

Austin/Travis County Continuum of Care Violence Against Women Act (VAWA) Policies & Procedures

Approved by the Membership Council on: 06/04/2018.

A. Regulatory Citations

- 1) 24 CFR 5.2005 (e)(2)
- 2) 78 FR 47717

B. Background

CoC-funded projects must follow policies and procedures that conform to HUD's program rules set forth in 24 CFR Part 578, which covers CoC responsibilities, including responsibilities related to the Violence Against Women Act (VAWA). These regulations provide protections to and prohibit discrimination against program applicants and program participants who have experienced or are experiencing domestic violence, dating violence, sexual assault, or stalking, regardless of sex, gender identity, gender expression or actual or perceived sexual orientation. **All CoC-funded service providers are responsible for understanding and implementing these requirements, as written by HUD, within their programs.**

HUD prohibits denying assistance to program applicants and program participants because they have experienced or are experiencing domestic violence, dating violence, sexual assault, or stalking. Similarly, HUD prohibits terminating program participants because they have experienced or are experiencing domestic violence, dating violence, sexual assault, or stalking. Additionally, HUD-funded program participants cannot be evicted from housing because they have experienced or are experiencing domestic violence, dating violence, sexual assault, or stalking.

C. VAWA Requirements

Austin/Travis County CoC and ESG providers must implement and document procedures to ensure compliance with the rules set forth in § 578.99(j) of the CoC Interim Rule:

- Persons may not be denied assistance, terminated from assistance or evicted as a result directly related to experiencing domestic violence, dating violence, sexual assault, or stalking, regardless of sex, gender identity, gender expression or actual or perceived sexual orientation.
- CoC funded programs must inform participants of Notice of Occupancy Rights and the Certification form for documenting the incident of domestic violence, dating violence, sexual assault, or stalking.
- Providers are to adhere to the CoC's adopted Emergency Transfer Plan procedures and protocols.
- CoC programs must record the number of emergency transfer requests received and the outcomes associated with those requests.
- All housing providers will provide reasonable accommodations to this policy for individuals with disabilities.

D. Prohibitions on Denying, Terminating, and Evicting Protected Program Participants

HUD prohibits denying assistance to potential Program Participants because they have experienced or are experiencing Domestic Violence, Dating Violence, Sexual Assault, or Stalking. Similarly, HUD prohibits terminating Program Participants because they have experienced or are experiencing Domestic Violence, Dating Violence, Sexual Assault, or Stalking. Additionally, HUD-funded Program Participants cannot be evicted from housing because they have experienced or are experiencing Domestic Violence, Dating Violence, Sexual Assault, or Stalking.

Participants may be evicted, and assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, Austin/Travis County CoC or any other PHA or ESG funded housing provider cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking. Participants may be evicted and assistance terminated, if covered HUD funded housing providers can demonstrate that not evicting or terminating the participant's assistance would present a real physical danger that:

- Would occur within an immediate time frame, and
- Could result in death or serious bodily harm to other tenants or those who work on the property.

If housing provider can demonstrate the above, the housing provider should only terminate assistance or evict if there are no other actions that could be taken to reduce or eliminate the threat.

E. Providing Notice of VAWA Protections

All CoC-funded housing providers and ESG-funded Homelessness Prevention and Rapid Rehousing providers must provide notice to program applicants and participants of their rights under VAWA. **CoC program grantees must document that clients were informed of their rights and provided copies of the notices. A signed copy of acknowledgement must be maintained in client files.** HUD provides detailed guidance on the scope and timing of this requirement in 24 CFR 578.99(j)(4) and 24 CFR 5.2005(a).

- 1) All CoC-funded programs must provide applicants and participants the following documents:¹
 - a) [HUD Form 5380](#): Notice of Occupancy Rights under the Violence Against Women Act form that explains the VAWA protections including the right to confidentiality, and any limitations on those protections.
 - b) [HUD Form 5382](#): Certification of Domestic Violence, Dating Violence, Sexual Assault, Stalking or Alternate Documentation form to be completed by the participant to document that the applicant or resident is a victim of domestic violence, dating violence, sexual assault, or stalking.

¹ 24 CFR 578.99(j)(4)

- 2) HUD forms 5380 and 5382 must be provided to each person seeking or receiving CoC or other HUD funded housing assistance at the following times:²
 - a) When an individual or family is denied permanent or transitional housing;
 - b) When a program participant is admitted to permanent or transitional housing;
 - c) When a program participant receives notification of eviction; and
 - d) When a program participant is notified of termination of assistance.
- 3) HUD forms 5380 and 5382 are available in multiple languages [here](#).
- 4) If a program participant in a CoC-funded program has not been notified of their rights under VAWA, and none of the above conditions apply, the program must provide HUD forms 5380 and 5382 at re-certification or lease renewal.
- 5) CoC-funded programs using funds for rental assistance are required to include VAWA notification and confidentiality requirements (specified in 24 CFR 5.2007(c)) in a contract with the owner or manager of the housing unit(s). The program must ensure that the owner or manager of the housing provides HUD forms 5380 and 5382 to the program participant with any notification of eviction.³

F. Contract, Lease, and Occupancy Agreement Provisions

CoC-funded programs must include language in agreements with housing owners or landlords detailing VAWA protections, including notification, prohibited bases for eviction, limitations, and other requirements. For specific requirements, see 24 CFR 578.99(j)(5).

For leases for tenant-based rental assistance existing prior to December 16, 2016, recipients and subrecipients must enter into a contract as specified by 24 CFR 578.99(j)(5) before the next renewal of the lease.

G. Emergency Transfer

One of the key provisions the 2013 VAWA updates and subsequent HUD regulations is the ability of an eligible Program Participant to be offered information about VAWA protections and the opportunity to request an Emergency Transfer from their housing unit to another, safer housing unit. Austin/Travis County CoC has responded to this requirement by developing an Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking and an Emergency Response Protocol for addressing incidents of Domestic Violence, Dating Violence, Sexual Assault, or Stalking.

1) Ensuring Low Barrier Access

Program providers should be informed of signs of victimization and abuse and should proactively act to help participants understand their rights and protections under VAWA. If a participant indicates a need for protection or communicates a lack of safety, programs have a responsibility to help participants understand their rights and access their options. Program

² 24 CFR 578.99(j)(4)

³ 24 CFR 578.99(j)(4)(ii)

participants do not have to specifically request an emergency transfer or mention VAWA directly to be eligible for VAWA protections.

2) Emergency Transfer Request:

HUD requires that its approved Emergency Transfer Request form be used to initiate Emergency Transfers. The form details the eligibility criteria for requesting an Emergency Transfer as well as the documentation and information that is necessary for completing the Emergency Transfer Request.

- [Emergency Transfer Request](#)

Providers are responsible for taking actions directed toward immediate client safety and should do this by first connecting the client to a Victim Service Provider for safety planning. By providing a direct referral to a Victim Service Provider, a risk assessment and safety planning will help the survivor navigate appropriate steps toward safety and determine what actions (including an emergency transfer) are in the best interest of their own safety.

3) Emergency Transfer Plan:

HUD regulations require that its model Emergency Transfer plan be adapted and used to initiate and document Emergency Transfers under VAWA. Austin/Travis County CoC has adopted HUD's Emergency Transfer Plan. Providers receiving HUD CoC and ESG funds must utilize the guidance provided in the Austin/Travis County CoC Emergency Transfer Plan to initiate Emergency Transfers.

- [Austin/Travis County Emergency Transfer Plan](#)

Requesting an Emergency Transfer does not guarantee a program participant will receive a successful transfer opportunity and/or be located to another HUD-funded housing unit. Please see Austin/Travis County CoC's Emergency Transfer Plan for more information on Emergency Transfer timing, ability, and use with the Coordinated Entry Process.

4) Emergency Response Protocol:

In the interest of putting safety first, Austin/Travis County CoC has adopted an Emergency Response Protocol that urges service providers to begin safety planning as the first step before initiating or requesting an Emergency Transfer.

- [Emergency Response Protocol](#)
- Providers in Austin/Travis County should contact The SAFE Alliance by phone at **512.267.SAFE (7233)** to begin assisting clients with safety planning and to help the Program Participant identify options and determine their best next step. Providers are required to become familiar with this protocol and are encouraged to follow this protocol whenever safety allows.

H. Certification Documenting Incident

Housing providers may, but are not required to, ask participants to provide documentation certifying incidents of domestic violence, dating violence, sexual assault, or stalking, to assert VAWA's protections. At their discretion, housing providers may apply VAWA to an individual based solely on

the individual's verbal testimony. However, if the housing provider requests documentation, this request must be made in writing.

CoC programs must have written policies stating program requirements for requesting documentation to certify incidents and standard operating procedures outlining practices that prohibit discrimination and ensure client self-efficacy and confidentiality.

If a provider requires a participant to provide documentation of the event, the provider must submit the request to the participant in writing and inform the participant of acceptable forms of documentation. The survivor can choose what form of documentation to provide. The survivor has 14 business days to produce documentation and the housing provider may extend the timeframe if it is needed by the individual.

Acceptable types of documentation provided by HUD are described below.

- 1) [HUD Form 5382](#)
- 2) Third-Party Documentation
 - Third party documentation are statement provided by a victim service provider, medical professional, mental health professional, and/ or attorney. Must be signed by both the third party and the survivor under the penalty of perjury.
- 3) Police, court, or administrative records
- 4) A written statement or other evidence provided by the participant.

Conflicting Evidence

Individuals requesting protection cannot be required to provide third-party documentation. However, in cases where 2 household members claim to be the victim and name the other household member as the perpetrator, the housing provider can require third-party documentation.

I. Lease Bifurcation

In accordance with 24 CFR 5.2009(a), housing providers may bifurcate a lease, or remove a household member from a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual regardless of whether the household member is a signatory to the lease, and without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant.

Covered housing providers are encouraged to undertake whatever actions permissible and feasible under their respective programs to assist individuals residing in their units who are victims of domestic violence, dating violence, sexual assault, or stalking to remain in their units or other units under the covered housing program or other covered housing providers, and for the covered housing provider to bear the costs of any transfer, where permissible. (24 CFR 5.2009(c)).

J. Continued Assistance

If a family who is receiving tenant-based rental assistance under this part separates via lease bifurcation (24 CFR 5.2009(a)), the family's tenant-based rental assistance and any utility assistance shall continue for the family member(s) who are not evicted or removed. (24 CFR 578.99(j)(7))

For permanent supportive housing projects, members of any household who were living in a unit assisted under this part at the time of a qualifying member's eviction from the unit because the qualifying member was found to have engaged in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking, have the right to rental assistance under this section until the expiration of the lease in effect at the time of the qualifying member's eviction. (24 CFR 578.75(i)(2), also see 24 CFR 578.99(i)(7))

Otherwise, if a family living in a CoC-funded project separates via lease bifurcation, the remaining tenant(s) will be eligible to remain in the project. (24 CFR 578.99(i)(7))

K. Documenting and Reporting Outcomes

Providers must document requests for emergency transfers, including the outcome of the requests, and are required to report these outcomes to HUD annually. All records related to emergency transfer requests must be retained for three years. All covered housing providers must maintain records on emergency transfers requested under 24 CFR 5.2005(e).

L. Protecting Sensitive Data

Agencies must ensure they have policies and infrastructure in place to secure sensitive data. Policies should include access levels, user passwords and retention and destruction guidelines. Infrastructure includes servers, networks, back-up devices, and software updates to maintain databases and protection against breaches and malware. Options for maintaining the highest level of control and confidentiality over agency data include:

- Cloud-based provider that minimizes the inadvertent disclosure of sensitive, identifying and/or confidential information, either internally or externally.
- Keep equipment and software in-house and have policies and infrastructure in place to minimize inadvertent disclosure of sensitive, identifying and/or confidential information.
- Use of cloud-based services for non-survivor data and using in-house systems for sensitive, identifying and/or confidential information.