VAWA CoC Compliance Q&A

Q: Does HUD plan to provide additional guidance to CoC and ESG recipients on VAWA implementation?

A: Yes, HUD intends to publish additional guidance to CoCs and ESG recipients to help them implement the new requirements in the VAWA Final Rule, including the emergency transfer plan provisions. That guidance will contain additional information about when HUD expects CoCs and ESG written standards to be updated to reflect the new requirements.

Q: We previously heard that a household may only receive two security deposits (so if the program paid a double security deposit initially, the household could not receive another security deposit) for the lifetime of that household, even if the program needs to move them multiple times because of lease violations.

If indeed the household is limited to two security deposits for a lifetime, since CoC programs must follow the VAWA Emergency Transfer Policy, making programs responsible for transferring victims of domestic violence, dating violence, sexual assault, and stalking, does following this policy override the regulation limiting households to two security deposits in order to move the household safely into another unit, if they have no other means to pay the deposit.

A: Regarding security deposits, the CoC Program interim rule outlines that security deposits are eligible costs under leasing (Section 578.49(b)(4)) and rental assistance (Section 578.51(a)(2)). Under both leasing and rental assistance, grant funds may be used for security deposits in an amount not to exceed 2 months of rent.

The CoC Program interim rule does not prohibit the recipient of either leasing or rental assistance funds from providing another security deposit on behalf of the same program participant for another unit. Recipients are encouraged to have policies in place for their program regarding the payment of multiple security deposits for a program participant and to apply these standards consistently across the program.

Be aware, if the original security deposit provided on behalf of a program participant is returned to the recipient instead of the participant, it must be treated as program income and used for CoC Program eligible activities as outlined in Section 578.97

Q: The regulations require a lease addendum that states VAWA protections for participants. Is there a current effective lease addendum required by HUD? The one that I found expired in June 2017. If there is not a current addendum required by HUD, should we develop our own lease addendum?

The Emergency Solutions Grant (ESG) and Continuum of Care (CoC) programs have not issued lease addendums yet.

We will be issuing lease addendums for the ESG and CoC programs later this year. In the meantime, CoC grantees can reference the guidance at the CoC Program Interim Rule at 578.99 (j) (5) which indicates what language needs to be included in applicable leases. ESG grantees can reference the guidance at ESG Program Interim Rule 576.106 (g) to get the language for the leases for that program.

Q: In HUD form 8350, Notice of Occupancy Rights under the Violence Against Women Act, the section titled, Removing the Abuser or Perpetrator from the Household, second paragraph, second sentence: If the evicted abuser or perpetrator was a sole tenant to have established eligibility for assistance under the program, HP (Housing Provider) must allow the tenant who is or has been a victim or other household members to remain in the unit for a period of time, in order to establish eligibility under the program or another HUD housing program covered by VAWA, or, find alternative housing

What is the acceptable time period for a) as a landlord receiving assistance payments, and b) as a program administrator writing the checks for the program assistance? The time frame was not referenced in another documents or in recent webinar discussions.

A: The CoC program interim rule at 578.75 (j) states that for permanent supportive housing (PSH) projects, members of any household who were living in a unit assisted under this part at the time of a qualifying members eviction from the unit because the qualifying members was found to have engaged in criminal activity directly related 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 members eviction.

Q: If there were a two person household where both parties met the criteria for the voucher however the voucher was given to one client over the other for whatever reason, can the second person receive her own voucher if they were in a domestic dispute? She met the criteria upon entry however has been in the program with us for a year already. Our criteria is Dual Diagnosis and chronic homelessness.

A: Based on the information you provided below we assume you're referring to a household who is currently being served in a PSH project that is dedicated to the chronically homeless.

In the scenario you provided it sounds like both individuals, the head of household and his or her partner, were eligible at intake into the PSH program when they presented together for assistance and it has recently come to your attention that the family composition may change in light of the domestic dispute.

To answer your question, so long as the head of households partner met the original requirements of the PSH project at initial program intake, then HUD would allow the program to continue serving her. This means that both individuals may continue to be assisted under the PSH project in separate units, so long as the partner met the definition of chronically homeless that was in effect at the time he or she originally entered the housing program (this includes having advisability). In this instance, the recipient or subrecipient must ensure that all eligibility requirements, including chronically homeless status at the point of original intake into the program, have been documented in the household's case file.

In this case, this individual maybe transferred to a CoC-funded PSH project where she would qualify as the head of household. Section 423(f) of the McKinney-Vento Act, as amended by the HEARTH Act states that permanent supportive housing projects may serve individuals and families from other permanent supportive housing projects as long as program participants originally met the eligibility requirements for the PSH project to which they are transferring. If the program participant believes his/her needs will be better met by another permanent supportive housing project and transfers to another program, recipients or subrecipients accepting program participants from other permanent

supportive housing projects must keep records on file demonstrating that the individual or family is (1) transferring from another permanent supportive housing project; (2) the reason for the transfer; and (3) met the eligibility requirements for permanent supportive housing prior to entering the original permanent supportive housing project.

Q: Please confirm that each CoC funded permanent housing project (i.e., Permanent Supportive Housing Rapid Re-Housing PSH RRH) must adopt an emergency transfer plan based on HUDs model emergency transfer plan and other types of CoC projects (i.e., TH and SH) are encouraged to do so. Please advise whether TH-RRH projects awarded in the 2017 competition will be required or encouraged to do so.

Please confirm that PSH and RRH projects must provide the Notice of Occupancy Rights (HUD 5380) and certification of DV form (HUD 5382) that and TH and SH projects must provide the certification form only to all adult members of applicant and tenant households at the time an applicant is denied admission or assistance; at the time individual is admitted or given assistance; and with any notification of eviction or assistance termination. Please advise whether TH-RRH projects awarded in the 2017 competition will be required to provide one or both forms.

Please confirm that use of the Emergency Transfer Request (HUD 5383) is optional for all types of CoC Projects.

A: The requirement under the HUD Final Rule Regarding the Implementation of Housing Protections Authorized in the Violence Against Women Reauthorization Act of 2013 (VAWA), states that the CoC must develop the emergency transfer plan that meets the requirements under 578.99 (j) (8). Recipients and subrecipients in the Continuum of Care must follow that plan.

The Notice of Occupancy Rights must be provided when individuals and/or families are applying for permanent housing and transitional housing. The notice and certification form must also be provided at each of the following times:

(A) When an individual or family is denied permanent housing or transitional housing;
(B) When a program participant is admitted to permanent housing or transitional housing;
(C) When a program participant receives notification of eviction; and
(D) When a program participant is notified of termination of assistance.

When grant funds are used for rental assistance, the recipient or subrecipient must ensure that the owner or manager of the housing provides the notice and certification form described in 24 CFR 5.2005(a) to the program participant with any notification of eviction.

The HUD 5383 Emergency Transfer Form is one of the acceptable forms of documentation that a program participant can submit to request an emergency transfer. The other forms are described at 24 CFR 5.2007 (b).

Q: With the VAWA rule, is the end of a households participation in the program considered an ending or is it a termination? With a termination from a permanent housing subsidy the end is a termination for sure (which would require the issuing of the notice of occupancy rights) but with RRH, it is intended and know to be short-term.

A: In HUDs homeless assistance programs, including the CoC Program, exiting a program because the pre-determined amount of assistance has been provided or because the individual or family is no longer eligible is different than terminating for cause. Therefore, in the situation you describe, where the assistance to program participants is ending - and they are not being terminated for cause - you would only need to provide the Notice of Occupancy Rights at program entry.

Q: What does a Continuum of Care (CoC) need to do to be in compliance with the Violence Against Women Act?

A: For a full list of the requirements, and the specifics of the requirements described below, please see the VAWA Final Rule. In general, however, the CoC must do two things to be in compliance:

> **Develop an emergency transfer plan that meets the requirements of 24 CFR 578.99(j)(8), and**
>
> **Update its written standards for prioritizing assistance to incorporate the emergency transfer plan prioritization requirements (as described in 24 CFR 578.7(a)(9).**

When possible the CoC should work with the ESG recipients in their geographic area to create an emergency transfer plan that is consistent between the two programs for the same geographic area covered by the plan. Additionally, the CoCs should consider ways that they can support recipients and subrecipients of CoC Program funds in their geographic area in implementing the requirements of the VAWA Final Rule.

Q: Does the Notice of Occupancy Rights and the development of an Emergency Transfer Plan under the VAWA Act apply to TBRA units funded under PH and RRH programs administered by CoC recipients who are nonprofits and are not PHAs. Also, if it does apply, must the nonprofit attach the notice to the tenants rental agreement//lease with the private owner/landlord in addition to providing the notice to the tenant at the designated interaction points outlined in the regulations. Should we reference both the Notice of Occupancy Rights and the Emergency Transfer Plan in the CoC Written Standards?

A: We will note there are many requirements that must be included in the lease between the landlord and the program participant and in the contract between the recipient or subrecipient and the landlord or owner. Please review 24 CFR 578.99 for a full list of those requirements.

Notice of Rights

Under the CoC Program, the Notice of Rights and the certification form described at 24 CFR 5.2005 must be provided by recipients and subrecipients - including nonprofit organization, PHAs, and state and local governments -providing transitional and permanent housing (including both permanent supportive housing and rapid re-housing) to each individual or family applying to receive transitional or permanent housing as well as at the following times:

> **When an individual or family is denied transitional or permanent housing;**
> **When a program participant is admitted to a transitional or permanent housing project;**
> **When a program participant receives notification of eviction; and,**
> **When a program participant is notified of termination of assistance.**

When grant funds are used for rental assistance, it is the responsibility of the recipient or subrecipient to ensure that the owner or manager of the housing providers the Notice of Rights and the

certification form to the program participant with any notification of eviction. This commitment must be included in the contract the recipient or subrecipient has with the owner or landlord.

Emergency Transfer Plan

Under the VAWA Final Rule a program participant that is a victim of domestic violence, dating violence, sexual assault, or stalking can qualify for an emergency transfer if they believe that there is a threat of imminent harm from further violence if they remain in their same dwelling unit, or, in the case of sexual assault, they reasonably believe there is an imminent threat from further violence if they remain in the same dwelling unit that they are currently occupying or if the sexual assault occurred on the premise during the 90-calendar day period preceding the date of the request for this transfer (see 24 CFR 5.2005(e)(2) for more information).

The CoC is responsible for developing an emergency transfer plan that covers the entire CoCs geographic area that complies with the requirements of 24 CFR 5.2005(e) and also includes the following requirements:

> **For families receiving tenant-based rental assistance, what will happen with respect to the non-transferring family member(s), if the family separates in order to effect an emergency transfer; and**
>
> **For families living in units that are otherwise assisted with CoC Program funds, that if the individual or family qualifies for an emergency transfer but a safe unit is not immediately available for an internal transfer (a transfer within the project), the individual or family will have priority over all other applicants for transitional and permanent housing (including rapid re-housing and permanent supportive housing) funded with CoC Program funds so long as the individual or family meets all eligibility criteria required by Federal law or regulation or HUD NOFA and the individual or family meets any additional criteria or preferences established in accordance with 24 CFR 578.93(b)(1), (4), (6), or (7). The individual or family may not be required to meet any additional eligibility criteria or preferences for the project and they shall retain their original homeless or chronically homeless status for the purposes of the transfer.**

The CoC must incorporate the provisions in their emergency transfer plan into their written standards for prioritizing assistance for transitional and permanent housing.

Q: When serving victims of family violence in HUD CoC projects, is it permissible or required that clients be provided the HUD Form 5380 and 5382? Should these forms be in use for our CoC PSH and RRH projects?

Yes, you should be using these forms for your CoC funded transitional and permanent housing projects in accordance with the VAWA Final Rule.

Q: Should the emergency transfer plan be CoC-wide, or by grantee?

A: The Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs Final Rule (VAWA Final Rule) requires CoCs - and not recipients - to develop and implement an emergency transfer plan. Recipients and subrecipients receiving CoC Program funding are required

to follow the CoCs emergency transfer plan. The emergency transfer plan must meet all of the requirements of 24 CFR 578.99(j)(8).

Q: Should the emergency transfer plan be CoC-wide, or by grantee? Should participants fleeing DV be prioritized on the coordinated entry list?

It should be noted that the VAWA Final Rule only discusses survivors of domestic violence, dating violence, sexual assault, and stalking that qualify for an emergency transfer. In this case, where a transfer within the existing project to a new, safe unit cannot be accommodated, the final rule clarifies that the survivor must be prioritized over all other applicants for assistance so long as the survivor meets all statutory, regulatory, HUD NOFA eligibility requirements, and any preferences established in accordance with 24 CFR 578.93(b)(1), (4), (6), and (7) - but not any other local eligibility requirements. For the purpose of the transfer the survivor maintains their original homeless or chronically homeless status. This means, for example, that if the project is required by HUD to be dedicated for individuals or families experiencing chronic homelessness the survivor must have been chronically homeless upon entry into their original project. These requirements are required to be incorporated into the CoCs written standards for prioritizing assistance, which necessarily are implemented into the CoCs coordinated entry process.

Q: How should the CoC program integrate private landlords into this?

As indicated in the VAWA Final Rule, for tenant-based rental assistance, the recipient or subrecipient must enter into a contract with the owner or landlord of the housing that:

- **(A) Requires the owner or landlord of the housing to comply with the provisions of 24 CFR Part 5, Subpart L; and,**
- **(B) Requires the owner or landlord of the housing to include a lease provision that include all requirements that apply to tenants, the owner or the lease under 24 CFR part 5, subpart L, as supplemented by this part, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.005(b) and (c).**

The lease may specify that the protections under 24 CFR part 5, subpart L, only apply while the program participant receives tenant-based rental assistance under the Continuum of Care Program.

Further, all recipients or subrecipients providing tenant-based rental assistance on behalf of program participants must enter into a contract with the owner or landlord of the housing that: (1) requires the owner or landlord to comply with the provisions of 24 CFR part 5, subpart L, and (2) requires the owner or landlord to include a lease provision that includes all of the requirements discussed above.

Because of these new requirements, it is probable that landlords will need to update the leases that they sign with program participants to incorporate these provisions. Additionally, it is likely that recipients and subrecipients will need to update the contracts that they sign with landlords and owners of housing to reflect these new requirements.

Q: Are there additional VAWA rules if the person is using a CoC funded rental subsidy to rent a unit and the unit itself was constructed or rehabbed using other federal funds or programs (HOME and/or LIHTC for example), regardless of who owns the unit?

If the other federal funds are covered by the requirement to offer an emergency transfer plan, the participant should be offered all options provided by each applicable plan and allowed to make an informed choice.

Q: The CoC housed a chronically homeless individual who was able to reunify with his family (wife and children) once housed. There is now a domestic violence situation in this family in which the perpetrator is the qualifying person for PSH. The wife has filed for a restraining order but does not meet the qualifications for PSH as they were housed prior to reunification. While we recognize the projects responsibility to its original client, should the project also continue to provide housing to the wife and children?

A: Based on the information you provided in your question, we assume you are asking about ongoing eligibility for the wife and children, as well as ongoing eligibility for the husband who is the head of household for the family. Note that this answer also assumes that the family is separating. If the family chooses to reunify, there is nothing in the CoC Program interim rule that would prohibit you from serving them as a family again.

Eligibility for the wife and children:

Please note that the wife and children you describe in your question may be eligible to continue receiving assistance until the lease ends should the requirements be met in order to receive VAWA protections as it is stated in the VAWA final rule (published November 2016). The VAWA final rule expands remedies for victims of domestic violence, dating violence, sexual assault, and stalking by requiring covered housing providers to have emergency transfer plans, and providing that if housing providers allow for bifurcation of a lease, then tenants should have a reasonable time to establish eligibility for assistance under a VAWA-covered program or to find new housing when an assisted household has to be divided as a result of the violence or abuse covered by VAWA. Therefore, depending on if the lease was bifurcated, the husband has been removed from the unit due to engaging in criminal activity directly relating to domestic violence, and other requirements have been met in order for the VAWA final rule protections to apply, then the wife and children may continue to reside in the unit receiving assistance until the end of the lease that is currently in effect.

The wife and any members of the family could meet Category 4 of the definition of homeless if they are fleeing or attempting to flee from domestic violence and meet all other requirements. If the household meets this criteria then they would be considered homeless and would be eligible for assistance funded through the CoC Program as long as they met any other eligibility requirements established by regulation or NOFA. In addition, the household may be eligible for Homelessness Prevention under the ESG Program.

RRH projects funded as new projects through the Permanent Housing Bonus or created through reallocation under the FY 2015 CoC Program NOFA or FY 2016 CoC Program NOFA must serve homeless individuals and families (including unaccompanied youth) who enter directly from the streets or emergency shelters and persons who meet the criteria of paragraph (4) of the definition of homeless. Please note that there is no requirement that individuals and families who meet the criteria of paragraph (4) of HUDs definition also be currently living on the streets or in emergency shelters in order to be eligible for RRH assistance funded through a new FY 2015 or FY2016 CoC Program RRH project.

Eligibility for the husband:

Note that while the project is not required to, it may choose to continue to provide assistance to the husband if there is availability in the project to continue serving him, even if he finds a new unit.

HUD is encouraging communities to implement policies and procedures that are consistent with a Housing First approach. For more information about Housing First, please see Ann Oliva's In Focus message titled Why Housing First. HUD has also posted a brief called Housing First in Permanent Supportive Housing that discusses the core principles of a Housing First model to help inform implementation of this model at the local level.

Q: We have a CoC leasing funded PSH program for persons with SMI (severe mental illness). We master lease scattered site units. A single person household is requesting her rental subsidy be transferred to a different unit in a different county. This person requires an accessible unit. She indicates that she has suffered Domestic Violence in the past by family who live in another state, but she fears they know where she lives now. She has also alleged that someone (from a local agency) has sexually molested her. Is the program required to provide a subsidy for a unit in another county? Are we required to continue to offer supportive services if she lives in another county? Locating accessible units is challenging, especially within the FMR limits. If the only accessible unit found was over the FMR, could we use program funds to pay above the FMR? Are there any similar protections as found in VAWA but for person who claim to be in danger due to gender identity issues?

A: In order to request an emergency transfer the program participant must expressly request the transfer; and reasonably believes there is a threat of imminent harm from further violence if the program participant remains within the same dwelling unit that the participant is currently occupying; or in the case of a program participant who is a victim of sexual assault, either the participant believes there is a threat of imminent harm from further violence if they remain within the same dwelling unit they are currently occupying, or the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer.

If the program participant is transferred outside of the agency's service area, the expectation is that the agency would connect the program participant to a local agency to receive supportive services. There is no provision in VAWA or the CoC Program Interim Rule to use program funds to pay for a unit that exceeds FMR limits. The Fair Market Rent and rent reasonableness requirements also cover units receiving rental assistance through an emergency transfer. VAWA protections cover victims of domestic violence, dating violence, sexual assault and stalking.

Q: Do homeless individuals need to be US citizens in order to be eligible for HUD CoC services and VAWA protections?

A: On August 11, 2016 HUD, HHS, and the DOJ issued a joint letter reminding recipients of federal funds how the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 applies to their programs. HUD encourages recipients and subrecipients to review the letter, in addition to guidance in the PRWORA fact sheet which describes how the Act applies to HUDs CoC and ESG Programs. This guidance is further outlined below.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 imposed restrictions on eligibility for receipt of public benefits. Essentially, the law provides that illegal aliens are not to receive public benefits and specifies how the inquiry into a person's status is to be conducted.

However, there are certain types of federal assistance that are not subject to the Acts restriction on access to public benefits based on immigration status. This includes activities that: (1) deliver in-kind services at the community level, (2) are necessary for the protection of life or safety, and (3) do not condition the provision of assistance on the potential program participants income or resources.

HUD has determined that the following forms of assistance are not subject to the Acts immigration-based restrictions because they meet all three of the aforementioned criteria:

Street Outreach Services
Emergency Shelter
Safe Haven
Rapid Re-Housing

CoC Program transitional housing has been determined to be excepted when the recipient or subrecipient owns or leases the building used to provide transitional housing because it falls within the exception for life or safety.

However, the exception does not apply to CoC Program transitional housing where the recipient or subrecipient provides rental assistance payments on behalf of program participants or CoC Program permanent supportive housing programs. For these projects, recipients that are governments are required to comply with the law and should contact their legal counsel for advice on how to comply.

HUD reminds nonprofit organizations that are recipients of CoC or ESG Program funds that the Act does not require nonprofit charitable organizations to verify the immigration status of applicants for federal, state, or local public benefits. If a nonprofit elects to verify citizenship or immigration status, they must follow the procedures required by the Act and should consult with their legal counsel on how to comply.

Note: A nonprofit charitable organization that chooses not to verify cannot be penalized (e.g., through cancellation of its grant or denial of reimbursement for benefit expenditures) for providing federal public benefits to an individual who is not a U.S. citizen, U.S. non-citizen national, or qualified alien, except when it does so either in violation of independent program verification requirements or in the face of a verification determination made by a non-exempt entity. However, if your organization chooses to verify, even though it is a nonprofit charitable organization that is not required to do so under the Act, you should comply with the procedures set forth in this Guidance and provide benefits only to those whom you verify to be U.S. citizens, U.S. non-citizen nationals or qualified aliens. Any verification request to INS by a nonprofit charitable organization must be accompanied by the written consent of the individual whose status is to be verified to the release of information about the individual to a nongovernmental entity. The consent must be notarized or executed under penalty of perjury. (INS Form G-639 may be used for this purpose.)

Please review the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) with your legal counsel to determine if a household, where the household is eligible for VAWA self-petition or has a U Visa, is eligible for public benefits that require documentation of

immigration status. We also recommend consulting with your legal counsel to determine if there are any other subpopulations you might be considering serving would be eligible for public benefits that require documentation of immigration status.

Q: How many transfers can a participant request/receive?

A: There are no guidelines or requirements that would limit the number of emergency transfers a participant may request or receive.

Q: How can an agency determine the severity of a threat and/or the true need for or level of safety a participant may require?

A: The self-certification is participant dependent and only the participant can determine if/when a unit is safe.
