A), 8 U.S.C. § 1154 (a)(1)(A) (VAWA Self-petitioning); INA § 101(a)(15)(U)(i), 8 U.S.C. § 1101(a)(15)(U)(i).

¹⁷ 22 U.S.C. § 7105(b)(1)(A).

Part III of this report will analyze the standards of evidence used for admission to transitional housing. NIWAP's survey revealed that many programs turn individuals away due to their inability to produce documentation required by the housing program, but not required by law. This section will clarify which documentation is actually required by law, explain why many of the documentation requirements imposed by transitional housing programs are not legally required, and why the "any credible evidence" rule is the model federal government policy that programs should adopt as a part of their best practices when assessing eligibility for transitional housing. Finally, Part IV of the report contains recommendations for a HUD issued policy directive that clarifies what is legally allowed and that directs all HUD grantees to use the any credible evidence standard for transitional housing admissions to transitional housing program to ensure all eligible individuals, including immigrant victims of crime and battered immigrants, can gain access to necessary transitional housing.

I. History of legislative and administrative efforts to provide access to housing

a. Undocumented immigrants should be granted access to transitional housing as a matter of law

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 states that a "non-qualified alien" is not eligible for any federal public benefit.¹⁸ However, Congress also included provisions in PRWORA that specifically authorized the Attorney General of the United States to designate the kinds of government-funded community programs, services, or assistance necessary to protect life or safety for which all immigrants, including undocumented immigrants, will continue to be eligible for. In PRWORA, Congress included a non-exclusive list of examples of the types of programs that it envisioned that could be specified by the Attorney General and would be included among the programs necessary to life and safety that were open to all persons without regard to immigration status.¹⁹ This list includes soup kitchens, crisis counseling and intervention, *short-term shelter*, and other programs.²⁰

Pursuant to this authority granted by Congress in PRWORA, the Attorney General issued the Final Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation on January 16, 2001.²¹ The Order states that, when a program meets the following criteria, its services are available, as a matter of federal law, to all persons without regard to immigration status. The program:

- (i) delivers in-kind (non -monetary) services at the community level, including through public or private non-profit agencies or organizations;
- (ii) does not condition the provision, amount, or cost of the assistance on the individual recipient's income or resources; and
- (iii) serves purposes of the protection of life or safety.²²

¹⁸ 8 U.S.C § 1611(a) (1998).

¹⁹ 8 U.S.C. § 1611(b)(1)(D) (1998).

²⁰ *Id.*

²¹ See generally AG Order on Life and Safety Services, available at:

http://niwaplibrary.wcl.american.edu/public-benefits/unrestricted-benefits/AG_order.protection_life_or_safety.pdf

²² *Id.* at 3616.

The Attorney General's Order included the following programs provided by community-based agencies have been designated as programs that are required as a matter of law to be open to all persons, including undocumented immigrants, without regard to immigration status:²³ The Attorney General's Order stated that the specified programs, services, or assistance determined to be necessary for the protection of life and safety include, but are not limited to, the following:

- *Crisis counseling and intervention programs;*
- *Services and assistance relating to child protection;*
- Adult protective services;
- *Violence and abuse prevention;*
- *Services to victims of domestic violence or other criminal activity;*
- Treatment of mental illness or substance abuse;
- *Short-term shelter or housing assistance for the homeless, victims of domestic violence, and runaway, abused, or abandoned children;*
- Programs to help individuals during periods of adverse weather conditions;
- Soup kitchens;
- Community food banks;
- Senior nutrition programs and other nutritional programs for persons requiring special assistance;
- Medical and public health services and mental health disability or substance abuse assistance necessary to protect life and safety; and
- *Activities designed to protect the life and safety of workers, children, and youths or community residents.*

Other government funded services open to all persons without regard to immigration status, in addition to services necessary to life and safety, under PRWORA include:

- Emergency health care;²⁴
- Immunizations, and treatment of communicable diseases;²⁵
- Short-term, non-cash, in-kind emergency disaster relief;²⁶ and
- Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under Title V of the Housing Act of 1949 [42 U.S.C.A. § 1471 et seq.], or any assistance under section 1926c of Title 7, to the extent that the alien is receiving such a benefit on August 22, 1996.²⁷

By being included in the above list, shelters and transitional housing programs offering short term services for a duration of up to two years are legally permitted and required to offer their

²³ *Id.*

²⁴ 8 U.S.C. § 1611(b)(1)(A) (1998).

²⁵ 8 U.S.C. § 1611(b)(1)(C) (1998).

²⁶ 8 U.S.C. § 1611(b)(1)(B) (1998).

²⁷ 8 U.S.C. § 1611(b)(1)(E) (1998) (It should be noted that this provision is no longer relevant because the population that was eligible for this benefit has since attained lawful permanent residency or have naturalized and are receiving benefits as a result of either status).

services equally to battered immigrant women, as they do to all other battered women, without regard to immigration status.

Nonprofit charitable organizations, including shelters and transitional housing programs, can legally provide services and are explicitly allowed to do so without asking any questions about immigration status and without any immigration status verification of those being served.²⁸ Additionally, shelters and transitional housing programs, because they are nonprofit charitable organizations, cannot be penalized by either federal or state government officials for failing to verify immigration status.²⁹

On January 21, 2001, HUD issued a policy letter (“2001 HUD Letter”) to its grantees implementing the Attorney General’s Order regarding Programs Necessary to Protect Life and Safety.³⁰ HUD’s policy defined the term “short term shelter,” which was identified in PRWORA³¹ and in the Necessary to Protect Life and Safety Regulations.³² The HUD policy guidance stated that

transitional housing is by nature short-term and intended to be a step from emergency shelter to permanent housing. Therefore, HUD-funded programs that provide emergency shelter and transitional housing for up to two (2) years, are to make these services equally available to all needy persons, including individuals who are not ‘qualified aliens’ ‘without verification of citizenship, nationality or immigration status’.³³

These two pieces of policy guidance clarify that all programs providing emergency shelter and transitional housing are to be open to all immigrants who are “homeless, victims of domestic violence, or runaway abused or abandoned children.”³⁴ The phrase “victims of domestic violence” in the Attorney General’s Order includes victims of spouse abuse, intimate partner violence, child abuse and elder abuse. Sexual assault survivors receive access to emergency shelter and transitional housing under the 2001 HUD letter because they are at risk of homelessness or have become homeless. Victims of human trafficking are to be provided emergency shelter and transitional housing under Section 107 of the TVPA.³⁵

²⁸ Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61344 (Dep’t of Justice Nov. 17, 1997) (it should be noted that a final rule has not been issued on verification and the interim rule is still in force), available at: http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/c_FR-1997%20interim%20verif%20guidance%20DOJ_OVW%2011.15.04.pdf

²⁹ *Id.*

³⁰ See 2001 HUD Letter, available at: <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf/view>

³¹ 8 U.S.C. § 1611(b)(1)(D)(1998).

³² See AG Order on Life and Safety Services at 3616, available at: http://niwaplibrary.wcl.american.edu/public-benefits/unrestricted-benefits/AG_order.protection_life_or_safety.pdf

³³ 2001 HUD Letter at 12, available at: <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf/view>.

³⁴ *Id.*

³⁵ 22 U.S.C. §§ 7105(A)(1)(A), (A)(1)(B)

In accordance with PRWORA,³⁶ TVPA,³⁷ the Attorney General’s Order on Programs Necessary to Protect Life and Safety³⁸ and HUD guidelines,³⁹ all recipients of HUD, DOJ, or Department of Health and Human Services (HHS) funding operating emergency shelters and transitional housing programs should be providing services to all eligible persons without regard to the applicant’s immigration status. Despite the fact that transitional housing is supposed to be available under these laws and policies, NIWAP’s research, conducted in December 2013, found that programs across the country have been denying access to transitional housing to immigrant victims of domestic violence, sexual assault, human trafficking and other crimes at rates that reflect substantial misunderstanding in the field that has been caused in significant part from a lack of clear guidance from HUD. All federal funders should jointly issue policy guidance confirming that programs receiving federal funding from HUD, DOJ, HHS, or other federal source for transitional housing programs confirming immigrant crime victims’ continued eligibility for transitional housing for up to two years without regard to immigration status. These policies should include anti-discrimination requirements. HUD, DOJ and HHS should also include in their grant awards to all programs receiving funding for transitional housing programs grant conditions requiring compliance with federal anti-discrimination laws⁴⁰ and non-discrimination against victims defined as underserved by VAWA.⁴¹

b. Access may not be restricted based on immigration status requirements for eligibility because such restrictions may amount to discrimination.

Recipients of federal funding must not discriminate against individuals based on race, color, national origin, religion, sex, familial status, or disability.⁴² Discrimination is directly prohibited by several federal funding statutes. Each of the following series of federal statutes that fund transitional housing, shelter and other services to crime victims contain anti-discrimination protections. VAWA,⁴³ Family Violence Prevention and Services Act (FVPSA)⁴⁴, the Victims of Crime Act (VOCA)⁴⁵, and the Fair Housing Act⁴⁶ funding all require that programs receiving funding not discriminate in their provision of services to victims of domestic violence, sexual assault, stalking, dating violence, child abuse, elder abuse, human trafficking and other crimes.

³⁶ 8 U.S.C. § 1611(a) (1998).

³⁷ 22 U.S.C. §§ 7105(A)(1)(A) & (B).

³⁸ See AG Order on Life and Safety Services, available at: http://niwaplibrary.wcl.american.edu/public-benefits/unrestricted-benefits/AG_order.protection_life_or_safety.pdf

³⁹ 2001 HUD Letter at 12, available at: <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf/view>.

⁴⁰ See Catherine Longville and Leslye E. Orloff, *Anti-Discrimination Provisions That Apply to Programs Receiving Federal Funding Serving Victims of Violence Against Women Crimes* (June 18, 2014)(publication pending).

⁴¹ Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54, § 3(b)(13) (2013) (codified at 42 U.S.C. § 13925(b)(13)) (hereinafter “VAWA 2013”).

⁴² Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), Pub. L. 90-284, 82 Stat. 73 (as amended by 42 U.S.C. § 3604).

⁴³ VAWA 2013, Pub. L. 113-4, 127 Stat. 54 § 101; 42 U.S.C. §§ 3711 *et seq.*; see also *id.* at § 102(a)(1)(A)(15); 42 U.S.C. § 3796hh(b)(15).

⁴⁴ Family Violence Prevention and Services Act (FVPSA), 42 U.S.C. § 10401 *et seq.* (2010).

⁴⁵ 42 U.S.C.A. § 10601 (2006).

⁴⁶ 42 U.S.C § 3604 (2007).

In addition to including anti-discrimination protections in each of these federal funding statutes, Congress expressly exempted services that it deemed necessary to protect life and safety, including short-term shelter,⁴⁷ from any immigration status based restrictions imposed on access to federal public benefits,⁴⁸ ensuring that these services remained open to all persons, including undocumented immigrants. Thus, immigrant victims are eligible to receive a variety of services necessary to protect life and safety.⁴⁹

VAWA is another significant federal funder of transitional housing programs. VAWA clearly establishes that discrimination is not to be tolerated in granting access to any VAWA funded program.⁵⁰ VAWA 2013 included the following new anti-discrimination protections:⁵¹

No person in the United States shall, on the basis of *actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation, or disability*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, the Violence Against Women and Department of Justice Reauthorization Act of 2005, the Violence Against Women Reauthorization Act of 2013, and any other program or activity funded in whole or in part with funds appropriated for grants, cooperative agreements, and other assistance administered by the Office on Violence Against Women.

VAWA programs are legally bound to accept all applicants without regard to race, color, religion, national origin, sex, gender identity, sexual orientation, or disability. The VAWA anti-discrimination provision is intentionally inclusive and is designed to prevent discrimination by any VAWA funded program. Discrimination based on national origin includes discrimination against persons because of their actual or perceived country of origin and based on the person's limited English proficiency.⁵²

Further, VAWA recognized that certain groups of victims of violence against women face additional barriers to services and often have less access to victim services than others victims. VAWA defined such victims as underserved and included undocumented immigrant victims, underserved due to their alienage status, as victims who were to receive enhanced access to services. Under VAWA, immigrants also warrant protection a part of an underserved population.⁵³ Underserved populations include groups that face obstacles accessing victim

⁴⁷ 8 U.S.C. § 1611(b)(1)(D) (1998).

⁴⁸ 8 U.S.C. § 1611(a)(1998).

⁴⁹ AG Order on Life and Safety Services, available at: http://niwaplibrary.wcl.american.edu/public-benefits/unrestricted-benefits/AG_order.protection_life_or_safety.pdf

⁵⁰ VAWA 2013 Anti-discrimination provision, 42 U.S.C. § 13925(b)(13)(A)

⁵¹ *Id.*

⁵² Exec. Order No. 13,166, 65 Fed. Reg. 50, 121; *see also* (Aug. 16, 2000); *see also* U.S. Dep't of Justice, Federal Coordination and Compliance Section, *Commonly Asked Questions and Answers Regarding Executive Order 13166* (Apr. 2011), available at: http://niwaplibrary.wcl.american.edu/language-access/government-materials/042511_Q-A_EO_13166.pdf (DOJ explanation of the goals of the Executive Order and guidance for federal agencies in providing access to services for LEP individuals in compliance with the Executive Order).

⁵³ VAWA 2013, 42 U.S.C. § 13925(a)(39):

services such as limited language proficiency and immigration status.⁵⁴ VAWA’s definition of “underserved populations” explicitly includes alienage status and other protected groups not specifically listed in the VAWA 2013 anti-discrimination provisions. “[U]nderserved populations” means populations who face barriers in accessing and using victim services, and includes populations underserved because of geographic location, religion, sexual orientation, gender identity, underserved racial and ethnic populations, populations underserved because of special needs (such as language barriers, disabilities, alienage status, or age), and any other population the Attorney General or by the Secretary of Health and Human Services determined to be underserved.

In addition to VAWA, the Attorney General clarifies that PRWORA prohibits discrimination in accessibility to services necessary to protect life and safety. The final Order from the Attorney General states that “[n]either states nor other service providers may use the Act as a basis for prohibiting access of aliens to any programs, services, or assistance covered by this Order. Unless an alien fails to meet eligibility requirements provided by applicable law other than the Act, benefit providers may not restrict the access of any alien to the services covered by this Order, including, but not limited to, emergency shelters.”⁵⁵ It is clear from the Attorney General’s guidance on the text of PRWORA that Congress wanted to make short-term shelter, including transitional housing assistance, available to any victim of domestic violence regardless her immigration status and that discrimination of this underserved population goes against the purpose of providing services that are necessary to life and safety.

Additionally, there are a range of crime victim services available to noncitizen crime victims in the U.S. offered to victims at the state level with the Victims of Crime Act.⁵⁶ VOCA grants were created to:

- 1) provide direct victim services including safety services (e.g., repairing broken locks), information about how they can participate and understand the criminal justice system, and funds to stabilize life circumstances; and

“Underserved populations” means populations who face barriers in accessing and using victim services, and includes populations underserved because of geographic location, religion, sexual orientation, gender identity, underserved racial and ethnic populations, populations underserved because of special needs (such as language barriers, disabilities, alienage status, or age), and any other population determined to be underserved by the Attorney General or by the Secretary of Health and Human Services, as appropriate.

Note: The Family Violence Prevention and Service Act, 42 U.S.C. § 13925(a)(39) uses an identical definition of “underserved populations” in its efforts to provide services to victims, increase public awareness about and prevent family violence.

⁵⁴ *Id.*

⁵⁵ Dep’t of Justice, Office for Civil Rights, *Fact Sheet: Access to HHS-Funded Services for Immigrant Survivors of Domestic Violence* (Jan. 19, 2001) (discussing PWRORA), available at: http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/PB_HHS%20Fact%20Sheet.pdf/view For a full discussion of this statement by the Attorney General and federal preemption of state laws and policies that are inconsistent with this policy see ROCIO MOLINA, LESLYE E. ORLOFF, AND BENISH ANVER, FEDERAL PREEMPTION OF STATE LAWS THAT ATTEMPT TO RESTRICT IMMIGRANT ACCESS TO SERVICES NECESSARY TO PROTECT LIFE AND SAFETY (Feb. 15, 2013), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits/Federal-Preemption-Life-and-Safety.pdf/view>

⁵⁶ Victims of Crime Act of 1984, 42 U.S.C.A. § 10601 (West 2006).

2) provide victim assistance funds for agencies that respond to the physical and emotional needs of crime victims.⁵⁷

VOCA provides funding that states can use to support programs, including domestic violence shelters and services that assist battered women who are crime victims. States receiving VOCA funds are required to "identify gaps in available services [to] ... 'underserved' victims, [which include] ... non-English speaking residents ... [and] members of racial or ethnic minorities"⁵⁸ The formal grant requirements do not exclude any group of persons. In fact, this requirement allows states to incorporate undocumented immigrants into the group of persons entitled to better services due to inadequate services in the past.

Transitional housing programs that receive HUD or OVW funding are subject to the Fair Housing Act (FHA), which prohibits discrimination on the basis of race, national origin, color, religion, sex, familial status, or disability.⁵⁹ As HUD is bound to comply with the FHA, all HUD funded programs must comply with FHA's anti-discrimination policy. Further, HUD regulations prohibit discrimination based on limited English proficiency. The HUD regulations on limited English proficiency make it clear that a recipient of federal funds cannot deny access to an individual based solely on the fact that they have limited English proficiency. As stated in the HUD regulations: "When bilingual staff cannot meet all the language service obligations of the recipient, the recipient would turn to other options."⁶⁰ The HUD guidance further states: "[R]efusing to serve LEP persons or not adequately serving or delaying services to LEP persons would violate Title VI."⁶¹

Each of the federal laws, regulations and federal agency policies discussed above illustrate the extent to which Congress and Federal government agencies have expressed its understanding of the special vulnerability of immigrants to crime victimization and the federal government's commitment to ensuring that all victim services programs, including transitional housing are open to all victims, including undocumented immigrants.

II. Research Findings On Access to Transitional Housing For Immigrant Crime Victims

In 2014, NIWAP conducted a nationwide survey of attorneys, advocates, and other service providers that work with immigrant crime victims and battered immigrants to determine the accessibility of transitional housing by this vulnerable population and whether accessibility was consistent with what is available under the law. There were 655 agencies that participated as respondents in the survey including representatives from 50 states, the District of Columbia, the Virgin Islands, and the Northern Mariana Islands, and although the survey gathered slightly

⁵⁷ Department of Justice, *Summary of the Revisions to the 1997 Final Program Guidelines*, available at: <http://ojp.gov/ovc/voca/vaguide.htm> (last visited May 4, 2014)

⁵⁸ *Id.* at §A(8).

⁵⁹ Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3604 prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions based on these factors.

⁶⁰ 72 Fed. Reg. 2742 (Dep't of Housing and Urban Development Jan. 22, 2007), available at: http://www.justice.gov/crt/lep/guidance/HUD_guidance_Jan07.pdf

⁶¹ *Id.* at 2751.

fewer respondents from the South and slightly more from the West proportional to the population as a whole, the regional distribution is otherwise proportional. Survey participants reported on 9,277 immigrant clients who have needed transitional housing and 12,678 who have been in emergency shelter. The survey respondents included attorneys, advocates, and service providers from across the United States with first-hand knowledge of current practices in the field.

Table 1

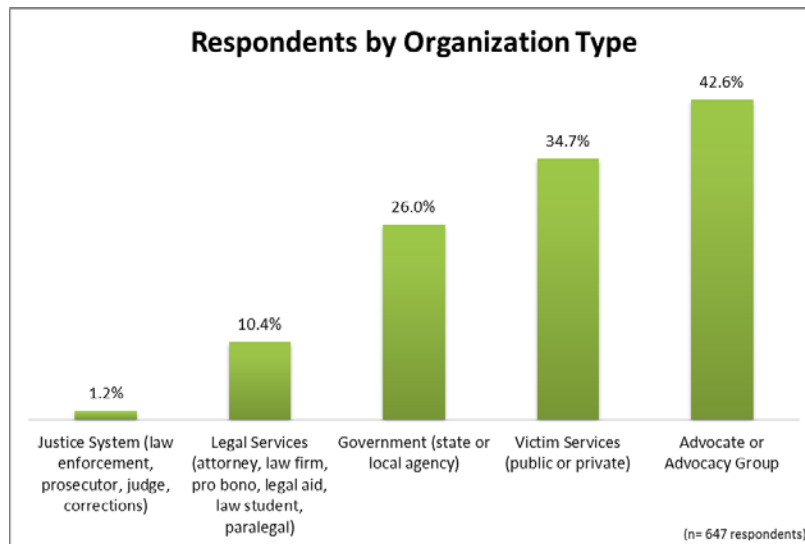
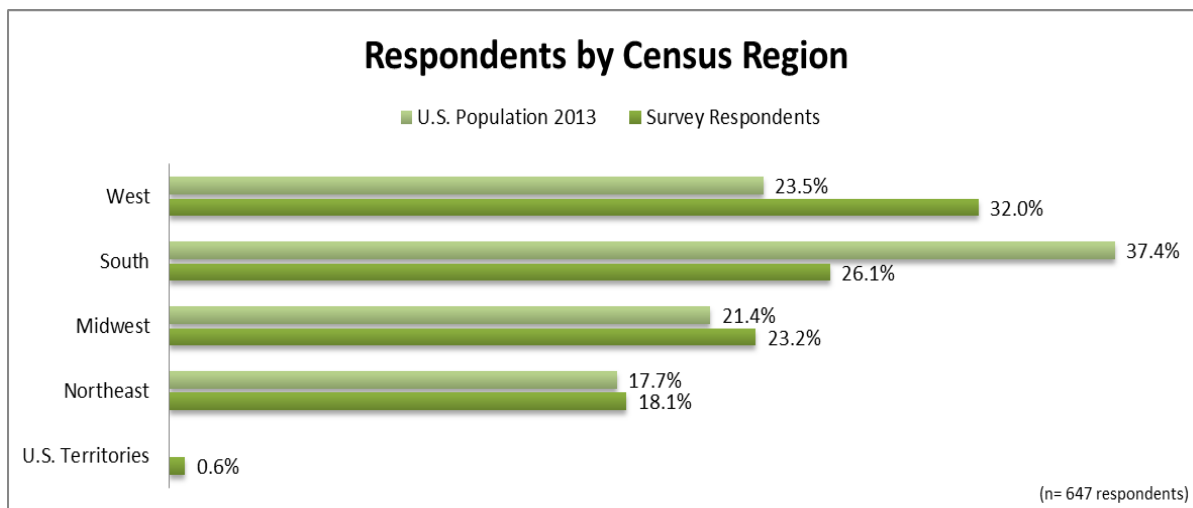


Table 2⁶²

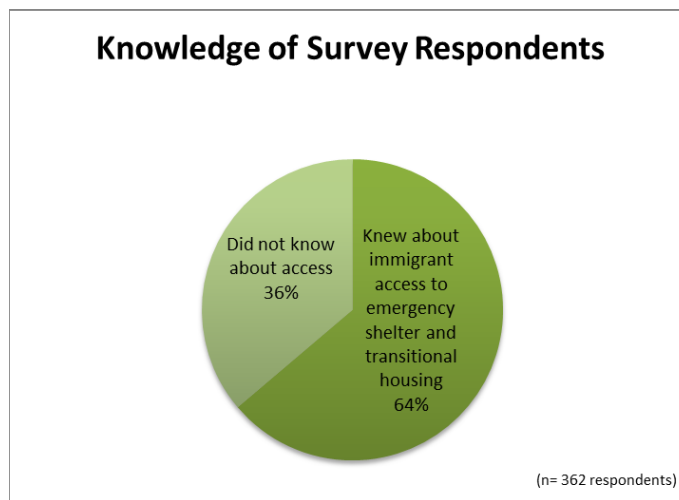


As a provider of training and technical assistance nationwide, NIWAP frequently receives questions and requests for assistance regarding eligibility for transitional housing, which illustrates that, in the thirteen years since the issuance of the HUD policy and the Attorney

⁶² 2013 estimates based on data from U.S. CENSUS BUREAU, Annual Population Estimates: United States Regional Population by Year, <http://www.census.gov/popclock/> (last accessed June 3, 2014).

General’s Order, there is still confusion and a lack of proper enforcement of the law in the field. In order to better understand the extent of these issues in the field, NIWAP asked survey respondents if they were aware that immigrants who are victims of domestic violence or sexual assault, are homeless, at risk of homelessness, are runaways, or are abused and abandoned children, are legally eligible for emergency shelter and transitional housing, for up to 2 years, without regard to their immigrant status.⁶³ 64% (n=231) of respondents were aware of eligibility for transitional housing and emergency shelter was available to immigrant crime victims and battered immigrants regardless of immigration status. However, over a third (36%, n=131) of the respondents were unaware that access to transitional housing and emergency shelter was available regardless of immigration status of the victim.

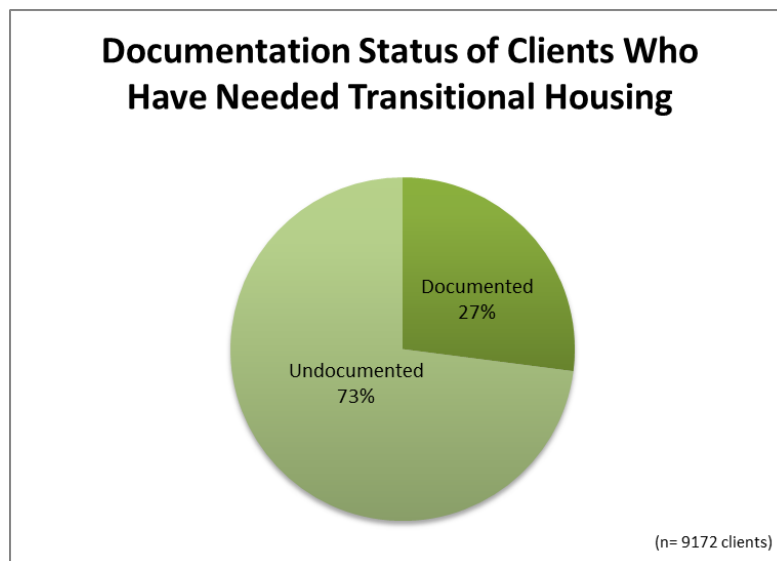
Table 3



Lack of access to transitional housing is a significant problem affecting thousands of immigrant victims of domestic violence, sexual assault, human trafficking, child abuse, elder abuse, and other serious crimes and is essential to preventing re-victimization, promoting the healing process and providing economic independence from abusers. Immigrants eligible for transitional housing also include persons who are vulnerable to abuse because they are homeless or children who have been abandoned or run away from home. Among the cases reported by survey, respondents stated that clients that were battered immigrants represented the largest population in need of transitional housing to escape their abusers (83.3%, n=7,686). Battered undocumented immigrants formed the majority of those surveyed in need of transitional housing in the survey (73%, n=6,692). Additionally, advocates and attorneys participating in the survey reported on over 490 children who were or had been in need of transitional housing assistance. These children faced homelessness due to abuse and abandonment and are extremely vulnerable to abuse and re-victimization without access to safe housing.

⁶³See 2001 HUD Letter, available at: <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf>.

Table 4



The need for transitional housing and emergency shelter is especially important to undocumented immigrants for a variety of reasons. Transitional housing and emergency shelter provide immediate relief to immigrant victims preventing them having to choose between homelessness and having to return to live with their abuser. Without access to transitional housing and emergency shelter, research has found that immigrant victims of domestic violence, sexual assault and human trafficking are forced to continue living with their abusers until after their VAWA self-petition or U visa case has been adjudicated by the Department of Homeland Security (DHS).⁶⁴ It has further been reported that victims applying for immigration benefits who stay with their perpetrators while their immigration case is pending, suffer high rates of ongoing abuse, with 55.8% of VAWA self-petitioners reporting experiencing ongoing abuse at least once a month.⁶⁵ Undocumented victims are often prevented from working by their abusers who refuse to file immigration cases on the victim's behalf and who use threats of deportation.⁶⁶ This survey found that undocumented immigrant victims⁶⁷ are in great need of access to transitional housing, with survey participants reporting 6,650 undocumented immigrant victim

⁶⁴ KRISZTINA E. SZABO, DAVID STAUFFER, BENISH ANVER, AND LESLYE E. ORLOFF, EARLY ACCESS TO WORK AUTHORIZATION FOR VAWA SELF-PETITIONERS AND U VISA APPLICANTS 22-23 (Feb. 12, 2014), available at: <http://niwap.org/reports/Early-Access-to-Work-Authorization.pdf>. See also 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).

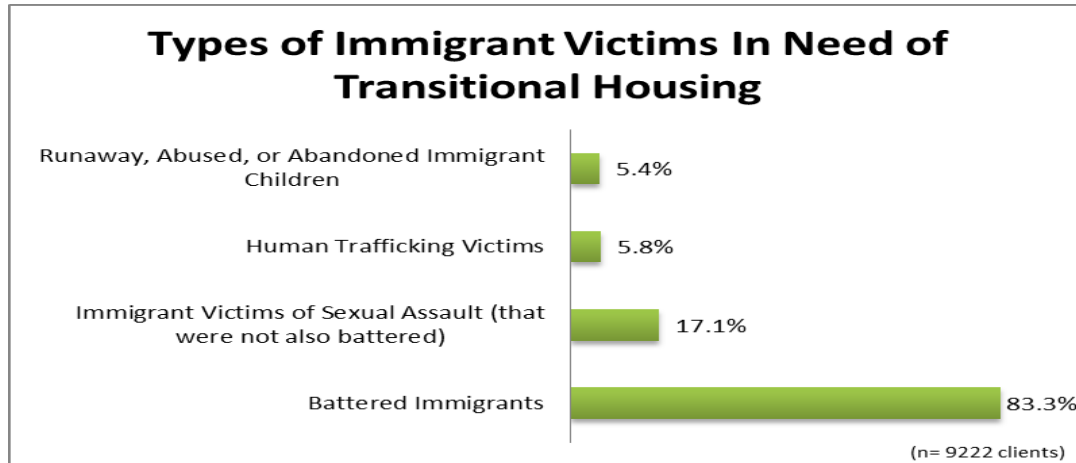
⁶⁵ KRISZTINA E. SZABO, DAVID STAUFFER, BENISH ANVER, AND LESLYE E. ORLOFF, EARLY ACCESS TO WORK AUTHORIZATION FOR VAWA SELF-PETITIONERS AND U VISA APPLICANTS 24 (Feb. 12, 2014), available at: <http://niwap.org/reports/Early-Access-to-Work-Authorization.pdf>

⁶⁶ *Id.* at 25-26.

⁶⁷ Undocumented victims include victims who have filed for VAWA, T or U visa immigration relief whose cases are pending adjudication with the U.S. Department of Homeland Security as well as immigrant crime victims who are in the process of filing or who will not be filing for immigration relief because they will not or cannot safely report the crime they suffered to law enforcement authorities. Citizens, lawful permanent residents, immigrants with work authorization and those on student visas are all considered documented immigrants.

clients in need of transitional housing services. This survey also found that immigrant crime victims who are granted VAWA self-petitions, U visas or T visas, continued presence, and other legally present immigrants⁶⁸ are not consistently able to access transitional housing programs.

Table 5



The likelihood of re-victimization, especially among battered immigrants, is evidenced by the survey finding that 66% (n=6,023) of victims seeking transitional housing had previously visited emergency shelters (see Table 6 below). Emergency shelters are not available to victims on a long term basis and cannot offer victims the prolonged protection and stability necessary to gain independence from abusers. The fact that respondents reported that two-thirds of their immigrant victim clients seeking transitional housing have previously required emergency shelters demonstrates the ongoing need for access to housing options for this particularly vulnerable population.

Table 6



⁶⁸ Citizens, lawful permanent residents, immigrants with work authorization and those on legal visas (e.g., student, work, religious) are all considered legally present immigrants.

a. Battered Immigrants’ Access to Transitional Housing

Of the total number of respondents who answered the survey, 43.8% (n=287) served battered immigrant clients who needed transitional housing, while 56.2% (n=368) did not. Of those battered immigrant clients who needed transitional housing, only slightly more than half sought access. This is likely related to the fact that a significant number of service providers are not uniformly aware of the fact undocumented battered immigrants are legally eligible for transitional housing (see Table 3 above).

Once immigrant crime victims learn about their ability to access transitional housing from the advocates or attorneys assisting them, many victims choose to apply for transitional housing. Survey respondents reported on a total of 4,482 cases where they assisted immigrant clients, including battered immigrants (3,738); immigrant victims of sexual assault (495), immigrant human trafficking victims (186) and abused/abandoned/runaway children (62) who applied for transitional housing programs between 2001 and 2013. NIWAP’s survey found that when immigrant crime victims applied for transitional housing, significant proportions of immigrant victim applicants are denied access to transitional housing. This was true for all categories of immigrant crime victims.

The two categories of immigrant crime victims with the greatest success in accessing transitional housing programs were immigrant victims of human trafficking (78.5%, n=146) and immigrant children who had been abused, abandoned or who were runaways (80.8%, n=51). Human trafficking victims are legally entitled to the same access to federal and state funded public benefits and services as refugees, which includes direct access to all federally funded programs including transitional housing. Despite broad accessibility to services, the rate at which respondents reported clients that were victims of human trafficking and were turned away from transitional housing programs was substantial (21.5%, n=40). Although, since 2001, as a matter of law, battered immigrants were to be provided access to transitional housing programs, over half of all battered immigrant clients that the respondents worked with that applied for transitional housing programs were denied access (52.9%, n=1979). Respondents also reported that clients who were immigrant victims of non-intimate partner sexual assault had the greatest difficulty accessing transitional housing programs with 94.2% (n=466) denied access.

How Successful Are Immigrant Crime Victims in Accessing Transitional Housing?

Table 7

Type of Crime	% Accepted	# Accepted	% Denied	# Denied
Domestic Violence	47.1%	1759	52.9%	1979
Sexual Assault	5.8%	29	94.2%	466
Human Trafficking	78.5%	146	21.5%	40
Abused/Abandoned/Run Away Children	80.8%	51	19.2%	12

The survey found that immigrant victims of crime who were successful in accessing transitional housing very often had filed for or had already received immigration relief (68.1%, n=1329). Another 29.9% (n=583) of immigrant victims who successfully accessed transitional

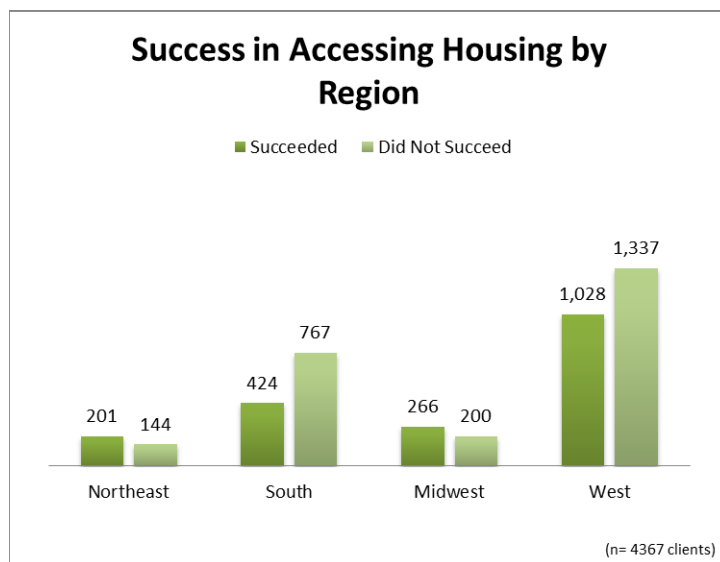
housing were undocumented. The discussion that follows analyzes the reported information regarding why battered immigrants who sought access were either successful or unsuccessful in obtaining relief through transitional housing.

When battered immigrants *were successful* in obtaining transitional housing, successful applicants had the following immigration histories:

- 31.7% (n=549) were undocumented and had not filed for immigration relief
- 26% (n=449) had a VAWA self-petition pending
- 22.4% (n=387) had a pending U visa
- 8.8% (n=152) had a VAWA self-petition approved
- 5.8% (n=101) had a U visa approved
- 2.2% (n=38) were lawful permanent residents, US citizens, or had other visa status

The survey sought to understand what factors contributed to denial of access to transitional housing to immigrant crime victims. The vast majority (85.9%, n=1614) of immigrant crime victims who were denied admittance to transitional housing programs were expressly told why they were deemed ineligible. The following sections examine details about the immigration status of applicants for transitional housing and for victims who were unsuccessful and the reasons they were given for denial of access to transitional housing programs. This report first discusses the findings with regard to battered immigrants, then immigrant victims of sexual assault and will lastly discuss immigrant victims of human trafficking.⁶⁹

Table 8

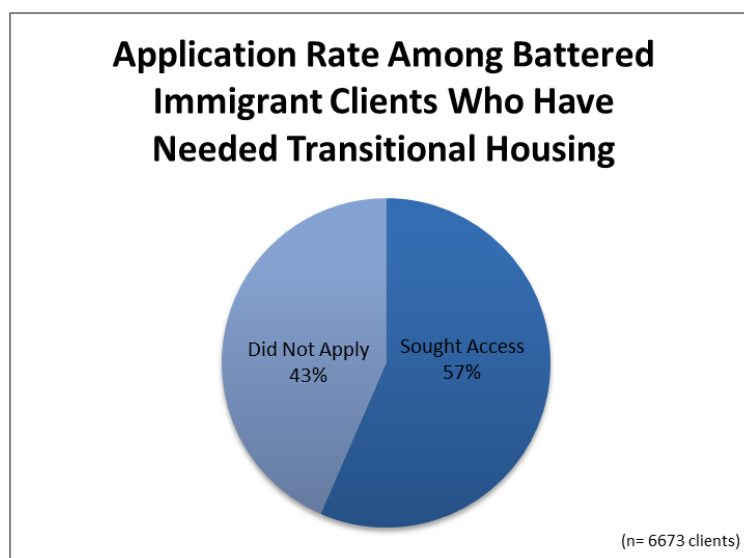


Battered Immigrant Access to Transitional Housing

⁶⁹ This paper does not report findings on each of these factors regarding abused, abandoned, or runaway immigrant children because the numbers of survey participants reporting on these cases was too small to be statistically significant. The information reported does, however, contain indications that some of the foreign born children being turned away for transitional housing programs had lawful permanent residency.

A key finding of the survey was that immigration status was a significant factor affecting battered immigrant access to transitional housing programs. There was a significant discrepancy between those with pending or approved applications for legal immigration status and victims who were undocumented. Among successful battered immigrant applicants for transitional housing, 66.1% (n=1182) had been granted legal immigration status or had pending VAWA self-petitions or U visa applications and 31.7% (n=549) were undocumented battered immigrants. By comparison, among battered immigrants denied access to transitional housing, 46.4% (n=343) had legal immigration status or a pending VAWA self-petition or U visa application and 52.8% (n=383) were undocumented.

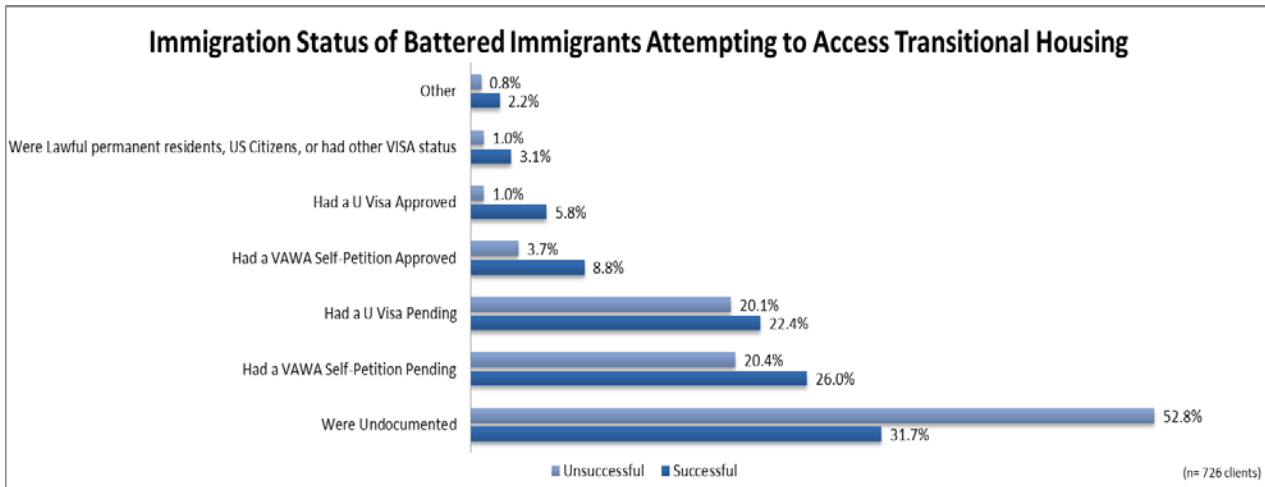
Table 9



Unsuccessful battered immigrant transitional housing applicants had the following immigration statuses or a lack thereof:

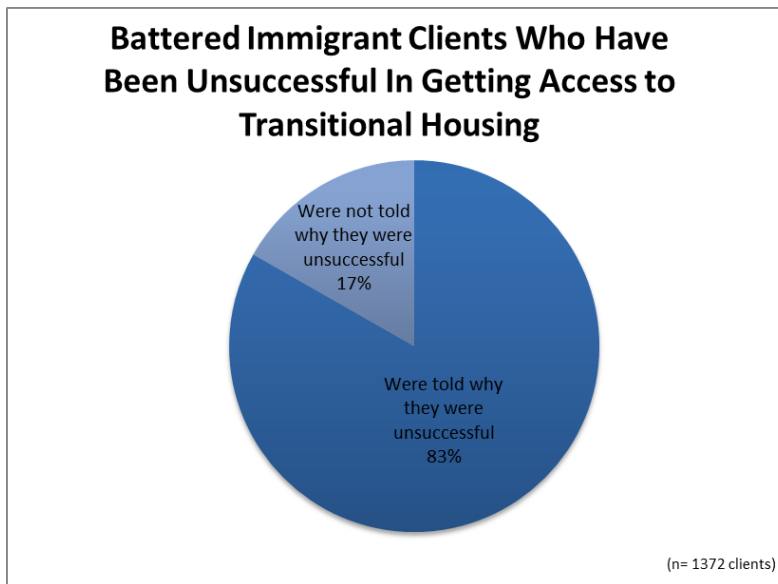
- 52.8% (n=383) were undocumented and had not filed for immigration relief
- 20.4% (n=148) had a VAWA self-petition pending
- 20.1% (n=146) had a U visa pending
- 3.7% (n=27) had a VAWA self-petition approved
- 1.2% (n=8) had a U visa approved
- 1% (n=7) were lawful permanent residents or naturalized citizens

Table 10



The majority of battered immigrant crime victims were given a reason the transitional housing programs decided that they were ineligible to receive transitional housing (Table 11).

Table 11



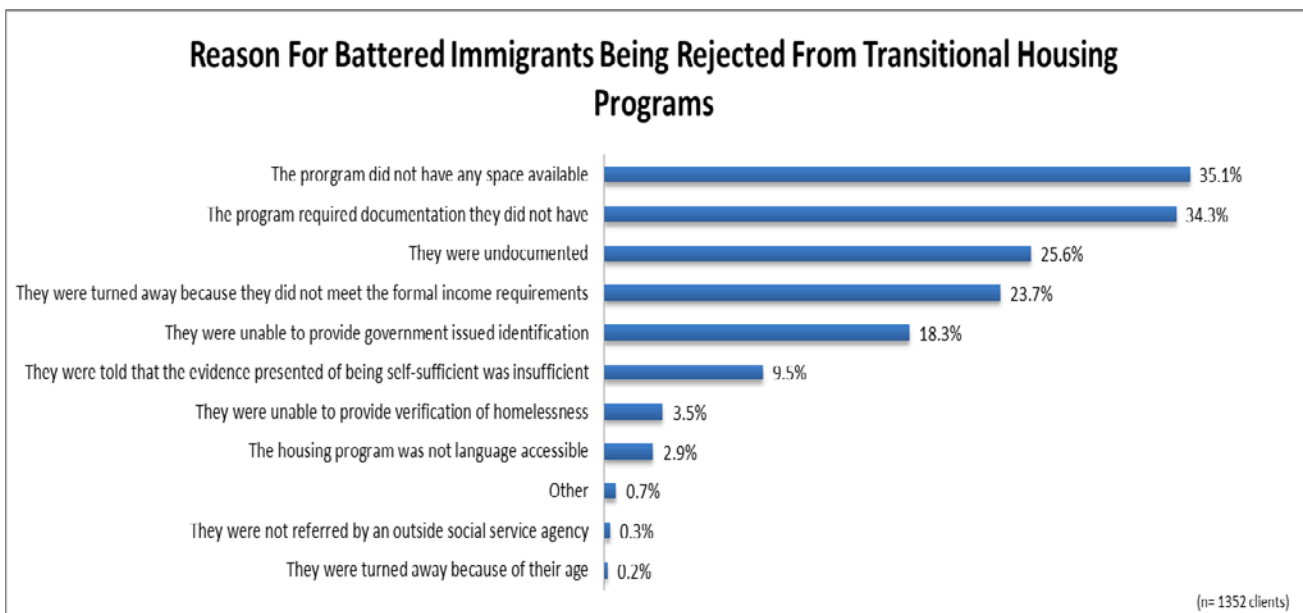
The most common reasons for denial of immigrant victim access to transitional housing programs included:

- 35.1% (n=475) the housing program did not have any additional space available);
- 34.4% (n=464) immigrant victim lacked the required documentation of immigration status);
- 25.6% (n=346) immigrant applicant was undocumented;
- 23.7% (n=321) immigrant victim did not meet the formal income requirements; or

- 18.3% (n=248) the battered immigrant applicant failed to present government issued identification.

Failure to meet “formal income requirements” was often conflated with immigration status documentation issues. For example, respondents reported that this occurred when the transitional housing program required that immigrant victims applying for transitional housing provide evidence of legal work authorization to approval the ability to work (see Table 13 below). Some programs required this documentation of immigrant victims who were actually working and who could prove the income they were earning in other ways. Imposing requirements for immigration documentation on battered immigrants applying for transitional housing conflicts with HUD guidance and DOJ regulations that declare that battered immigrant access to transitional housing is to be made available to all persons, without regard to their immigration status, because transitional housing is necessary to protect life and safety.

Table 12



As a matter of law, only one of the eleven reasons reported by respondents above is a valid reason for denying battered immigrants access to transitional housing. Housing programs are limited by their resources; therefore, denial based on lack of space is the only legitimate reason for denial. The remaining 64.9% (n=878) of applicants who were rejected from transitional housing were denied based on grounds that are not legally correct.

The types of documentation many programs are required of the respondents’ clients exceeded minimum legal requirements, creating an unnecessary obstacle. First, over half of the applicants were denied on the basis that they could not provide either proof of legal work authorization (50.5%, n=213) or proof of current employment or ability to work (54%, n=227). Battered immigrants including those who are undocumented, have pending applications for VAWA, U visa or T visa immigration relief, and those whose applications for legal immigration status have been approved, are all legally eligible to access transitional housing programs. Their legal right to access both shelter and transitional housing has been established federal law since

the 1996 PRWORA included short term shelter (emergency shelter and transitional housing)⁷⁰ on the list of programs necessary to protect life and safety that are as a matter of federal law exempt from immigrant restrictions.⁷¹ These laws do not require applicants prove any form of legal immigration status, including work authorization.

Despite this eligibility, many immigrant victim applicants were turned away because transitional housing programs required either proof of the ability to secure work or proof of legal employment to show participants have the potential to be self-sufficient. If transitional housing programs require applicants to submit evidence of potential for self-sufficiency, immigrant victims must be permitted to prove self-sufficiency through evidence other than legal work authorization. Such evidence may include proof they are currently working, have any form of support, or by showing that they are in the process of filing for immigration relief that will lead to legal work authorization. For some undocumented immigrants this can include, but is not limited to, application for VAWA self-petitioning, U visa, T visa and other forms of immigration relief.

Second, the requirement that government issued documents be presented when applying for transitional housing either directly or effectively bars undocumented immigrants from successfully obtaining access to transitional housing. The majority of rejected applicants (82.6%, n=348) are rejected based on their inability to prove immigration status. Almost half (44.6%, n=188) of rejected applicants are unable to show a U.S. issued identity document such as a driver's license. Undocumented battered immigrants are disproportionately affected by these two requirements.

As discussed above, by law, all persons, regardless of immigration status, are eligible for transitional housing programs. In practice, requiring U.S. government issued identification is essentially the same as requiring immigration status. In the vast majority of states, the only forms of identification that are sufficient to obtain a government issued ID are issued only to persons who have obtained or are in the process of obtaining legal immigration status.⁷² Undocumented immigrants are not eligible to apply for driver's licenses in many states and, therefore, cannot obtain state or federal government identification documents issued in the United States. Many, but not all, immigrant crime victims will have forms of identification issued by their home countries (e.g. passports, identification cards issued by foreign governments). However, some domestic violence, human trafficking, and workplace violence victims may not have access to identity documents issued by any government because their perpetrator has confiscated their documents as part of the abuse, power and control exerted against the victim. Requirements to provide government issued documents imposed by transitional housing programs effectively bar

⁷⁰ 2001 HUD Letter at 12, available at: <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf/view>.

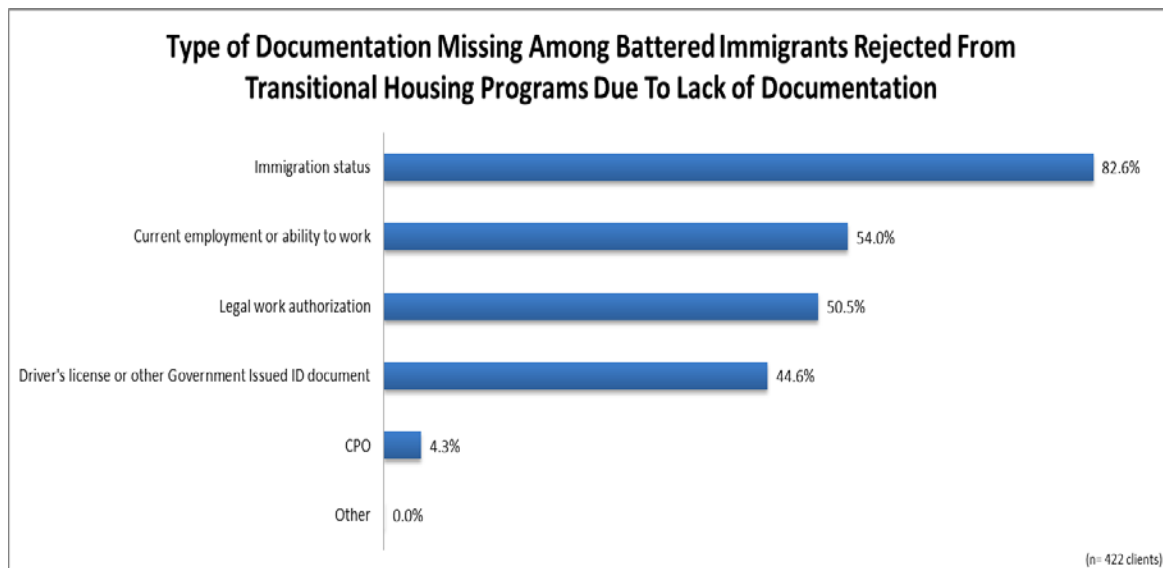
⁷¹ 8 U.S.C. § 1611(b)(1)(D)(1998); See AG Order on Life and Safety Services at 3616, available at: http://niwaplibrary.wcl.american.edu/public-benefits/unrestricted-benefits/AG_order.protection_life_or_safety.pdf

⁷² See generally Angela Baker and Leslye Orloff, *Acceptable Forms of Identification for State Driver's License/Identification Card* (Mar. 2013), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/state-issued-drivers-licenses-and-identification/Drivers-License-Access.pdf/view>.

Currently, ten states (CT, MD, VT, IL, CO, NM, UT, NV, CA, WA), the District of Columbia, and Puerto Rico issue driver's licenses to undocumented immigrants that are eligible for such license under Deferred Action for Childhood Arrivals (DACA) status. Restrictions should be checked in each state law as they vary.

undocumented immigrants from accessing programs, even if the transitional housing program does not expressly ask about immigration status.

Table 13

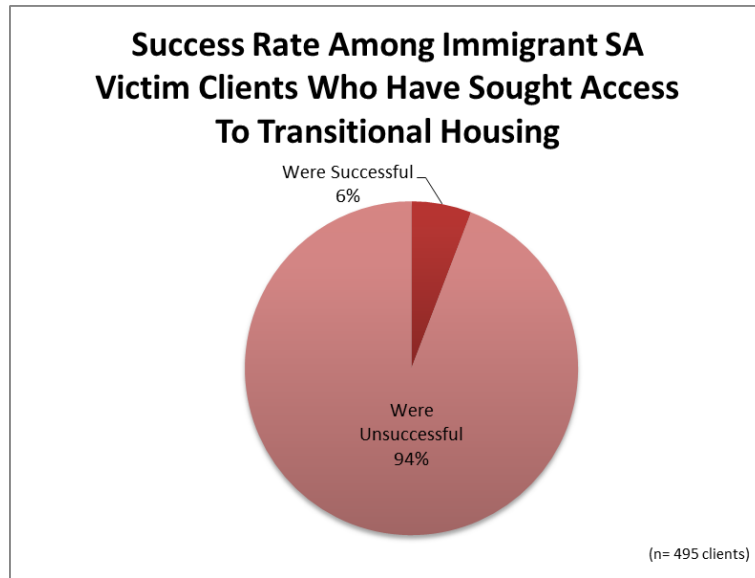


Lastly, it is important to note that survey participants also reported evidence of discrimination against limited English proficient (LEP) victims by transitional housing programs that denied access to immigrant crime victims because program staff could not communicate with LEP victims. This survey included reports on 57 cases in which immigrant crime victims were denied access to the transitional housing program because the victim did not speak English. This occurred most often in cases of battered immigrants (39), but also affected 18 cases of immigrant victims of sexual assault, human trafficking or abused, abandoned or runaway immigrant children. As discussed above, denial of language access to federally funded and assisted programs can be considered to be national origin discrimination and is prohibited. Therefore, lack of language access can never be a legitimate reason for denying access to transitional housing for immigrant crime victims.

b. Transitional Housing: Immigrant Victims of Sexual Assault

Of the total number of survey respondents, 22.3% (n=146) served immigrant victims of sexual assault clients who were not also victims of battery or extreme cruelty. Of those clients that were immigrant victims of sexual assault who needed transitional housing, 62.8% (n=515) sought access to transitional housing, while 37.2% (n=305) did not apply. An overwhelming majority of sexual assault victims who applied were denied access to transitional housing (94.2%, n=466)

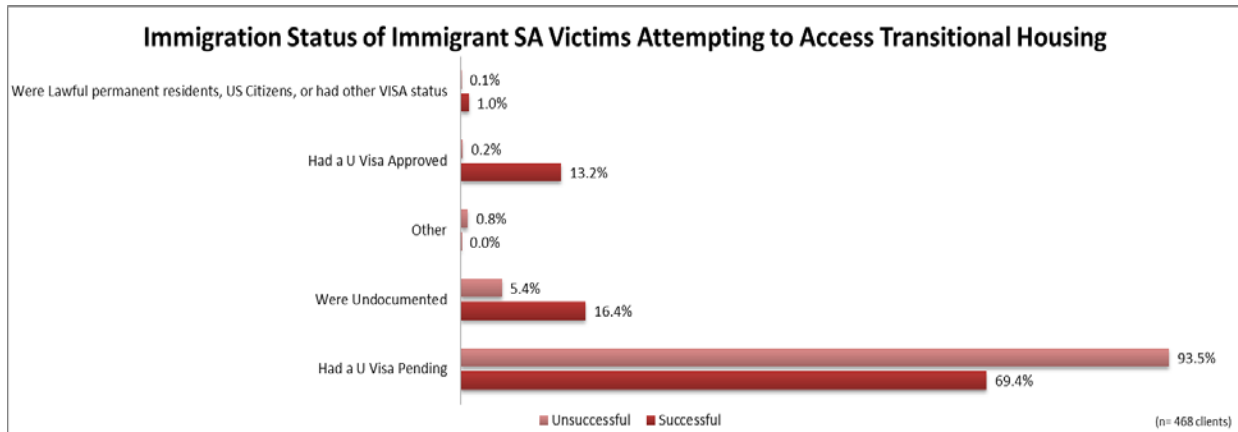
Table 14



Further, unlike battered immigrants, the majority of applicants seeking safe haven in transitional housing following a sexual assault were immigrant crime victims with pending U visa applications. These were immigrants who could provide documentation proving that they were in the process of applying for U visa immigration relief. In order to file their U visa case, they would have had to come forward and report the rape or sexual assault they experienced to law enforcement or other government officials (e.g. EEOC or Federal or State Department of Labor, Child Protective Services or Adult Protective Services).⁷³ When immigrant victims of non-intimate partner sexual assault with pending U visa applications sought transitional housing, a vast majority (93.5% (n=414)) were denied transitional housing. The immigration statuses of the immigrant sexual assault victims and their ability to access transitional housing is reported in Table 15.

⁷³ U.S. Dep't of Homeland Security, New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53014,53015 (Sept. 17, 2007), available at: http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim-regs-Fed-Reg.pdf

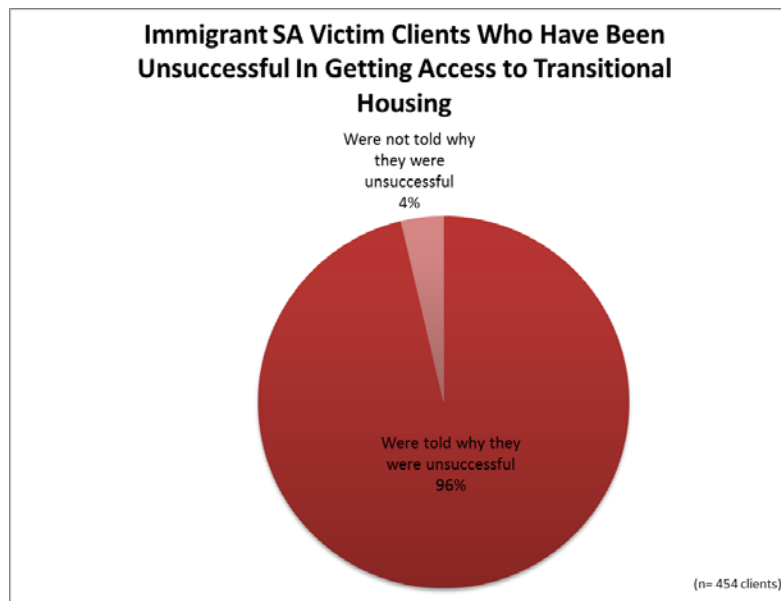
Table 15



In contrast to the data about battered immigrants, many victims of sexual assault are denied access to transitional housing despite having a pending or approved U visa application and a path to legal immigration status and lawful permanent residency. The proportion of immigrant victims denied access to transitional housing with pending or approved immigration cases was significantly higher for victims of non-intimate partner sexual assault (93.8%, n=453) as compared to battered immigrants, which accounted for 46.4% (n=337) of denials. Another significant difference between battered immigrants and immigrant sexual assault victims is the rate at which they applied for transitional housing. Undocumented immigrants accounted for 37.9% (n=932) of battered immigrants and only 6.7% (n=28) of sexual assault victims applying for transitional housing.

Almost all, 96% (n=437), of the sexual assault victims denied access to transitional housing were provided the reason for their application being denied.

Table 16

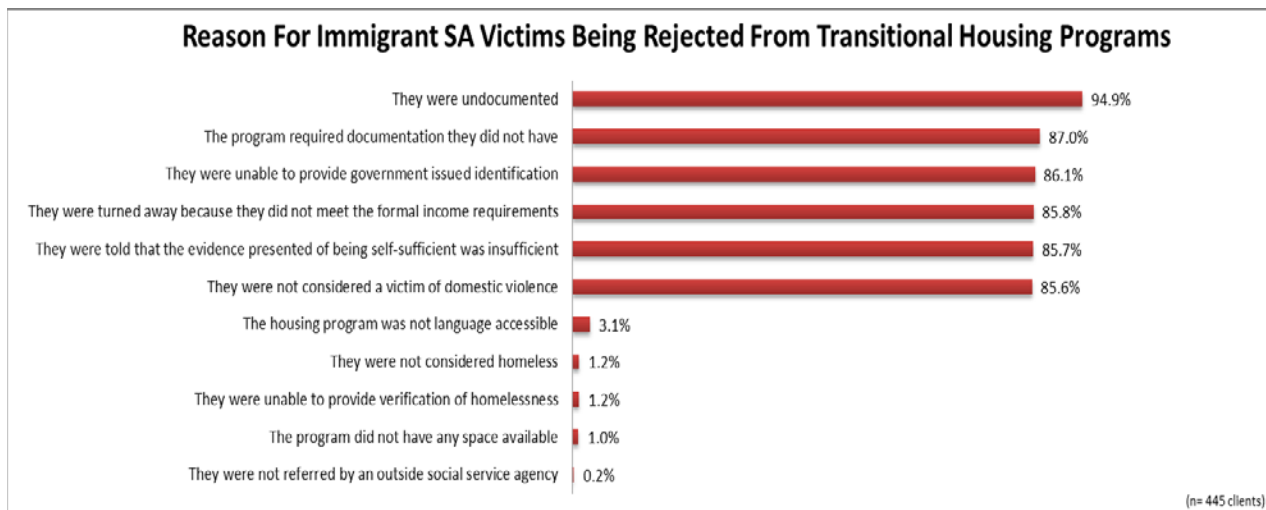


Immigrant victims of sexual assault who were denied access to transitional housing programs were often provided more than one reason for being denied access. The primary reasons for denial provided were:

- 94.9% (n=422) the victim was undocumented;
- 87.0% (n=387) documentation of immigration status required;
- 86.1% (n=383) victim could not provide a government issued ID;
- 85.8% (n=382) victim did not meet formal proof of income requirements;
- 85.7% (n=381) not enough evidence of self-sufficiency; and
- 85.6% (n=380) they were not victims of domestic violence.

These findings document the difficulty victims of sexual assault have accessing transitional housing programs. In addition to immigration status related reasons, similar to those experienced by battered immigrants, large number of immigrant victims of sexual assault were also turned away because they were not victims of domestic violence. This research sought information about victim access to transitional housing programs without regard to whether the programs received funding from OVW, HUD, FEMA or other state or federal government funders. As a result the findings provide information about how transitional housing programs in general, treat immigrant survivors. What is clear from the survey findings is that, contrary to both the central purpose of transitional housing and the VAWA expansion of access for victims of sexual assault, there is widespread denial of access to transitional housing for victims of sexual assault, including immigrant victims in communities across the country.

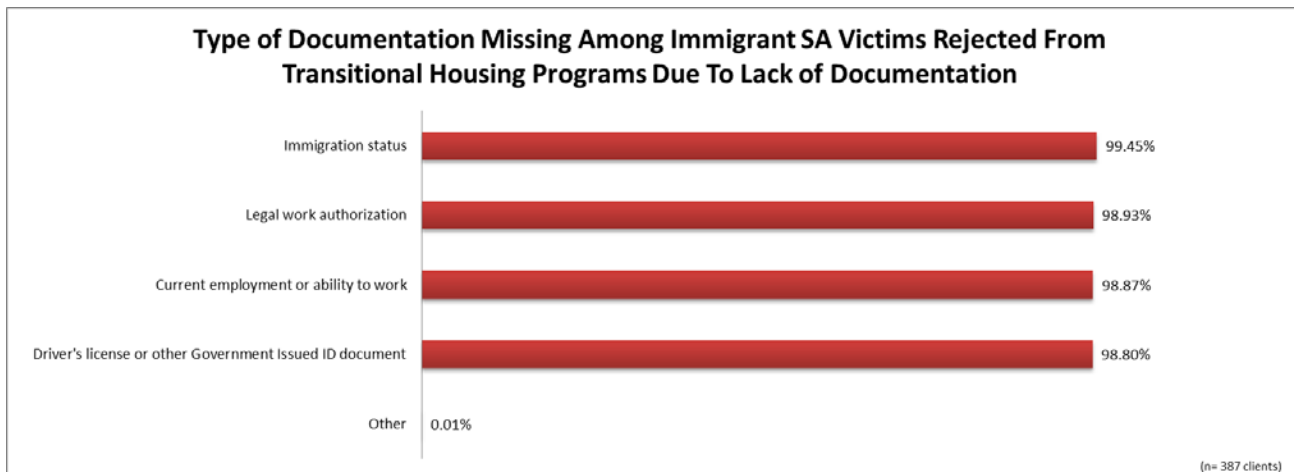
Table 17



In the instances where immigrant victims of sexual assault clients were denied access to transitional housing on the basis of not having the required documentation, the forms of documentation required were very similar to those asked of battered immigrants. Over 98% (n=382) of immigrant victims of sexual assault that were denied access to transitional housing programs were provided with a range of reasons for denial, each of which was fundamentally related to the immigrant sexual assault victim’s immigration status. (See table 17). 87% of sexual assault victims were denied access to transitional housing because they did not meet documentation requirements and 86.1% were unable to provide the program with government

issued identification, similar to the findings related to the impact of these requirements and the denial of access to transitional housing by battered immigrants (See tables 12 and 17). The data clearly shows these reasons are pervasive in transitional housing programs and apply to victims of both sexual assault and domestic violence.

Table 18



c. Transitional Housing: Victims of Human Trafficking

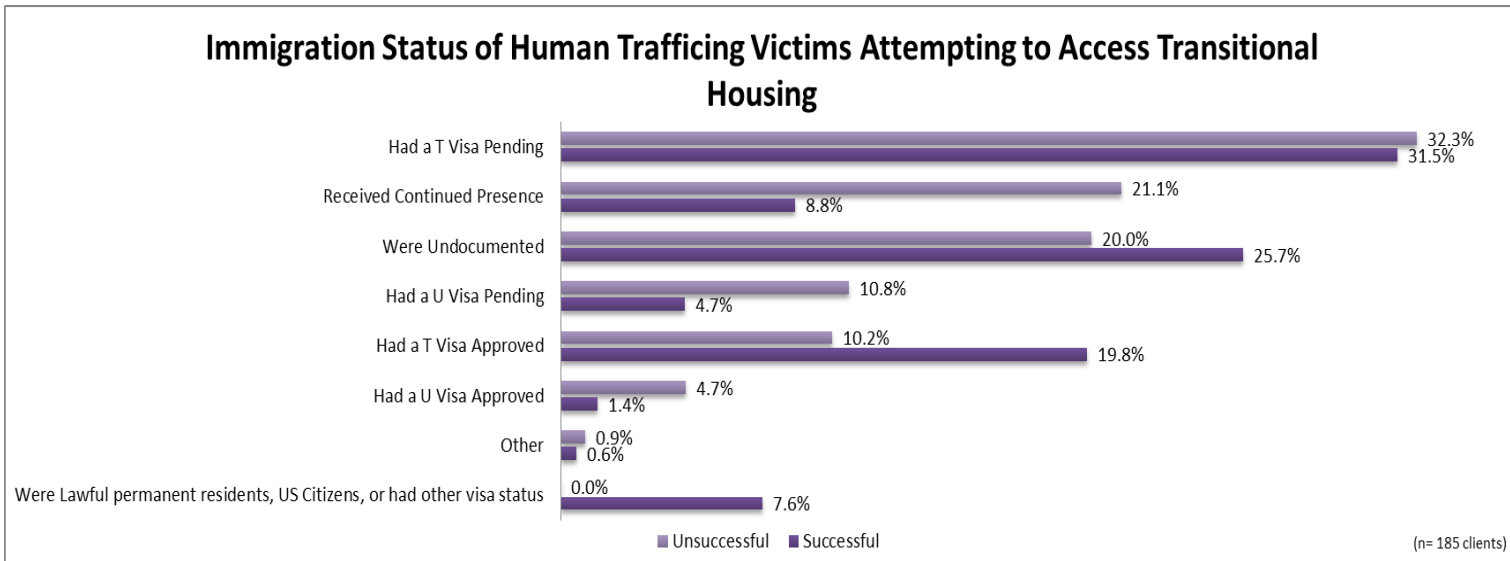
Victims of humans trafficking are generally more successful than victims of domestic violence when applying for transitional housing. Trafficking victims’ eligibility to receive transitional housing is based in several bases of legal authority. They are eligible for transitional housing to the same extent as other immigrant crime victims, based on DOJ regulations and HUD policy making transitional housing a program that is necessary to protect health and safety.⁷⁴ Victims of severe forms of human trafficking additionally have statutory grounds for eligibility based in the Trafficking Victims Protection Act.⁷⁵ Of those reported clients that were victims of human trafficking who needed transitional housing, 73.4% (n=186) sought access to transitional housing while 26.6% (n=67) did not apply for transitional housing. Additionally, of the human trafficking victims that sought access to transitional housing, 78.5% (n=146) were successful in obtaining it, while 21.5% (n=40) were unsuccessful in their efforts.

In terms of the effect of immigration status on success in obtaining transitional housing, of the clients that were successful in obtaining housing, 61% (n=87) had either pending or approved T visa applications, 4.7% (n=9) and 7.6% (n=11) had already attained lawful permanent residency. Over a quarter (25.7%, n=11) of successful human trafficking victim applicants were undocumented. Despite this fact, 31 out of 40 clients that were denied transitional housing also had pending cases. The rest of the human trafficking victims reported in the survey that were denied transitional housing were undocumented.

⁷⁴ See AG Order on Life and Safety Services, available at: http://niwaplibrary.wcl.american.edu/public-benefits/unrestricted-benefits/AG_order.protection_life_or_safety.pdf; see also 2001 HUD Letter, available at: <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf>

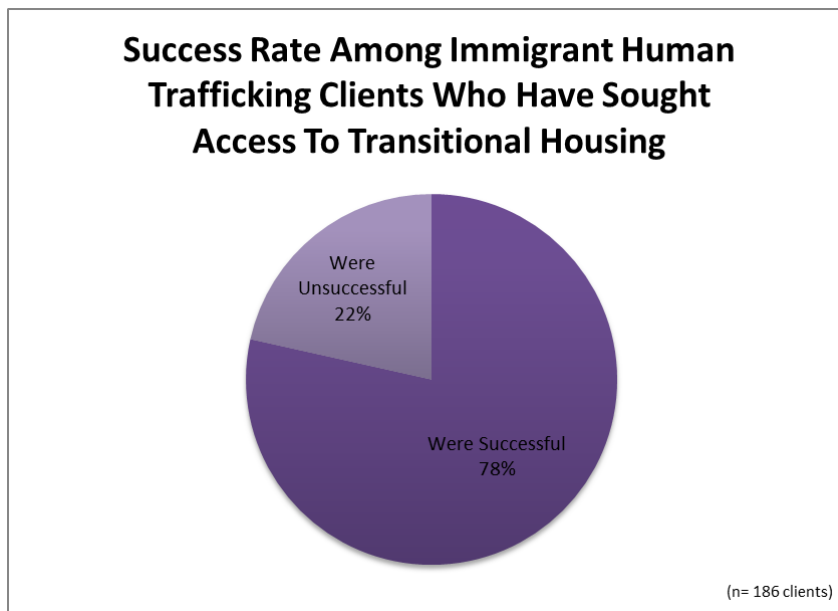
⁷⁵ 22 U.S.C. § 7105(b)(1)(A); 2001 HUD Letter, available at: <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf>.

Table 19



The findings of this survey indicate that, even when applicants who are victims of human trafficking have proper documentation and valid legal status in the United States, they are frequently rejected from transitional housing programs. Some of the most common reasons for rejection echo the reasons discussed when battered immigrants and immigrant victims of sexual assault were rejected.

Table 20

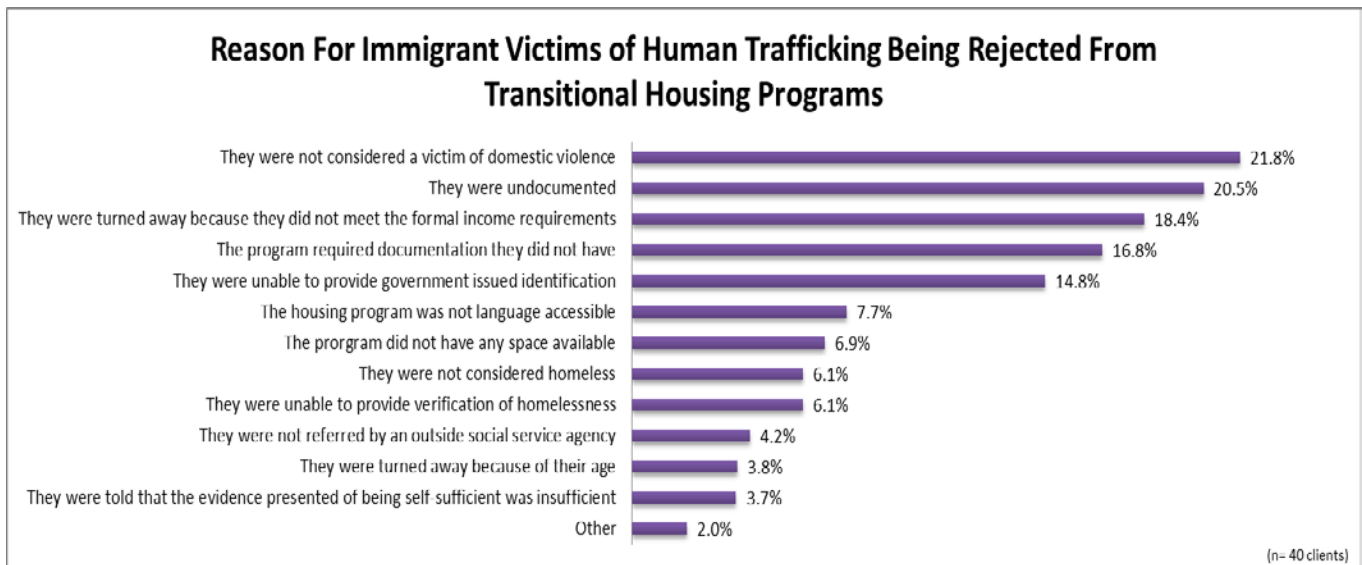


The most common reason for denying victims of human trafficking access to transitional housing was similar to the findings in this survey for sexual assault victims (see Table 21 below). The reasons provided included: the applicant was not a victim of domestic violence (21.8%, n=9); the trafficking victim was undocumented (20.5%, n=8); victim could not provide sufficient

proof of income eligibility (18.4%, n=8); failure to provide immigration documentation (16.8%, n=7); and no government issued ID (14.8%, n=6). Prior to the passage of VAWA 2005, victims of sexual assault, dating violence, and stalking were being turned away from transitional housing programs because they were not victims of domestic violence.⁷⁶ VAWA 2005 sought to remedy this problem by expanding transitional housing eligibility to victims of sexual assault, dating violence, and stalking.⁷⁷ As the findings indicate, transitional housing programs, which might be OVW or HUD funded, are still turning away sexual assault victims because they cannot show that they are victims of domestic violence, contrary to Congress' intent to expand these services to victims of sexual assault, dating violence, and stalking.

This research also found that almost a quarter (22%) of human trafficking victims are turned away from transitional housing programs despite the fact that, in addition to being eligible in the same way as any other undocumented immigrant victim, the TVPA was designed to give trafficking victims the same enhanced access to all forms of housing and other benefits programs available to refugees. Additionally, those human trafficking victims who are also sexual assault survivors should be able to benefits from VAWA's expansion of transitional housing programs to sexual assault survivors. This approach is consistent with the fact that VAWA and TVPA are complementary laws that have together expanded protections for victims. This overlap of victimization was recognized by the most recent VAWA reauthorization by the inclusion of sex trafficking victim protection for youth.⁷⁸ Victims of all forms human trafficking are entitled to access to transitional housing based on one of the following laws: VAWA,⁷⁹ TVPA⁸⁰ or PRWORA.⁸¹

Table 21



⁷⁶ VAWA 2000, Pub. L. 106-386, 114 Stat. 1464 § 1203 (transitional housing services were available only to victims of domestic violence in VAWA 2000).

⁷⁷ VAWA 2005, Pub. L. 109-162, 119 Stat. 3039 § 602(a)(1)(C) (2005).

⁷⁸ 42 U.S.C. § 14043(c).

⁷⁹ VAWA 2013, 42 U.S.C. § 13975(g)(i) (2013).

⁸⁰ TVPA 2000, 22 U.S.C. §§ 7105(A)(1)(A), (A)(1)(B) (2000).

⁸¹ PRWORA 1996, 8 U.S.C. § 1611(b)(1)(D) (1998).

This research found that both immigrant victims of human trafficking and immigrant victims of non-intimate partner sexual assault are being turned away from transitional housing programs across the country because they are not victims of domestic violence. Sexual assault and human trafficking are complex crimes with many possible fact patterns warranting access to transitional housing due to violence in the victim's living environment.

For example, a young woman may be sexually assaulted by a neighbor in her apartment building and suffer ongoing danger, abuse, and re-victimization by the sexual assault perpetrator that she will continue to face if she cannot leave or is forced to return to the home where the sexual assault took place. Women who are domestic workers providing house cleaning, child care and/or care for elders often reside in the home in which they work. If they are sexually assaulted or are a victim of human trafficking who has been held hostage in the employer's home, access to both emergency shelter and transitional housing could make a crucial difference to victim safety. Additionally, human trafficking often involves multiple parties and several locations, a victim may not qualify under the narrow definition of "domestic" in that she does not live under the same roof as her perpetrator, but the perpetrator may still have easy and unimpeded access to her living environment.

The data collected in NIWAP's survey illustrates a substantial need for access in both populations. The data implies that both human trafficking and sexual assault occur separately from domestic battery, yet victims incur similar risks to their health and safety if they remain in their current living environments, thus necessitating access to transitional housing.

III. All evidence submitted for admission to transitional housing should be judged by the "any credible evidence" standard.

In 1990, Congress added the battered spouse waiver to the Immigration and Naturalization Act⁸², which allows immigrants that are battered or subjected to extreme cruelty by their U.S. citizen or lawful permanent resident spouses to complete the process of receiving lawful permanent residency without the knowledge or cooperation of the abusive citizen or law permanent resident spouse.⁸³ In implementing the 1990 battered spouse waiver protections, the Immigration and Naturalization Service (INS) required that immigrants applying for battered spouse waivers based on extreme cruelty submit evidence from a licensed mental health professional with their immigration application. At the time the regulation was issued and today, the number of mental health professionals with training on domestic violence was very low, and the number of bilingual and bicultural trained mental health professionals trained in domestic violence issues remains relatively low. This made it virtually impossible for abused immigrant victim spouses to obtain the evaluations that mental health INS regulations required as a prerequisite to filing a battered spouse waiver based on extreme cruelty.⁸⁴ When abused immigrant spouses lived in communities where such mental health services existed, they were often barred access because they did not have the financial resources to pay for the required

⁸² Immigration and Naturalization Act (INA), Pub. L. No. 99-639, 100 Stat. 3537 (codified as amended at 8 U.S.C. § 1186a).

⁸³ See INA § 216(c)(4), 8 U.S.C. § 1186a(c)(4)(battered spouse waiver provision); see generally INA Pub. L. No. 101-649, 104 Stat. 4978 (codified as amended in scattered sections of 8 U.S.C.) and § 701(b).

⁸⁴ Ignatius Bau & William R. Tamayo, *Immigration Marriage Fraud Amendments of 1986 (Marriage Fraud Act) And Other Related Issues*, in DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES: ASSERTING THE RIGHTS OF BATTERED WOMEN, 15 (Debbie Lee et. al. Eds., 1991).

mental health evaluation.⁸⁵ This mental health expert evaluation requirement focused on the victim's injuries rather than the abuser's actions and severely limited the number of battered immigrants who had suffered extreme cruelty who would be granted relief.⁸⁶

To address this problem and prevent INS, and later DHS, from imposing mandatory evidence requirements on immigration cases filed by immigrant crime victims, Congress imposed the VAWA standard of "any credible evidence" on all cases involving battered spouse waivers, VAWA self-petitioning, and VAWA cancellation of removal in VAWA 1994 and Congress later expanded the application "any credible evidence" requirements to apply to U and T visa cases.⁸⁷ To address the onerous mental health evaluation requirement, in VAWA 1994 Congress required INS, and later DHS, to accept "any credible evidence" provided by immigrant victims "in support of hardship waivers based on battering or extreme cruelty whether or not the evidence is supported by an evaluation by a licensed mental health professional."⁸⁸ Their intention was to "remove any impediments in the law that would deter battered immigrants 'from taking action to protect himself or herself, such as filing a civil protection order, filing criminal charges, or calling the police because of the threat or fear of deportation.'"⁸⁹

This rule was created to ensure victims were not hindered from applying for and receiving VAWA, T or U visa immigration relief by abusers who had control of primary evidence, identity, or other documents that were important for victims' immigration cases.⁹⁰ Congress acknowledged that immigrant victims require further protective measures because of their limited capability to produce primary evidence, especially in cases of domestic violence, workplace violence, and human trafficking. Abusers are often in control of all primary documentation, confiscate vital records as a measure of control, and threaten deportation, making

⁸⁵ *Id.*

⁸⁶ For these reasons, the Violence Against Women Act of 1994 ("VAWA 1994") imposed a new credible evidence standard for battered spouse waiver cases that forced the INS to accept any credible evidence of abuse. VAWA 1994 is part of the Violence Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1796 (1994). This immigration provision of the VAWA is codified at INA §216(c)(4), 8 U.S.C. § 1186a(c)(4)(C). The congressional history of VAWA 1994 stated that the INS was to accept "any credible evidence" and explicitly then existing the INS regulation directing the "Attorney General to consider any credible evidence submitted in support of hardship waivers based on battering or extreme cruelty whether or not the evidence is supported by an evaluation by a licensed mental health professional." H.R. Rep. No. 103-395. See generally Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 Am. U. J. GENDER SOC. POL'Y & L. 95, 95-183 (2002), available at: http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-self-petition-and-cancellation/research-reports-and-data/VAWA_Offering_Helping_Hand_History.pdf

⁸⁷ The any credible evidence standard has since been applied to all immigration cases involving domestic violence and has been extended in the VAWA 2000 to apply in immigration cases involving immigrant crime victims. VAWA 2000, Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106.386, §§ 1504(a), INA § 204(a)(1)(J), 8 U.S.C. § 1154(a)(1)(J); INA § 240A(b)(2)(D), 8 U.S.C. § 1129b(b)(2)(D); INA § 237(a)(7)(B), 8 U.S.C. § 1227(a)(7)(B); and INA § 214(p)(4), 8 U.S.C. § 1184(o)(4).

⁸⁸ H.R. REP. NO. 103-395 (1993)

⁸⁹ Leslye E. Orloff, Kathryn C. Isom, and Edmundo Saballos, *Mandatory U-visa Certification Unnecessarily Undermines the Purpose of the Violence Against Women Act's Immigration Protections And Its "Any Credible Evidence" Rules – A Call For Consistency*, 11 GEO. J. GENDER & L. 619, 626 (2010), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/other-immigration/any-credible-evidence-standard/Any%20Credible%20Evidence%20-%20Orloff.pdf/view>.

⁹⁰ *Id.* at. 627.

it infinitely more difficult for immigrant victims to access transitional housing.⁹¹ The “any credible evidence” rule helped prevent perpetrators from undermining victim access to immigration protections by controlling or destroying documents or other evidence. It also prevented victims from being denied access to VAWA’s immigration protections because the victim did not have the financial resources to pay for mental health evaluations or other services. Furthermore, it removed requirements from the law that could endanger victims by forcing them to travel back to the state or city in which the perpetrator resided to obtain copies of evidence (e.g., police record, health records, marriage licenses), when this could mean sacrificing their safety. DHS has adopted these measures as well; in the context of adjudicating eligibility for immigration benefits, DHS must consider any credible evidence submitted in order to establish victimization, as well as all other elements required to approve an immigrant’s VAWA self-petition.⁹²

Implementing an “any credible evidence” standard for all cases of crime victims applying for transitional housing would benefit all victims of domestic violence, sexual assault, dating violence, stalking, and human trafficking. Undocumented immigrant victims often do not have the types of documents required, such as a United States-issued government identification card or Social Security number. Since all services necessary for life and safety must be available to all persons regardless of immigration status, transitional housing programs should *not* be requiring these documents that by their very nature, many immigrant victims are unlikely to have. Individuals seeking access should be able to satisfy all requirements by “any credible evidence.” This approach would promote access to transitional housing programs for all victims, would improve consistency and fairness in the application process, and would reduce discrimination against victims historically underserved by transitional housing and other victim services programs.

As discussed above, most transitional housing programs have formal income requirements that, at times, may impede immigrant women from obtaining transitional housing. Some income requirements have an employment requirement as well, so an applicant must show they are currently employed in order to gain access. This requirement is especially problematic for undocumented victims, including those in the process of applying for immigration benefits through the VAWA, T and U visa immigration programs. Some programs only accept specific forms of documentation to prove employment, including legal work authorization. Many immigrant crime victims are, in fact, working, but cannot prove employment with documentation.⁹³ Some have been working for many years but are paid in cash, “off the books”,

⁹¹ H.R. REP. No. 103-395, at 26 (1993)

⁹² 8 C.F.R. § 103.2(b)(2)(iii)

Evidence provided with a self-petition filed by a spouse or child of abusive citizen or resident. The USCIS will consider any credible evidence relevant to a self-petition filed by a qualified spouse or child of an abusive citizen or lawful permanent resident under . . . the Act. The self-petitioner may, but is not required to demonstrate that preferred primary or secondary evidence is unavailable. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the USCIS.

See also 8 C.F.R. § 204.1(f)(1); 8 C.F.R. § 204.2(c)(2)(i); 8 C.F.R. § 204.2(e)(2)(iii); 8 C.F.R. § 204.2(e)(2)(i).

⁹³ KRISZTINA E. SZABO, DAVID STAUFFER, BENISH ANVER, AND LESLYE E. ORLOFF, EARLY ACCESS TO WORK AUTHORIZATION FOR VAWA SELF-PETITIONERS AND U VISA APPLICANTS 29 (Over half of VAWA self-petitioners and 59.4% of U visa victims were reported to be working without formal work authorization while they await

without legal work authorization. These victims would be able to prove their employment if they were provided the flexibility of using any credible evidence.

Some victims may not have been able to secure employment because they lack legal work authorization. A large number of immigrant victims in this group will qualify to attain legal immigration status and work authorization through VAWA, T or U visa immigration relief. Others may qualify for work authorization as abused spouses of certain immigrant work visa holders.⁹⁴ When immigrant victims apply for VAWA-related immigration relief, they only

adjudication of their VAWA self-petition and U visa cases), available at: <http://niwap.org/reports/Early-Access-to-Work-Authorization.pdf>

⁹⁴ Section 106 was added to the INA with the reauthorization of VAWA 2005, Pub. L. 109-0162 § 814(c) (2005). Section 106 was added to the INA with the intention to end the economic dependence of a battered spouse of abusive work visa holders in the United States. Under Section 106, work authorization is available to spouses of lawfully admitted work visa holders when they or their children have been battered or been subjected to extreme cruelty by their spouses. The immigrant battered spouse must be married to one of the following work related visa holders, as defined by INA § 101(a)(15):

(A) Diplomat and Foreign Government Official (holders include an “ambassador, public minister, or consular officer who has been accredited by a foreign government recognized de jure by the United States and who is accepted by the President or by the Secretary of State...”

(E)(iii) Australians (those who “enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation” “solely to perform services in a specialty occupation in the United States if the alien is a national of the Commonwealth of Australia and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under INA § 212(t)(1)”

(G) Representatives of International Organizations and the Staff

“(i) a designated principal resident representative of a foreign government recognized de jure by the United States, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669, 22 U.S.C. § 288), accredited resident members of the staff of such representatives, and members of his or their immediate family;

(ii) other accredited representatives of such a foreign government to such international organization, and the members of their immediate families;

(iii) an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited representative is not recognized de jure by the United States, or that the government of which is an accredited representative is not a member of such international organization, and the members of his immediate family;

(iv) officers, or employees of such international organizations, and the members of their immediate families; or

(v) attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees.”

(H) Temporary Work Visas

“an alien (i) 3a/ 3b/ (b) subject to section 212(j)(2) , who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 214(i)(1) or as a fashion model, who meets the requirements for the occupation specified in section 214(i)(2) or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 3b/ 212(n)(1) , or (b1) who is entitled to enter the United States under and in pursuance of

receive work authorization once their case has been approved by DHS. Adjudication of VAWA, T and U visa cases is currently⁹⁵ taking up to 7 months. Adjudication of INA Section 106 work authorizations will take significantly longer, because DHS is still in the process of issuing implementation guidance on these cases.⁹⁶ The fact that an immigrant victim has filed for or is preparing to file for immigration relief should be- and would be, under the “any credible evidence” standard -enough evidence that the victim is taking steps toward self-sufficiency to qualify them for transitional housing.

NIWAP’s research revealed that the most common problems immigrant victims face are producing government-issued identity documents, which are required to prove immigration status, income or employment, and legal work authorization. As discussed above, transitional housing programs are supposed to be open to undocumented immigrants and each of the federal funding sources for transitional housing contains anti-discrimination requirements. When programs impose immigration status, legal work authorization, and specific documentation evidentiary requirements on applicants for transitional housing that effectively deny access to immigrant and LEP victims, the programs risk violating anti-discrimination laws. While it is improper to refuse access due to an inability to show legal immigration status and work authorization, it is permissible to require certain income predictability and identification. Adopting an “any credible evidence” standard for proof to meet all eligibility requirements will help all victims of domestic violence, sexual assault, dating violence, stalking and human trafficking gain equal access to transitional housing necessary to their safety and economic independence from abusers.

the provisions of an agreement listed in section 214(g)(8)(A) , who is engaged in a specialty occupation described in section 214(i)(3) , and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1) , or (c) 3b/ who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 212(m)(1) , and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) for the facility (as defined in section 212(m)(6)) for which the alien will perform the services; or

(ii) (a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of 3bbb/ the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), and the pressing of apples for cider on a farm, of a temporary or seasonal nature, or

(b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or

(iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him.

⁹⁵ Current processing time as of May 2014.

⁹⁶ Implementing policies are likely to be issued during 2014.

HUD should follow the lead of DHS and consider formally adopting an “any credible evidence” standard for all HUD-funded transitional housing programs. This would ensure that transitional housing programs adopt uniform policies for admission eligibility and would provide undocumented immigrant victims and all other battered immigrants and immigrant victims of crime greater access to transitional housing programs.

IV. Analysis, Recommendations and Conclusion

Short term shelters (emergency shelters and transitional housing) are open to all immigrants who are victims of domestic violence (spouse, intimate partner, child or elder abuse), are homeless or at risk of homelessness, are abused, abandoned or neglected children for up to two years,⁹⁷ and to victims of human trafficking.⁹⁸ Housing protections for victims of domestic violence, dating violence, sexual assault, and stalking have been expanded by VAWA 2013.⁹⁹ Additionally, victims of human trafficking have been provided access to a broad range of services under TVPA.¹⁰⁰ To reflect the broadened housing and immigration protections that have been enacted since the 2001 HUD Letter was issued, the Administration should reissue an updated version of this letter and apply it to all relevant federal funding sources for transitional housing programs including but not limited to HUD, DOJ, HHS and DHS FEMA funded programs. We have included a proposed draft of an amended grantee letter that could be sent to all federal government grantees as Appendix A. The following recommendations discuss the updates needed.

a. Extend Applicability to All Federal Agencies Funding Emergency Shelter and Transitional Housing

The HUD Letter applied only to emergency shelter and transitional housing programs funded by HUD. The reissued letter should apply to all of the significant sources of government funding for shelter and transitional housing. The primary federal funding agencies are: HUD; the

⁹⁷ See 2001 HUD Memo, available at: <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf/view>.

⁹⁸ 22 U.S.C. §§ 7105(A)(1)(A), (A)(1)(B)

⁹⁹ VAWA 2013 § 602, Pub. L. No. 113-4, 127 Stat 54 (2013) (Section 602 expanded eligibility by including victims of dating violence), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/vawa-legislative-history/violence-against-women-act-statutes-enacted/VAWA%202013.pdf>.

See also VAWA 2005, Pub. L. 109-162, 119 Stat. 3039 § 602(a)(3)(expanded duration of stay in transitional housing from 18 months to 24 months; expanded transitional housing eligibility to victims of sexual assault, dating violence, and stalking), available at: <http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/statutes/VAWA-2005-Senate-House-Passed-Pub.-L.-109-162.pdf>.

Compare VAWA 2000 Pub. L. 106-386, 114 Stat. 1464 § 1203 (eligibility for transitional housing was limited to victims of domestic violence only and was for 12 months)

¹⁰⁰ TVPA 2000, 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.

U.S. Department of Justice (DOJ), the Office on Violence Against Women (OVW) and the Office of Victims of Crime (OVC); the U.S. Department of Health and Human Services (HHS), the Family Violence Protection and Services Act Office (FVPSA) and the Federal Emergency Management Administration (FEMA) of the U.S. Department of Homeland Security (DHS).

Admission to housing programs may be the difference between life or death for many victims of domestic violence, sexual assault, and human trafficking. Transitional housing is the only viable option for survivors who need longer than the sixty days protection most emergency shelters offer.¹⁰¹ Transitional housing programs offer counseling, support groups, safety planning, workshops (e.g., educational, employment, budget, parenting, and nutrition), and partnerships with community agencies and businesses.¹⁰² Battered women have cited these additional services, not offered in permanent housing or rapid rehousing, as the most important factors to their breaking the cycle of violence and gaining independence.¹⁰³ Without transitional housing battered women are faced with having to choose between returning to live with their abusers and homelessness.¹⁰⁴

The likelihood of returning to live with their perpetrator is extremely high for immigrant battered women. Significant numbers of battered immigrants who file VAWA self-petitions (43.1%) and U visa applications (63.4%) remain trapped living in homes with their abusers suffering ongoing abuse at least monthly while they await receipt of work authorization (55.8% - VAWA self-petitioners; 97.4% -U Visa case).¹⁰⁵ Access to transitional housing enables greater numbers of battered immigrants leaving emergency shelter to secure safe housing and avoid returning to abusive homes. Issuance of a letter that is explicitly applicable to all federally funded transitional housing programs would provide that direction needed to ensure that victims of domestic violence, sexual assault, dating violence, stalking and human trafficking can transitional housing without regard to immigration status.

b. Include Full List of VAWA Crimes Pursuant to VAWA 2013

When the HUD letter was issued in 2001, it offered shelter to domestic violence victims, the homeless, and run away, abused or abandoned children. At the time the letter was issued, victims of domestic violence were a predominant focus of VAWA. With each VAWA reauthorization (2000, 2005 and 2013)¹⁰⁶ the categories of crime victims covered by VAWA's important protections has grown. The list of persons eligible for access to emergency shelter and transitional housing should be expanded includes the same range of crimes that VAWA and the TVPA cover. In addition to immigrant victims of sexual assault, stalking, dating violence,

¹⁰¹ Cris M. Sullivan, Anna Melbin, and Debra Cain, *Transitional Supportive Housing Programs: Battered Women's Perspectives and Recommendations*, 18 AFFILIA – J. WOMEN AND SOC. WORK 445, 446 (2003).

¹⁰² *Id.* at 453

¹⁰³ *Id.* at 455

¹⁰⁴ *Id.* at 456

¹⁰⁵ KRISZTINA E. SZABO, DAVID STAUFFER, BENISH ANVER & LESLYE E. ORLOFF, EARLY ACCESS TO WORK AUTHORIZATION FOR VAWA SELF-PETITIONERS AND U VISA APPLICANTS 22-23 (Feb. 12, 2014), available at <http://niwap.org/reports/Early-Access-to-Work-Authorization.pdf>.

¹⁰⁶ See comparison of VAWA 2000, VAWA 2005 and VAWA 2013 in note 92 above.

human trafficking (sex and labor), victims of all U visa listed crimes¹⁰⁷ should be eligible for emergency shelter and transitional housing for up to two years. The policy should also clarify that domestic violence includes the abuse of spouses, intimate partners, children, elders and disabled family members.

This approach is similar to the approach taken in VAWA 2013 with regard to the funding of shelter and transitional housing programs.

The Attorney General, acting through the Director of the Violence Against Women Office of the Department of Justice (“Director”), and in consultation with the Secretary of Housing and Urban Development (“Secretary”), and the Secretary of Health and Human Services, acting through the Administration for Children, Youth and Families (“ACYF”), shall award grants and contracts for not less than 2 years to eligible grantees to promote the full and equal access to and use of housing by adult and youth victims of domestic violence, dating violence, sexual assault, and stalking.¹⁰⁸

Our research illustrates the clear need for transitional housing for victims of sexual assault and human trafficking. Of approximately 500 victims of sexual assault who sought access to transitional housing, 94.9% were unsuccessful. Over 380 of those victims reported they were told they were denied because they were not victims of domestic violence. Additionally, over 40 victims of human trafficking reported rejection from transitional housing. The levels of violence, vulnerability to ongoing abuse, and financial dependence experienced by victims of sexual assault and human trafficking, as well as the role safe housing plays in their ability to rebuild their lives, warrants giving them the same access to transitional housing as is available to domestic violence victims.

NIWAP’s research found widespread discrepancies in the eligibility criteria for transitional housing services. Formal guidance from HUD, DOJ, HHS and DHS would help ensure greater and more uniform access for immigrant survivors. Issuing this guidance will also help government grantees offer transitional housing services in a manner that is more consistent with VAWA’s, HUD’s and HHS’s anti-discrimination provisions and efforts to reach and serve greater numbers of underserved victims.

c. Ensure access to short-term shelter or housing assistance without regard to immigration status by adopting the “any credible evidence” standard.

HUD, DOJ, HHS and FEMA-funded programs that provide emergency shelter and transitional housing must be made equally available to all persons, regardless of their

¹⁰⁷ Rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, stalking, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, fraud in foreign labor contracting, solicitation to commit any of the above-mentioned crimes, or any similar activity in violation of federal, state, or local criminal law.

¹⁰⁸ VAWA 2013, 42 U.S.C. § 14043e-4 (b)(1) (2013).

immigration status. Accordingly, no specific types of documentation should be required to support a crime victim’s application for transitional housing. Victims should be able to prove eligibility for transitional housing and for emergency shelter by providing “any credible evidence” in support of their applications.

With appropriations for transitional housing continually being set substantially lower than the funding for transitional housing authorized by VAWA, it was expected that lack of adequate space in transitional housing programs would be a significant reason why immigrant victims of crimes might not be able to access these programs. However, as reflected in Table 12, NIWAP found that the lack of available space only accounted for just over a third (35.1%) of denials in cases of battered immigrant applicants and played no significant role in denials of applications submitted by immigrant victims of sexual assault and human trafficking. When assessing the limited resources all grantors should be careful that funds are distributed equitably and make conscious efforts to avoid discrimination.

Withholding access to transitional housing based on an applicant’s immigration status is legally impermissible. NIWAP’s survey results document a national trend of transitional housing programs imposing strict eligibility documentation requirements, resulting in a large number of immigrant and LEP victims of domestic violence, sexual assault and human trafficking being turned away. In many instances, victims are explicitly denied access based on their immigration status, especially when they are undocumented, have pending applications for VAWA, T or U visa immigration relief, or have already been granted this relief. This research found that the leading reasons for immigration status related denials were (See table 20):

- Victim undocumented
- No government issued ID
- Victim could not provide documentation required by the program regarding
 - Immigration status (DV 82.6%; SA 99.4%) (Tables 13&18)
 - Legal Work Authorization (DV 50.5%; SA 98.9%)(Tables 13&18)
 - Driver’s License or State or U.S. federal government issued ID (DV 44.6%; SA 98.8%)(Tables 13&18)
 - Current employment or documentation of ability to work (DV 54.0%; SA 98.9%)(Tables 13&18)¹⁰⁹

The National Network to End Domestic Violence (NNEDV) – which is funded by the Office of Violence Against Women (OVW) and provides technical assistance nationwide on making transitional housing more accessible for victims of domestic violence, sexual assault, stalking and dating violence – published a Transitional Housing Toolkit, which includes various resources and best practices for developing and implementing transitional housing programs that

¹⁰⁹ The proof of ability to work often requires proof of legal work authorization which is an immigration related factor. For working immigrant victims, proof of current employment can also be complicated by the victim’s immigration status and requires that the transitional housing programs imposing this criteria be flexible with regard to the evidence they will accept as proof that the victim is working. Immigrant victims working in the informal economy will not have pay stubs or other formal documentation of employment. They may be paid in cash and may not be able to safely attain an affidavit of employment from their employer. The any credible evidence rules recommended in this report will address these problems by allowing working immigrant victim more latitude in how they prove current employment.

best serve the victims' needs while promoting victim safety, recovery, goals and capacities.¹¹⁰ NNEDV's "Best Practices for Setting Eligibility Criteria in Transitional Housing Programs" summarizes the eligibility requirements established by the OVW for transitional housing programs serving domestic violence, sexual assault, stalking and dating violence victims:

The Office on Violence Against Women (OVW) has created the following eligibility criteria for the Transitional Housing Grant Program. Applicant must be:

- A survivor of domestic and/or sexual violence, dating violence or stalking, whose is actively fleeing an abusive relationship;
- Eighteen years old or (legally) emancipated minor;
- In need of housing due to fleeing, without sufficient emergency or transitional housing available;
- Willing and desiring to participate in Transitional Housing and meet with staff on a mutually-determined schedule;
- Willing to create an individualized safety plan, with the assistance of Transitional Housing staff; and
- Able to safely* live independently, without access to staff or support 24-hours per day, 7 days per week.¹¹¹

NNEDV Best Practices guide goes on to describe why programs may have chosen to impose additional eligibility criteria beyond those outlined by OVW, explains how such practices are detrimental to survivors, and recommends changes.

It is important to avoid screening out survivors solely based on individual needs that your program does not think it can meet...Many programs set eligibility based upon the program's own definition of success in fear of failing or not meeting funder expectations, and as a result only screen in survivors who are believed to be the most 'motivated' or those who have already proven themselves 'successful'.

One example is setting eligibility criteria based on previous stays in an emergency shelter and/or based on the survivor's behavior in shelter. Both of these criteria assume that survivors who are accepted into shelter and subsequently follow the rules and 'work towards their goals' are more appropriate for transitional housing. These assumptions are based on the program's perceptions about which survivors are least difficult to serve; or which have the fewest barriers and obstacles; or who are most likely meet the program's ultimate definition of 'success' (for example, permanent housing). In short, acceptance decisions should not be made based on assumptions, but instead based on some basic pre-set eligibility criteria.

¹¹⁰ *Transitional Housing Toolkit*, NAT'L NETWORK TO END DOMESTIC VIOLENCE (NNEDV), <http://nnedv.org/resources/transitional-housing.html> (last visited June 2, 2014).

¹¹¹ Best Practices for Setting Eligibility Criteria in Transitional Housing Programs, NAT'L NETWORK TO END DOMESTIC VIOLENCE (NNEDV), http://nnedv.org/downloads/Thousing/BestPractices_SettingEligibilityCriteria.pdf (last visited June 2, 2014).

A program's success will of course be in part defined by outcomes... *But it must also be defined by the survivor.* Transitional housing programs should define program success by *what the program accomplished on behalf of the survivor or in partnership with the survivor; what services, information and assistance were provided and the manner in which they were provided.* ...When success is reframed in this way, it becomes clearer that ensuring program success is not based on screening out the survivors with the most needs, or those who have not yet proven themselves successful. *When success is defined differently for each survivor and her experience in the program, it can be met regardless of what a survivor's specific goals or capabilities are [sic].*

Funding for housing programs is limited. As such, programs are always attempting to utilize all resources wisely. This is a necessary and admirable approach in any non-profit organization. However, we must be careful not to expend resources only for those we determine 'deserving'. *The goal is to help survivors.* The role of the program is not to determine in advance who deserves help or who will be the most successful, based on our own definition of success....Eligibility should be straightforward, transparent, and clearly defined....[and] [b]e as broad and inclusive as possible.¹¹² (Italics in original)

The results of NIWAP's survey underscore the need for transitional housing programs to take the approach to program eligibility recommended by NNEDV and OVW. This victim-centered approach will end the harmful policies and restrictive admission practices the research found to be so prevalent across the nation. Currently, 85.6% of immigrant victims of sexual assault and 21.8% of human trafficking victims are being turned away for transitional housing programs because they are not domestic violence victims even though VAWA 2005 and 2013 affirm that victims of sexual assault are eligible for VAWA transitional housing programs.

The second greatest reason immigrant victims are turned away from accessing transitional housing stems from the imposition of requirements that are more related to the program's chosen definitions of success than "*what the program accomplished on behalf of the survivor or in partnership with the survivor.*"¹¹³ Table 17 illustrates the extent to which formal proof of income requirements and satisfactory proof of the ability to attain self-sufficiency lead to immigrant and LEP victims being denied access to transitional housing programs. The following chart compares and summarizes the most common reasons for denial.

¹¹² *Id.*

¹¹³ Best Practices for Setting Eligibility Criteria in Transitional housing Programs, NAT'L NETWORK TO END DOMESTIC VIOLENCE (NNEDV), http://nnedv.org/downloads/Thousing/BestPractices_SettingEligibilityCriteria.pdf (last visited June 2, 2014).

Table 22

Reason Crime Victims Were Denied Transitional Housing	DV %	SA %	HT %
They were undocumented	25.6%	94.9%	20.5%
Required documentation they did not have	34.3%	87.0%	16.8%
No government issued ID	18.3%	86.1%	14.8%
Not meet formal income requirements	23.7%	85.8%	18.4%
Evidence presented of self-sufficiency insufficient	9.5%	85.7%	3.7%
They were not considered a victim of domestic violence		85.6%	21.8%
The program did not have any space available	35.1%	1.0%	6.9%

NIWAP’s findings on the extent to which the transitional housing eligibility requirements are being used in the field are not consistent with OVW’s and NNEDV’s best practices for promoting violence against women survivor access to transitional housing. These findings help explain the low rates at which Latinos, Asians, LEP, and immigrant victims are being serviced by OVW-funded transitional housing programs. The Violence Against Women Act Measuring Effectiveness Initiative (VAWA MEI) at the Muskie School of Public Service at the University of Southern Maine documents the impact that OVW grants make in the lives of women, their families and their communities. The reports submitted by transitional housing programs receiving OVW funding during 2010-2012 by VAWA MEI reflect that immigrants, LEP, and non-African American racial and ethnic minorities are receiving services from transitional housing programs at lower rates than white and African American victims. Tables 23 and 24 summarize these findings.

Table 23

Immigration/Language Status of Transitional Housing Recipients	Number	Percentage
Children		
LEP	1,644	6.30%
Immigrants	1,168	4.48%
Adults		
LEP	2,920	14.01%
Immigrants	2,640	12.66%

Table 24

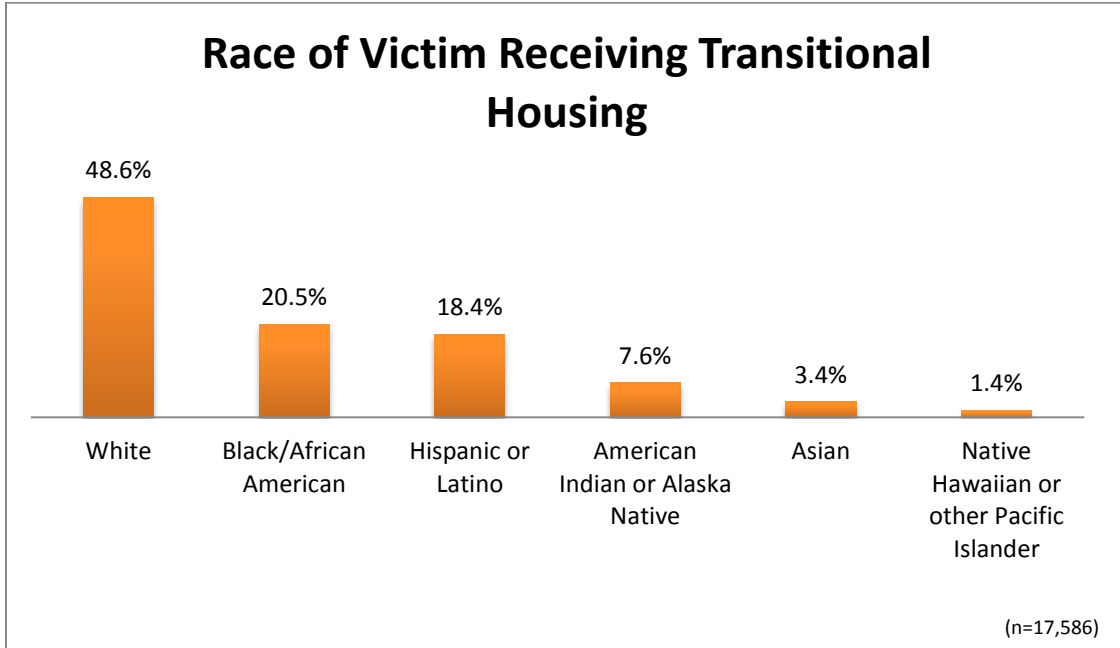
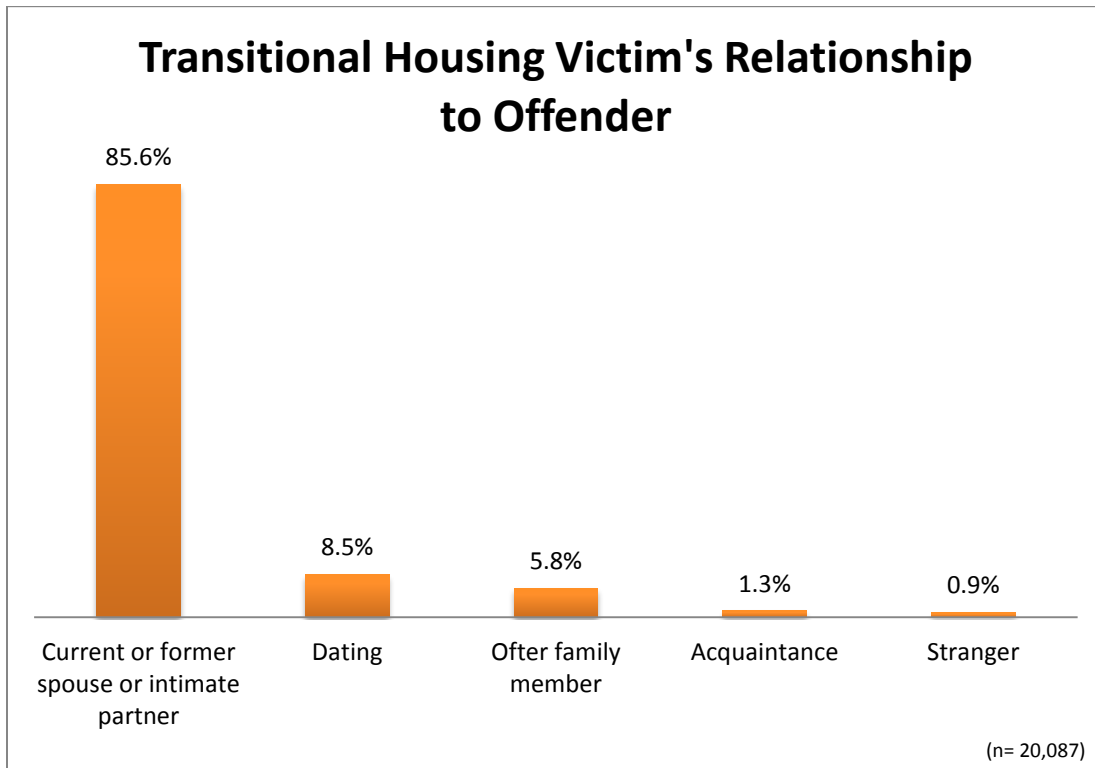


Table 25



In the context of adjudicating eligibility for immigration benefits, DHS must consider “any credible evidence” submitted in order to establish victimization as well as all other elements

required to approve an immigrant’s VAWA self-petition.¹¹⁴ The reasoning behind the broad and flexible evidentiary standard reflects the recognition that victims of abuse often lack access to evidence that is in their abuser’s control and that immigrant victims may lack specific forms of corroborative evidence of abuse.¹¹⁵

In implementing the “any credible evidence” standard, DHS has developed rules and interpretations,¹¹⁶ which HUD, DOJ, DHS, or HHS-funded programs can adopt in making eligibility determinations. This will increase the success of eligible applicants. Adopting any credible evidence rules will support the best practices model promoted by OVW and NNEDV, and will help immigrant and LEP victims by:

- Ending eligibility admission practices that
 - Result in denying transitional housing to:
 - Undocumented immigrant victims
 - Immigrant survivors with VAWA, T visa, U visa, Section 106 work authorization or any other immigration case that is pending but not approved
 - Immigrant survivors with
 - Approved or waitlist approved U visas
 - Approved VAWA self-petitions
 - Approved T visas or continued presence
 - Immigrant victims without legal work authorization
- Allowing victims to prove eligibility by providing “any credible evidence,” which includes a broad range of forms of evidence demonstrating
 - Crime victimization, proven via:
 - Medical records
 - Statements from victim advocates
 - Photographs of injuries
 - Protection orders
 - Victim’s statement

¹¹⁴ 8 C.F.R. § 103.2(b)(2)(iii)

Evidence provided with a self -petition filed by a spouse or child of abusive citizen or resident. The USCIS will consider any credible evidence relevant to a self-petition filed by a qualified spouse or child of an abusive citizen or lawful permanent resident under . . . the Act. The self-petitioner may, but is not required to demonstrate that preferred primary or secondary evidence is unavailable. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the USCIS.

see also 8 C.F.R. § 204.1(f)(1); 8 C.F.R. § 204.2(c)(2)(i); 8 C.F.R. § 204.2(e)(2)(iii); 8 C.F.R. § 204.2(e)(2)(i).

¹¹⁵ Leslye E. Orloff, Kathryn C. Isom & Edmundo Saballos, *Mandatory U-visa Certification Unnecessarily Undermines the Purpose of the Violence Against Women Act’s Immigration Protections And Its “Any Credible Evidence” Rules – A Call For Consistency*, 11 GEO. J. GENDER & L. 619, 627 (2010), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/other-immigration/any-credible-evidence-standard/Any%20Credible%20Evidence%20-%20Orloff.pdf/view>.

¹¹⁶ For a discussion on INS/DHS implementation of the “any credible evidence” standard, *see id.* at 626 – 632.

- Witness statements
- Court records
- Police reports
- Income, proven via:
 - Evidence that the victim is working
 - Child support orders
 - Evidence that the victim has income from family member
 - Evidence of self-employment
 - Evidence of cash income

All transitional housing programs receiving federal funding should be encouraged to adopt the transitional housing eligibility criteria consistent with the best practices promoted by OVW and NNEDV. Programs receiving federal funding that demonstrate in their grant applications policies and practices consistent with these best practices should receive additional points in the competitive grant application process. Additionally, HUD and other federal funders of transitional housing could require as part of any new grant that within one year of receipt of the funding or by the end of the grant, the grant recipient revise their admission and eligibility policies to incorporate these best practices and a victim-centered, safety-based approach. All programs receiving federal funding for transitional housing should be required to report to their funder the extent to which they are providing services to immigrant, LEP, individual racial and ethnic minority, and other underserved victims following the lead of OVW and its VAWA MEI program. This should be done in the aggregate with no information shared that could be personally identifying.

d. Mandate compliance with VAWA, HUD and HHS 2013’s anti-discrimination provision.

The Fair Housing Act prohibits discrimination on the basis of race, national origin, color, religion, sex, familial status or disability.¹¹⁷ VAWA 2013’s anti-discrimination provision is broader and additionally bars discrimination based on gender identity and sexual orientation:

No person in the United States shall, on the basis of actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, the Violence Against Women and Department of Justice Reauthorization Act of 2005, the Violence Against Women Reauthorization Act of 2013, and any other program or activity funded in whole or in part with funds appropriated for grants, cooperative agreements, and other assistance administered by the Office on Violence Against Women.¹¹⁸

Moreover, the definition also lists populations underserved because of special needs, such as language barriers or alienage status.

¹¹⁷ Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended by 42 U.S.C. § 3604.

¹¹⁸ 42 U.S.C. § 13925(b)(13).

“Underserved populations” means populations who face barriers in accessing and using victim services, and includes populations underserved because of geographic location, religion, sexual orientation, gender identity, underserved racial and ethnic populations,¹¹⁹ populations underserved because of special needs (such as language barriers, disabilities, alienage status, or age), and any other population determined to be underserved by the Attorney General or by the Secretary of Health and Human Services, as appropriate.¹²⁰

Additionally, all of the federal funding statutes discussed above contain anti-discrimination policies yet each group of victims we surveyed reported denial of access based on limited English proficiency and undocumented status. Since the vast majority of immigrant victims served by the programs participating in our survey are limited English proficient, policies which discriminate against immigrant access have the effect of also denying access to services for significant numbers of LEP victims. Since the abuse suffered by immigrant victims of violence against women affects their lives in multiple ways, it is important to recognize the intersectionality of their experience. Immigrant survivors experience abuse and discrimination and are underserved due to the fact that they are simultaneously women, immigrants, have diverse national origins, are limited English proficiency, and are often of color and/or are part of diverse ethnic or racial minority populations. Thus, it is difficult, if not impossible, to determine when and whether immigrant victims have been denied access to services based specifically on the victim’s limited English proficiency, alienage status or national origin. By adopting the approach promoted by OVW and NNEDV and shifting their definitions of “success” to be more victim-centered, transitional housing programs can help alleviate this problem.

To further advance these goals, the 2001 HUD letter should be reissued with amendments that:

- reflect the full range of VAWA, T and U visa crimes covered by VAWA and the TVPA;
- impose any credible evidence standards;
- expand the policy’s reach all federally funded transitional housing programs; and
- incorporate federal anti-discrimination law requirements including FHA’s anti-discrimination mandate, but also VAWA 2013’s anti-discrimination provision and underserved populations definition.

Issuance of such policy would go far toward assuring that future immigrant victims of domestic violence, sexual assault, dating violence, stalking, and human trafficking will successfully receive services from federally-funded transitional housing programs. Their outcomes in surviving abuse will be better and less complicated than the over 750 victims revealed by this research to have not been provided transitional housing services due to their immigration status. Issuance of government-wide policy directives will go far toward both

¹¹⁹ VAWA 2013 also advocates for increased provision of culturally specific services. The term “culturally specific” means primarily directed toward racial and ethnic minority groups. 42 U.S.C. § 13925(a)(6). The term “culturally-specific services” means community-based services that include culturally relevant and linguistically specific services and resources to culturally specific communities. 42 U.S.C. § 13925(a)(7).

¹²⁰ 42 U.S.C. § 13925(a)(39).

educating advocates and attorneys in the field who play a key role in immigrant victims' access to services,¹²¹ and toward supporting efforts of government grantees in providing transitional housing services necessary to protect life and safety in a manner that is equally accessible to all survivors.

Appendix A¹²²

Dear HUD, DOJ, HHS, and DHS Funds Recipients:

It has come to HUD's, DOJ's, HHS', and DHS' attention that some agencies providing emergency shelter and transitional housing are not offering these services to battered immigrants and immigrant crime victims. As we understand it, some agencies have been misinterpreting national policies which set forth the types of public benefits that are to be made available to all aliens, including those who have not established legal immigrant status.

Due to language, cultural and economic barriers, battered immigrants and immigrant crime victims, particularly women and children, face extensive hurdles they must overcome in order to change their quality of life. Frequently, women and children who have displayed the courage to break the cycle of violence are penalized when benefits essential for rebuilding lives shattered by violence are withheld. Without securing emergency shelter and transitional housing, battered immigrants and immigrant crime victims will be unable to successfully leave abusive homes.

Congress has recognized that certain services, such as emergency shelter and transitional housing, necessary to protect health and safety, should not be barred to individuals due to immigration status. In the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("the Act"), Congress specifically authorized the Attorney General to designate the kinds of government-funded community programs, services, or assistance necessary to protect life or safety for which: all immigrants, including undocumented immigrants, will continue to be eligible (8 U.S.C. 1611 (b)(1)(D)). Despite the Act's restrictions on immigrant access to public benefits, it explicitly guaranteed access for all persons without regard to immigration status for:

"programs, services, or assistance... specified by the Attorney General, in the Attorney General's sole discretion after consultation with the appropriate Federal agencies and departments, which (i) deliver in-kind service at the community level, including through public and private nonprofit agencies; (ii) do not condition the provision of assistance

¹²¹ Nawal H. Ammar, Leslye E. Orloff, Mary Ann Dutton, and Giselle A. Hass, *Battered Immigrant Women in the United States and Protection Orders: An Exploratory Research*, 37 CRIM. JUST. REV. at 339 (Aug. 1, 2012), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/AmmaretalCPO.pdf>; KRISZTINA E. SZABO, DAVID STAUFFER, BENISH ANVER & LESLYE E. ORLOFF, EARLY ACCESS TO WORK AUTHORIZATION FOR VAWA SELF-PETITIONERS AND U VISA APPLICANTS, NIWAP (Feb. 12, 2014), available at: <http://niwap.org/reports/Early-Access-to-Work-Authorization.pdf>.

¹²² The red font denotes NIWAP's proposed additions to the Letter from Andrew Cuomo, Secretary, U.S. Dep't of Housing and Urban Development, to HUD Funds Recipients (Jan. 19, 2001), available at <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf/view>.

provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.”

Pursuant to the authority set forth under Sections 401(b)(1)(D) and 411(b)(4) of the Act, after consulting with other Federal agencies, including the U.S. Department of Housing and Urban Development, the Attorney General exercised this discretion in Final Order Number 2353-2001, 66 Fed. Reg. 3613-3616 (1/16/01), which specifies the types of federally funded programs for which all aliens remain eligible. The Order provides a list of the types of programs “[i]ncluded within the specified programs, services, or assistance determined to be necessary for the protection of life or safety” and specifically includes emergency and short-term shelter for victims of domestic violence, the homeless and run away, abused or abandoned children and makes these services available to **such immigrants**, who because of their lack of legal immigration status, would otherwise be barred from participation in federal programs. **This policy clarifies that emergency and short-term shelter are available to the full range of victims protected under the Violence Against Women Act and the Trafficking Victims Protection Act including victims of sexual assault, stalking, dating violence, child abuse, elder abuse and human trafficking.** Any programs to be exempted from requiring verification of immigration status under this provision of the Act must meet all three of the foregoing requirements.¹²³

The list of programs open to all individuals without verification of alien eligibility includes:

crisis counseling and intervention programs, services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence (Specification 4(a)); and short-term shelter or housing assistance for the homeless, victims of domestic violence (including spouse, intimate partner, child or elder abuse), **sexual assault, stalking, dating violence or human trafficking**, and for runaway, abused or abandoned children. (Specification 4 (b)).

Both emergency shelter and transitional housing programs are necessary for the protection of life or safety. Transitional housing is by nature short-term and intended to be a step from emergency shelter to permanent housing. Therefore, HUD, **DOJ, HHS and DHS**-funded programs that provide emergency shelter and transitional housing for up to two (2) years, are to make these services equally available to all needy persons, including aliens who are not “qualified aliens,” (as defined in Section 431 of the Act). **Persons eligible for emergency shelter and transitional housing under this memo may prove eligibility by using any credible evidence.**¹²⁴ Two (2) years of transitional housing provides battered immigrants with emergency

¹²³ It should be noted that even if your program does not meet the three-prong test for exempted status as set out in the Attorney General's Order, battered immigrants who are qualified aliens as defined in Section 431 of the Act are not barred from receiving -federal public benefits. “Qualified aliens” are not subject to the Act's bar on “Federal public benefits” to non-“qualified aliens.”

¹²⁴ See Memorandum from Paul W. Virtue, Office of General Counsel, “*Extreme Hardship*” and *Documentary Requirements Involving Battered Spouses and Children* to Terrance O'Reilly, Director, Administrative Appeals Office (Oct. 16, 1998), at 7–8, reprinted in 1 INS AND DOJ LEGAL OPINIONS § 98-14 (Jan. 25, 1999), available at http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/government-memoranda-and-factsheets/VAWA_Virtue%20Extreme%20Hardship%20memo_8.16.98.pdf; see also USCIS Interim Rule, New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. No. 179, 53026 (Sep. 17, 2007), available at <http://niwaplibrary.wcl.american.edu/immigration/u->

and short-term shelter, which gives them the opportunity to safely make the transition to freedom from their abusers. In addition, emergency and transitional housing will help to stabilize homeless families by providing basic needs and safety, which will prevent battered immigrants and other immigrant crime victims from returning to the homes of their abusers.

Accordingly, this policy directive clarifies that all programs administering HUD, DOJ, HHS or DHS grants, which provide emergency shelter, transitional housing, short-term shelter and housing assistance to victims of domestic violence, sexual assault, stalking, dating violence, or human trafficking, the homeless, or abused, abandoned or run away children are deemed necessary, under the Order, for the protection of life and safety. Therefore, programs and services of this type that deliver in-kind services at the community level and do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources are to make their programs available to all persons without verification of citizenship, nationality or immigration status, as set forth in the Order, unless mandated to conduct such verification pursuant to federal, state, or local law other than the Act.

In accordance with the Federal guidelines outlined in the Attorney General's Order and in this policy directive, all recipients of HUD, DOJ, HHS, or DHS funding operating emergency shelters and transitional housing programs can provide services to all eligible persons.

Disregarding the Federal laws, guidance and directives that protect and preserve the legal rights of otherwise eligible immigrants, particularly crime victims, women and children, to gain much needed access to emergency shelter and transitional housing may result in imposition of appropriate sanctions. Recipients of federal funding must not discriminate against individuals described in 42 U.S.C. § 3604,¹²⁵ 41 U.S.C. 13925(b)(13),¹²⁶ and 42 U.S.C. 13925(a)(39).¹²⁷

[visa/regulations/UVISA_interim-regs-Fed-Reg.pdf/view](http://www.niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/regulations/1996VAWAregsself-petition.pdf); see generally INS Interim Final Rule, Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. No. 59, 13061 (March 26, 1996), available at <http://www.niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/regulations/1996VAWAregsself-petition.pdf>.

¹²⁵ Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended by 42 U.S.C. § 3604, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability.

¹²⁶ VAWA 2013 Anti-discrimination provision, 42 U.S.C. § 13925(b)(13):

No person in the United States shall, on the basis of actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, the Violence Against Women and Department of Justice Reauthorization Act of 2005, the Violence Against Women Reauthorization Act of 2013, and any other program or activity funded in whole or in part with funds appropriated for grants, cooperative agreements, and other assistance administered by the Office on Violence Against Women.

¹²⁷ VAWA 2013, 42 U.S.C. § 13925(a)(39). VAWA 2013's definition of "underserved populations" include alienage status and other protected groups not specifically listed in the VAWA 2013 anti-discrimination provisions:

Please contact the Office of Enforcement Discrimination Hotline at 1-800-669-9777, TDD at 1-800-927-9725, or on the Internet at www.hud.gov/hdiscrim.html to report any violations of this directive.

Recipients of **federal** funds should also note that sections 432(d) of the Act, which provides that nonprofit charitable organizations are not required to verify the immigration status of applicants for federal, state or local public benefits, may be applicable to their programs. For more information about this exemption, *see* **Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996**, 62 Fed. Reg. 61344, 61345 (Nov. 17, 1997).

Sincerely,

“Underserved populations” means populations who face barriers in accessing and using victim services, and includes populations underserved because of geographic location, religion, sexual orientation, gender identity, underserved racial and ethnic populations, populations underserved because of special needs (such as language barriers, disabilities, alienage status, or age), and any other population determined to be underserved by the Attorney General or by the Secretary of Health and Human Services, as appropriate.