VAWA Compliance & Strategies for Serving Survivors of Domestic Violence

Contra Costa County Continuum of Care

November 13, 2019
# Objectives

- To understand the goals & requirements of the Violence Against Women Act (VAWA) & how it applies to CoC-funded programs
- To become aware of some additional protections for survivors under California housing law
- To learn about confidentiality & privacy protections for survivors of violence
- Discuss assumptions about domestic violence
- Learn about best practices for working with survivors
- Address any questions or concerns you have about working with survivors
Agenda

1) The Violence Against Women Act (VAWA) and Relevant Contra Costa County Continuum of Care Policies

2) California Housing Law Protections for Survivors of Domestic Violence

3) Strategies for Recognizing and Working with Survivors of Domestic Violence
The Violence Against Women Act

The Federal Regulatory Landscape
What is the Violence Against Women Act (VAWA)?

- Recognition that domestic violence (DV) is an epidemic
- Provisions include:
  - Funding for coordinated community response to DV, sexual assault, dating violence, & stalking
  - Creation of a special DOJ Office on Violence Against Women
  - Strengthened protections for native, immigrant, & LGBTQ survivors
  - Protections for survivors in HUD-funded program - implemented by 11/6/16 HUD Final Rule
- VAWA protections apply to all genders!
Whom does VAWA protect?

VAWA provides protection for survivors of

- Domestic violence
- Dating violence
- Stalking
- Sexual assault

Regardless of sex, gender, race, national origin, & sexual orientation.
VAWA Definitions

- **Domestic Violence** - Crimes of violence committed by a current or former spouse or intimate partner, by a person with whom the victim shares a child in common.

- **Dating Violence** - Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

- **Romantic/Intimate Relationship** is determined by the length & type of relationship & the frequency of interaction.

- **Sexual Assault** - Any nonconsensual sexual act proscribed by law, including when the victim lacks capacity to consent.

- **Stalking** - Conduct directed at a specific person that would cause a reasonable person to:
  1. Fear for the person's safety or the safety of others; or
  2. Suffer substantial emotional distress.

In this training, we will use the term “DV survivor” to refer to anyone who has survived domestic violence, dating violence, sexual assault, or stalking.
HUD’s VAWA Final Rule
Key Safeguards for DV Survivors

Core Housing Protections

Emergency Transfer Plans

Required Notices and Contract Terms

Homebase
Documenting Survivor Status

HUD does **NOT require** survivors to document their status when they assert their VAWA rights.

….However, CoC and ESG recipients *may ask for documentation* of survivor status as follows:

- Programs must request documentation **in writing** and allow **14 business days** to respond.
- Participants can choose to provide **any** of the following:
  - HUD-5382 Victim Self-certification form
  - If survivor chooses this option, cannot ask for further third-party documentation unless have other conflicting documentation.
  - A professional’s statement
  - A Court or Law Enforcement document
  - Any other type of document the recipient chooses to accept.
- CoC & ESG recipients can limit a landlord’s right to request survivor status documentation
Core Housing Protections

- Survivors cannot be evicted or denied housing solely because of their status as survivors.
- Survivors cannot be evicted or denied housing solely based upon factors directly related to victimization.
  - If the survivor can show that their current or past victimization led an adverse factor that factor cannot be the basis for a denial or eviction.
  - Examples of possible adverse factors:
    - Lack of credit
    - Lack of income or employment history
    - Negative rental history
    - Criminal background
Limitations of VAWA Protections

- A program participant may be terminated or evicted:
  - For any violation not based on an act of DV against the tenant or an affiliated individual so long as the tenant is not subjected to a more demanding standard than other tenants in determining whether to evict or terminate assistance
  - If the housing provider can demonstrate an actual and imminent threat to other tenants, employees, or service providers

- **Actual and imminent threat** – A physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. Factors to be considered include:
  - The duration of the risk
  - The nature and severity of the potential harm
  - The likelihood that the potential harm will occur
  - The length of time before the potential harm would occur

Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents!
Eviction or Termination Only as a Last Resort

Eviction or termination of assistance should occur only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to:

- Transferring the victim to a different unit
- Barring the perpetrator from the property
- Contacting law enforcement to increase police presence or develop other plans to keep the property safe
- Seeking other legal remedies to prevent the perpetrator from acting on a threat
Bifurcating Leases

Landlords may bifurcate TBRA leases to evict, remove, or terminate assistance to a household member who engages in DV-related criminal activity without penalizing a victim of such criminal activity who is also a tenant or lawful occupant.

✓ TBRA and any utility assistance shall continue for the family member(s) who are not evicted or removed.

✓ In PSH, if the family’s eligibility was based upon the evicted or removed family member’s disability or chronic homeless status, the remaining family members may stay in the project through the end of the lease and be given the opportunity to demonstrate eligibility.

Non-TBRA participants who have not already established independent program eligibility at the time of bifurcation have 90 days to establish their eligibility or locate other housing.
VAWA Emergency Transfers
What is a VAWA Emergency Transfer?

VAWA emergency transfers quickly relocate DV survivors receiving assistance who believe there is an imminent threat of harm from further violence should they remain in their home, or survivors who were recently sexually assaulted in their home.
Emergency Transfers: Key Terms

- **Internal emergency transfer** – Emergency relocation of a tenant to another unit where the tenant would not be a new applicant.

- **External emergency transfer** – Emergency relocation of a tenant to another unit where the tenant would be considered a new applicant.

- **Safe unit** – A unit the DV survivor believes is safe.
Emergency Transfers: VAWA
Requirements for CoCs

Each CoC must:

- Establish an Emergency Transfer Plan to quickly relocate DV survivors receiving CoC & ESG-funded assistance, including:
  - Details about the transfer process
  - Eligibility for transfers
  - Any required documentation
  - Confidentiality protections
  - Policy on what happens to non-transferring family member(s)

- Make the Emergency Transfer Plan available to tenants & the public

- Keep a record of all emergency transfer requests & outcomes of those requests for five years & report to HUD annually
Emergency Transfers: Confidentiality

Any information provided by a participant when requesting an emergency transfer, including the fact that domestic violence occurred, must be kept in strict confidence by the recipient:

- No employees or contractors may have access to confidential information unless explicitly authorized by law;

- The information must not be entered into any shared database or disclosed to anyone unless the disclosure is:
  - Requested or consented to in writing by the individual in a time-limited release;
  - Required for use in an eviction proceeding or hearing regarding termination of assistance; or
  - Otherwise required by applicable law.
Contra Costa County CoC Emergency Transfer Policies

CoC policies on emergency transfers can be found in the Contra Costa Continuum of Care’s Written Standards for Providing CoC and ESG Assistance.
Who qualifies for an emergency transfer?

A program participant qualifies for an emergency transfer if:

- They are a **survivor** of domestic violence, dating violence, sexual assault, or stalking;
- They **expressly request** the transfer; **AND**
- Either:
  - They reasonably believe there is a **threat of imminent harm** from further violence if they remain in the dwelling unit; or
  - If they are a survivor of sexual assault, the sexual assault occurred on the premises during the **90-calendar-day period preceding** the date of the request for transfer.
Emergency Transfer Process

- Participant submits a written request to program staff, certifying that they qualify.
- The program may – but is not required to - request additional documentation.
- Program staff notify the Coordinated Entry System Manager of the request.
- Pursue internal transfer, external transfer, or both.
Emergency Transfer Process, Cont.

### Internal transfers

- Program staff should take immediate steps to effectuate transfer.
- Participant has same priority as program affords to all other internal transfers.
- If a safe unit is unavailable, offer the participant the option to:
  - Wait for a safe unit to become available,
  - Request an external transfer, or
  - Pursue internal & external transfer at the same time and transfer to next available safe unit.

### External Transfers

- Coordinated Entry System Manager facilitates referral of participant to next available safe unit through the Coordinated Entry System.
- Participant has priority over all other applicants, provided the household meets all eligibility criteria required by HUD and the new program.
- Household retains original homeless status.
Additional CoC Policies

- **Confidentiality**
  - Programs must ensure that strict confidentiality measures are in place to prevent disclosure of the participant’s new location to the alleged abuser.

- **Recordkeeping**
  - Programs must retain records of all emergency transfer request and their outcomes for a period of 5 years following the grant year of the program in which the household was a participant and report them to HUD annually.
Required Notices and Contract Terms
Required Notices to Participants

- All households receiving **CoC & ESG funded assistance** must receive a Notice of Occupancy Rights & Certification Form at each of the following times:
  - The household is **denied** assistance
  - The household is **admitted** to the program
  - The household receives notification of **eviction**
  - The household is notified of **termination** of assistance

- **Notice of Occupancy Rights** explains VAWA protections, including the right to confidentiality & limitations of the protections

- **Certification Form** to be completed by the survivor to document an incident of domestic violence, dating violence, sexual assault or stalking

- **Contra Costa County CoC Written Standards** require that evidence of compliance be kept in client files.

Model forms are available on the HUD portal.
Required Contract Terms

CoC Recipients & Landlords

• Owner/landlord will comply with 24 CFR part 5, subpart L (VAWA), including the prohibited bases for eviction & restrictions on construing lease terms under 24 CFR 5.2005(b) & (c)
• If TBRA
  ➢ Owner/landlord will provide the participant with Notice of Occupancy Rights and Certification Form with any eviction notice
  ➢ Recipient must keep strictly confidential any information provided by the participant when requesting an emergency transfer

Landlords & Participants

Owner/landlord will comply with 24 CFR part 5, subpart L (VAWA), including the prohibited bases for eviction & restrictions on construing lease terms under 24 CFR 5.2005(b) & (c)

CoC Recipients & Participants

• Recipient will comply with 24 CFR part 5, subpart L (VAWA), including the prohibited bases for eviction & restrictions on construing lease terms under 24 CFR 5.2005(b) & (c)
• If TBRA: Participant may terminate the agreement without penalty if the program determines the participant qualifies for an emergency transfer
Applicability

CoC-Funded Programs
- The required terms must be incorporated into any contracts, leases, subleases, & occupancy agreements:
  - Entered into
  - Renewed
    - Including those renewing automatically!

ESG-Funded Programs
- The required terms must be incorporated into any rental assistance agreement executed or renewed on or after 12/16/16.
Key Compliance Takeaways

- Recipients and landlords cannot discriminate against DV survivors in denying assistance, terminating assistance, or evicting tenants.
- CoCs must have written emergency transfer plans to quickly relocate DV survivors who are at risk of harm or were recently sexually assaulted in their units.
- Programs must strictly safeguard DV survivor confidentiality.
- HUD does not require DV survivors to document their status, but if CoCs decide to do so, there are limits on these requests.
- Survivors must be provided with a Notice of Occupancy Rights and Certification Forms when they are denied assistance, admitted to programs, terminated from programs, or notified of eviction proceedings.
- VAWA requires certain terms to be added to agreements between LL/recipient, recipient/participant, and participant/LL

Remember….If you have a question, ask!
California Housing Laws
Relevant California Housing Laws

- Landlords are required to change locks within 24 hours of receiving a request in writing & a court order excluding the abuser (or police report if the abuser does not live with the survivor) issued within 180 days.
  - If the landlord does not change the locks, the DV survivor may change them without permission.
- A landlord cannot evict a tenant based upon their status as DV survivor unless, after having used the defense that they are a DV survivor, the tenant persists in allowing the abuser onto the property or the landlord reasonably believes that the abuser poses a threat to other tenants.
  - Landlord must provide tenant with at least 3 days’ notice to allow DV survivor to correct the violation.
Questions?

Contact us at:
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Business Office: (925) 676-2845
24/7 Crisis Line: (888) 215-5555
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WORKING WITH DV SURVIVORS
Presentation Objectives

- Offering a common language and basic understanding of Domestic Violence
- Scope of the Issue
- Best/Promising Practices & incorporate these practices when implementing VAWA
- Address your questions or concerns regarding work with survivors
- STAND! programs, services, and partnerships
STAND!’s Guideposts

- Trauma Informed
- Client/survivor Centered
- Free & Voluntary Programs/Services
- Safe Space with Confidential Services
- Culturally Responsive
- Part of a larger network in community and in the field
Reminder

- Take care of yourself
Terms (why so many?):

- Domestic violence (DV)
- Family Violence (FV)
- Intimate Partner Violence (IPV)
- Gender Based Violence (GBV)
- Teen Dating Violence (TDV)
- Child Abuse
- Elder/Dependent Adult Abuse
- Trafficking
- Victim/Survivor
- Offender/Abuser/those who have used harm
Scope of the problem (1:3)

- On a typical day, domestic violence hotlines nationwide receive approximately 20,800 calls.
- 1:3 women will experience relationship violence.
- 1:7 men will experience relationship violence.
- 1:5 teens will experience teen dating violence.
- 5 million children in the US live in homes where IPV/GBV occurs.
25-33% LGBTQ people experience DV/IPV and CA

The presence of a gun in a domestic violence situation increases the risk of homicide by 500%.4

1:35 women have been threatened with a gun – by partner

First 72 hours upon leaving increases homicide x%

46% of IPV NOT reported
Scope of the problem (3:3)

- More than HALF of US mass shootings (2009-16 study) also shot a partner/family member

- ACEs – Adverse Childhood Experiences (KP, V. Felitti, lifelong impact)

- Child Maltreatment linked to criminal adult behavior

- Family violence linked to community violence
Etiology:

- IS not genetic but does tend to cycle
- IS intentional
- IS influenced by society
- IS found in every level of society
- Does not discriminate; it occurs in any race, age, gender, income level or sexual orientation
- Toxic masculinity
- Male child witness v. male child victim
ABUSE: Any actions that intentionally harm or injure another person

- Physical - Hitting, grabbing, cornering
- Mental/Emotional - Isolating, demeaning
- Verbal - Name calling, threatening
- Sexual - Sexual assault, coercion
- Economic - Using violence to attain money, limiting access to economic resources
- Spiritual - Forcing/requiring or restricting specific participation and/or practices
Terms of Types:

- Individual
- Family
- Community
- Primary
- Secondary
- Vicarious
- Intergenerational
- Historical
- Cultural
- Structural
How is DV different from other types of abuse?

- Considered a repeated pattern of use of abuse(s) to maintain power and control over a partner in an intimate relationship (or to not lose power over)
- Is a deliberate choice offending party makes regardless of how violent behavior was learned or developed
“Simple” Cycle Of Violence

Seduction or Honeymoon → Tension Building → Violence → Seduction or Honeymoon
Why don’t they just leave?

Try this…
VICTIM BLAMING: Placing all or partial blame on a victim for the abuse they endured

Survivors seeking access and accepting help and services depends on the reaction of the people they tell!
Brainstorm…

Why won’t she/he/they just leave!?
Why don’t they just leave?

Because of:

What can be triggered…
&
What is being avoided…
Triggering:

- fear
- guilt
- culture
- social norms
- love
- lack of options
- shame
- victim blaming
- isolation
- financial dependence
- religion
- doubt
- harassment
- denial
- doubt
- threats
- love
- support
- guilt
- isolation
- doubt
- children
- threats of Murder
- social norms
- blame
- immigration status
- stalking
Avoiding:

- Personal belief about divorce/break-up
- Having to move/homelessness
- Physical and psychological health
- Financial health
- Social isolation/strain
- Secrets/Shame/humiliation
- Self esteem
- Capacity to trust self
- Parenting concerns
- Relationships with child/ren and family
- Legal status
- Professional/work status
- Violence increases/lethality
What are the elements of a healthy relationship?
Healthy Relationships
(says who?)

- Respected boundaries
- Communication
- Trust
- Equality and shared decision making
- Feel safe and supported
- Giving and receiving affection
- Healthy disagreements
Unhealthy Relationship Qualities: (culturally defined?)

- Controlling behavior
- Fighting/high conflict
- Excessive "togetherness" - isolated from family and friends
- Externalizes blame
- One person with most/all the power & decision making
- Feeling afraid of/used by partner
- Jealousy
Perpetrators are not always aggressive, threatening, or frightening. They are not necessarily cold or unresponsive and may show no signs of hostility to their partner in front of others or even at the time of the abusive events.

Victims often do not present as weak, shy or quiet, and may not be “nice”. They are just as likely to present as angry and hostile as sad or frightened. They may show no signs of fear to or of their abusive partner.
Brainstorm...

What do our survivors want?
What do our survivors tell us they want?

- Violence to stop
- Reunification
- Separation/Dissolution
- Recovery for partner and children
What does STAND! (we) want?

It doesn’t matter!

(survivor centered)
Exercise...

Power
Key elements working with survivors:

- Check in and manage personal assumptions
  - Notice/interrupt system-embedded assumptions
- Assess power and control in the relationship
  - Assist in noticing the system imbedded power and control dynamics
- Support empowerment via choices and options (Survivor-Driven Advocacy)
- Trauma-Informed care
  - Assumption of survivor being expert at own experience; grounded in “what happened to you?” vs. “what’s wrong with you”
Key elements working with survivors:

- Focus on acknowledging and encouraging their decisions
- Finding and promoting survivor having a choice & their choices are validated
- Active interpersonal demonstration of respect, collaboration and promotion self-determination - even when concerned about safety
- Provide options NOT answers nor advice
- If survivor is asking for advice = not informed enough
- Expand his/ her/ their resources and support network
How STAND! Helps

The complexity of our work reflects the complexity of the problem

✓ Culturally competent and culturally relevant
✓ Survivor informed
✓ Trauma informed

Treating the whole family when possible; addressing the whole system(s)
Relationship to trauma

- Most consumers of DV services are trauma survivors
- Some perpetrators of DV are trauma survivors
- Trauma experiences affect individuals’ need for and response to outreach and services
- Trauma can create an immediate and/or uneven need for services
- Trauma can predispose or result in post trauma symptoms
- Note disparate exposure to both (multiple kinds of) trauma as well as gaps in resources or help seeking
Trauma and regulation:

- Fight
- Flight
- Freeze
- Flood
Key Elements of Trauma-Informed Care:

- **Safety**
  - Physical and emotional

- **Trust & Transparency**
  - Confidentiality and clear expectations

- **Choice & Voice**
  - Prioritize choice and give control

- **Collaboration**
  - Respect and accept

- **Empowerment**
  - Self-determination and strengths-based approach
28 year old female is seeking services for immediate shelter and access to affordable housing. She is a mother of three young children (9, 6, 3), identifies as multiracial. She currently lives with her 3-year long male partner (father of youngest child only), works nights and boyfriend works days – so children do not have to be in additional childcare. She reports recent arguments with boyfriend that have resulted in violence between them and witnessed by the children. She is very upset, angry, and loud in the waiting area while she waits to see you. Boyfriend has demanded she and the two elder children move out and he is keeping custody of the youngest child.
Interviewing with survivor:

Set Context

- Explain why you are asking these questions
- Explain basics including confidentiality and limits of
- Actively listening and positive micro skills
- Provide survivor-focused care
- Intentionally maintain appropriate power and control balance
- Promote client’s power by encouraging choice and voice
- Present options without bias
Potential barriers:

- No credit history or negative credit history
- Lack of rental history
- Undocumented status
- Uneven or gap in employment history
- Family size in proportion to size of unit/ HUD standards
- Assets too large to be considered for shelter/housing even if no access to assets
- Special needs; age, etc.
- No history of working in social services systems; reluctant to participate
DV and housing – intersection:

- Include option to connect clients to credit counseling, help/support reach out to creditors about past due bills.
- Include option of referrals of survivors to credit unions
- Collaborate with shelter, TH (in community) staff to help client with rental history
- Tax ID
- Sign up for affordable housing wait lists parallel to other options as possible
STAND! services address three areas:

- **Prevention: Changing the Future**
- **Intervention: Saving Lives**
- **Treatment: Rebuilding Families**
Prevention: Changing the Future

- Non-Violent/Nurturing Parent Parenting Classes
- YESS & YAV
- Speakers Bureau and Volunteer Services
Intervention: Saving Lives

- 24/7 Crisis Line
  - Lethality Assessment Protocol Program
  - Safety Planning
- Emergency Shelter & Transitional Housing (+multiple supportive services – adult and child)
- Domestic Violence Support Groups across MULTIPLE community locations
- Restraining Order Assistance Clinics
- Victim Advocacy
Treatment: Rebuilding Families

- **Clinical/Counseling Services; Assessment and Case Management (Survivors)**

- **Non-Violence Program (Those who have caused harm)**

- **Child Trauma Treatment Program (Youth)**
QUESTIONS?
FEDERAL REQUIREMENTS FOR COC PROGRAM RENTAL CONTRACTS

INTRODUCTION

This document provides an overview of requirements for rental contracts of Continuum of Care (CoC) permanent housing program participants, including:

- Leases between participants and landlords in tenant-based rental assistance (TBRA) programs and
- Subleases/occupancy agreements between participants and recipients/subrecipients in leasing programs.

COC PROGRAM INTERIM RULE REQUIREMENTS

A permanent housing program participant’s rental contract (lease, sublease, or occupancy agreement) must be:

- For term of at least one year;
- Automatically renewable for terms that are a minimum of one month long (except on prior notice by either party); and
- Terminable only for cause.

VAWA REQUIREMENTS

The Violence Against Women Act (VAWA) mandates that the following terms be incorporated into each rental contract that will be entered into as well as each existing rental contract which will be renewed following the expiration of a current term (including those which automatically renew).

REQUIRED TERMS FOR AGREEMENTS BETWEEN COC RECIPIENTS AND LANDLORDS

Any agreement between CoC recipients and property owners / landlords must include provisions stating that:

1. The owner/landlord will comply with 24 CFR part 5, subpart L
2. Any lease between the owner/landlord and the program participant or agreement between recipient and program participant will incorporate the provisions required by 24 CFR 5.2005(b) and (c), specifically:
   2.1. The program participant cannot be denied or terminated assistance or evicted from housing due to their status as a survivor of domestic violence or due to criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking acts threatened or committed against them in the home; and
   2.2. An incident of threatened or actual domestic violence, dating violence, sexual assault, or stalking against the program participant cannot be grounds for claiming the participant has engaged in a “repeated and serious violation of a lease” or as good cause for terminating their assistance, tenancy, or occupancy rights.

Any lease between a landlord and program participant or agreement between recipient and program participant may specify that the protections under 24 CFR part 5, subpart L only apply during the period of assistance under the CoC program.
**TBRA** programs must include terms to ensure that:

1. The owner/landlord will provide the Notice of Occupancy Rights and Certification Form to the program participant with any notification of eviction; and
2. The recipient is bound by 24 CFR 5.2007(c) to keep in strict confidence any information provided by the participant, including the fact that domestic violence occurred, when requesting an emergency transfer.

**NON-TBRA** programs must include a provision stating that any agreement between the CoC recipient and program participant will permit the participant to terminate the agreement without penalty if the recipient determines that the participant qualifies for an emergency transfer.

### REQUIRED TERMS FOR LEASES BETWEEN LANDLORDS AND PROGRAM PARTICIPANTS

Any lease between a property owner / landlord and a CoC program participant must include provisions stating that:

- The landlord will comply with 24 CFR part 5, subpart L
- Per 24 CFR 5.2005(b) & (c):
  - The program participant cannot be evicted from housing due to their status as a survivor of domestic violence or due to criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking acts threatened or committed against them in the home; and
  - An incident of threatened or actual domestic violence, dating violence, sexual assault, or stalking against the program participant cannot be grounds for claiming the participant has engaged in a “repeated and serious violation of a lease” or as good cause for terminating their tenancy.

The lease *may* specify that protections under 24 CFR part 5, subpart L only apply during the period of assistance under the CoC program.

### REQUIRED TERMS FOR AGREEMENTS BETWEEN RECIPIENTS AND PROGRAM PARTICIPANTS

Any agreement between a CoC recipient and program participant must include provisions stating that:

- The recipient will comply with 24 CFR part 5, subpart L
- Per 24 CFR 5.2005(b) & (c):
  - The program participant cannot be denied or terminated assistance or evicted from housing due to their status as a survivor of domestic violence or due to criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking acts threatened or committed against them in the home; and
  - An incident of threatened or actual domestic violence, dating violence, sexual assault, or stalking against a participant cannot be grounds for claiming the participant has engaged in a “repeated and serious violation of a lease” or as good cause for terminating their assistance, tenancy, or occupancy rights.

The lease *may* specify that protections under 24 CFR part 5, subpart L only apply during the period of assistance under the CoC program.

**NON-TBRA** programs must also include a provision stating that the program participant may terminate the agreement without penalty if the recipient determines that the participant qualifies for an emergency transfer.