

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

Approved by the ECHO Leadership Council on:

## **A. Regulatory Citations**

- A. 25 CFR 5.2005(e)(2), 24 CFR 5.2005
- B. 88 FR 321

## **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<sup>1</sup>, 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:

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<sup>1</sup> includes violence committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who —

- (A) is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;
- (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- (C) shares a child in common with the victim; or
- (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

- 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 their Notice of Occupancy Rights and the VAWA Self-Certification Form for documenting the incidents of domestic violence, dating violence, sexual assault, or stalking.
- Providers are to adhere to the CoC's adopted VAWA Emergency Transfer Plan procedures and protocols.
- CoC programs must record the number of VAWA Emergency Transfer requests received and the outcomes associated with those requests.
- All housing providers will provide reasonable accommodations under the policy for individuals with disabilities
- A person may not be retaliated against for seeking VAWA Emergency Transfer Services or VAWA housing Protections
- Protect survivor confidential information.

#### **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 a 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.

Tenants or program participants who exercise their rights under VAWA or participate in processes related to VAWA, as well as individuals who are aiding or encouraging tenants and program participants to exercise their VAWA rights or protections, are protected from retaliation by covered housing providers. This includes a covered housing provider's actions that amount to coercion, intimidation, threatening actions, interference, or retaliation. HUD and the Attorney General will implement this provision and enforce it consistently with the rights and remedies available to individuals seeking relief under the federal Fair Housing Act.

- **Has the right to seek law enforcement or emergency assistance** for themselves or others without being penalized by local laws or policies for these requests or because they were victims of criminal activity.

## 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 the acknowledgement must be maintained in the client's file.** 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 with the following documents:<sup>2</sup>
  - 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.
- 2) HUD forms 5380 and 5382 must be provided to each person seeking or receiving CoC housing assistance at the following times:<sup>3</sup>
  - 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 the termination of assistance.
- 3) HUD forms 5380 and 5382 are available in multiple languages [here](#).

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<sup>2</sup> 24 CFR 578.99(j)(4)

<sup>3</sup> 24 CFR 578.99(j)(4)

- 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.<sup>4</sup>

## **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 Transfers**

One of the key provisions of 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, safe 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 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](#)

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<sup>4</sup> 24 CFR 578.99(j)(4)(ii)

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.

Requesting an Emergency Transfer does not guarantee a program participant will receive a successful transfer opportunity and/or be located in 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 Coordinated Entry Process

**4) Emergency Transfer 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.

- Providers in Austin/Travis County should contact The SAFE Alliance by phone at 512.267.7233 (SAFE) 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 claim VAWA protections. At their discretion, housing providers may apply VAWA Protections 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 for 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 the acknowledgement must be maintained in the client's file.** 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).

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 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 is:
  - Statements 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 related 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 receiving tenant-based rental assistance separates through lease bifurcation, the rental and utility assistance will continue for the family member(s) who are not evicted or removed from the home (24 CFR 578.99(j)(7)). This *will* takes place of Code (24 CFR 5.2009(b)(2) which states: The covered housing provider shall provide to any remaining tenant or tenants that were not already eligible a period of 90 calendar days of bifurcation of the lease to: (A) Establish eligibility which the evicted or terminated tenant was the recipient of; or (B) Establish eligibility under another covered housing program; or (C) Find alternative housing.

In permanent supportive housing projects, if a household member is evicted due to criminal activity related to domestic violence, dating violence, sexual assault, or stalking, the other household members who were living in the unit at that time have the right to keep receiving rental assistance. This right continues until the end of the lease that was in place when the eviction happened (24 CFR 578.75(j); see also 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).

### **Data to Be Collected**

- Distribution and receipt of the HUD-required **Notice of Occupancy Rights under VAWA** and **VAWA certification forms**, including:
  - Timing of notices (admission, denial, eviction/termination, recertification)
  - Availability and provision of notices in multiple languages to support LEP access
- Number of tenants or applicants who submit **VAWA certification forms**
- Number and outcomes of actions involving VAWA protections, including:
  - Denials of admission, terminations of assistance, or evictions where VAWA protections were asserted
  - Instances where criminal activity related to domestic violence, dating violence, sexual assault, or stalking was cited
- Emergency transfer data collected through each provider's **VAWA Emergency Transfer Plan**, including:
  - Number of emergency transfer requests submitted

- o Type of transfer requested (internal or external)
- o Outcomes of requests (approved, denied, pending)
- o Timeframes from request to transfer completion
- o Identification of transfers to a survivor-defined “safe unit”
- Equity indicators disaggregated, where available and appropriate, by race, ethnicity, gender identity, disability status, and LEP (reported only in aggregate and de-identified form)

### **How the Data Will Be Collected**

- Housing providers will collect this data through:
  - o HUD-required VAWA notices and certification forms
  - o Records maintained under each provider’s Emergency Transfer Plan
  - o Case management and HMIS-aligned data entry processes
- Providers will ensure **consistent participation of recipients and subrecipients in HMIS and HMIS-comparable databases** for system-level monitoring.
- Aggregated, non-identifying data will be reported to ECHO on a scheduled basis to support oversight and equity analysis.
- ECHO's HMIS and relevant committees will review aggregated data to identify disparities, monitor compliance, and inform policy or process improvements.

All data collection will prioritize survivor confidentiality, adhere to VAWA protections, and comply with HUD privacy and data security requirements. Please see: [eCFR :: 24 CFR 5.2005 -- VAWA protections](#)

### **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

### **M. Confidentiality**

All information provided regarding domestic violence, dating violence, sexual assault or stalking, including the fact that an individual is or has experienced such violence or stalking,

must be kept confidential. This includes a survivor's personal identifying information to keeping confidential the new location of the dwelling which the program participant is relocating to from the person who committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the program participant. Confidentiality also means that providers and/or property owners or managers may not:

- Enter the information into any shared database except the authorized HMIS comparable database;
- Allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work; or
- Provide the information to any other entity or individual, except to the extent that the disclosure is:
  - Requested or consented to by the individual in writing, stating permission to release the information on a time-limited basis;
  - Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or
  - Otherwise required by applicable law

If program disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the program will inform the victim before disclosure occurs so that safety risks can be identified and addressed. [See the Notice of Occupancy Rights](#) under the Violence Against Women Act for All Program Participants for more information about the housing provider's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.