

VAWA Compliance Policy



I. Introduction

The Emergency Solutions Grant (ESG) Program is a federal program operated by the U.S. Department of Housing and Urban Development (HUD) to make grants to states, local governments, and territories for the purposes of funding activities that directly serve people experiencing homelessness, including people at risk of homelessness. The California Department of Housing and Community Development (CA HCD) is a direct recipient of ESG from HUD. CA HCD administers an annual allocation of ESG and an additional one-time allocation of ESG made available under the CARES Act.

For the purposes of this document, “annual ESG” refers to CA HCD’s annual allocation of ESG, “ESG-CV” refers to CA HCD’s one-time allocation of CARES Act ESG, and “ESG” refers to the program in general and to aspects of the program that apply to both annual ESG and ESG-CV.

This ESG VAWA Compliance Policy (the “Policy”) provides the structure under which ESG-funded activities are required to comply with certain requirements of the Violence Against Women Act (VAWA).

A. Applicability

This Manual applies to ESG grants funded using:

- Annual ESG
- ESG-CV

II. Definitions

A. Domestic Violence

For the purposes of this Policy and the ESG Program, the definition of domestic violence includes dating violence, sexual assault, stalking, and human trafficking. The definition is also considered to include any additional nuances as defined by HUD; for example, there may be additional circumstances that are considered domestic violence for youth aged 24 and under. For more information, please refer to the relevant external document published by HUD.

B. Covered Housing Providers

Some of the provisions of this Policy refer to Covered Housing Providers (CHPs). A CHP is any entity that meets any of the following criteria:¹

- A recipient or subrecipient that administers rental assistance (for the purposes of the Emergency Transfer Plan procedure)
- A housing owner with respect to the limitations of VAWA protections enumerated in 24 CFR 5.2005(d)
- The housing owner and the entity administering rental assistance (recipient, subrecipient, or sub-subrecipient) for the purposes of 24 CFR 5.2005(d)(2), which clarifies the circumstances under which a victim of domestic violence may or may not be evicted or have their ESG assistance terminated
- The housing owner and the entity administering rental assistance (recipient, subrecipient, or sub-subrecipient) for the purposes of 24 CFR 5.2007, which defines procedures for documenting the occurrence of domestic violence
 - *Note:* recipients and subrecipients may limit these requests in accordance with 24 CFR 576.409(b)(4)

III. General Requirements

A. Overview

The ESG Program's primary regulatory body is 24 CFR Part 576, the ESG Program Interim Rule.² The ESG Program Interim Rule provides various protections for victims of domestic violence (which includes domestic violence, dating violence, sexual assault, stalking, and human trafficking).³ These protections and their associated requirements are enumerated in this section of the Policy.

¹ 24 CFR § 576.409(b)

² <https://www.hudexchange.info/resource/1927/hearth-esg-program-and-consolidated-plan-conforming-amendments/>

³ 24 CFR § 576.409

B. HMIS Comparable Databases

Domestic violence service providers (VSPs) are prohibited from maintaining participant data in the CoC’s HMIS; instead, they are required to maintain participant data in an HMIS comparable database.

For the purposes of ESG, HUD defines a VSP as “a private nonprofit organization whose primary mission is to provide direct services to victims of domestic violence.”⁴

CA HCD is required to affirmatively record that VSPs receiving ESG are maintaining participant records in an HMIS comparable database.

VSPs are encouraged to connect with other VSPs and with the California Partnership to End Domestic Violence for more information about HMIS comparable databases. There is also information about HMIS comparable databases available from SafeHousingPartnerships.org: https://safehousingpartnerships.org/sites/default/files/2017-08/CD101_CSNNEDV.pdf

Please review the table below to determine whether a given project is required to maintain participant data in HMIS or an HMIS comparable database.

	Organization is a VSP	Organization is <u>not</u> a VSP
Project serves victims of domestic violence	HMIS comparable database	HMIS
Project does not serve victims of domestic violence	HMIS comparable database	HMIS

C. Prohibition on Denial or Termination of Assistance or Eviction on the Sole Basis of Domestic Violence—Housing

An ESG applicant or participant cannot be denied assistance, have their assistance terminated, or be evicted from their housing solely because they are a victim of domestic violence.

⁴ <https://www.hudexchange.info/faqs/programs/continuum-of-care-coc-program/program-requirements/coordinated-entry/how-does-hud-define-victim-service-provider/#:~:text=HUD%20defines%20a%20victim%20service,to%20victims%20of%20domestic%20violence.>

D. Prohibition on Denial of Admission or Removal on the Basis or as a Result of Domestic Violence—Emergency Shelter

An ESG applicant or participant cannot be denied admission to or removed from an emergency shelter on the basis or as a direct result of the fact that the applicant/participant is or has been a victim of domestic violence if they would otherwise qualify for admission or occupancy.

E. Notice of Occupancy Rights under the Violence Against Women Act and Certification Form

Each entity that determines eligibility for or administers ESG rental assistance is responsible for providing the following two forms to each applicant for ESG rental assistance and each participant receiving ESG rental assistance:

- “Notice of Occupancy Rights under the Violence Against Women Act” (Form HUD-5380), available here: <https://www.hud.gov/sites/documents/5380.DOCX>
- “Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternative Documentation” (Form HUD-5382), available here: <https://www.hud.gov/sites/documents/5382.docx>

These forms must be provided at each of the following times:

- When an applicant is denied ESG rental assistance
- When an applicant’s application for a unit receiving project-based rental assistance is denied
- When a participant begins receiving ESG rental assistance
- When a participant is notified of termination of ESG rental assistance
- When a participant receives notification of eviction

F. Bifurcation

When a family receiving tenant-based rental assistance separates under the lease bifurcation clause of 24 CFR 5.2009(a), the family’s tenant-based rental assistance and utility assistance, if any, shall continue for the family member(s) who are not evicted or removed.

If a family living in a unit receiving project-based rental assistance separates under the lease bifurcation clause of 24 CFR 5.2009(a), the family member(s) who are not evicted or removed can remain in the assisted unit without interruption to the rental assistance or utility assistance provided for the unit.

G. VAWA Lease Language

Subrecipients are required to ensure that the requirements listed under 24 CFR Part 5, Subpart L, are included or incorporated into all leases and rental assistance agreements for units that receive ESG-funded short-term or medium-term rental assistance.

Leases: under most circumstances, subrecipients will need to provide and require a lease amendment including the necessary language.⁵ Subrecipients may choose between two options for VAWA lease amendments:

- Subrecipients may use the sample “Lease Addendum” (HUD-91067), provided here: <https://www.hud.gov/sites/documents/91067.doc>
- Subrecipients may create their own lease addendum, which must incorporate all protections listed in 24 CFR Part 5, Subpart L

Rental assistance agreements: subrecipients will need to incorporate the necessary language into all rental assistance agreements.

Subrecipients should define their approach to ensuring VAWA protections are included in all rental assistance agreements and leases in their project policies and procedures. For more information, including the applicability of protections under different rental/leasing models, please refer to the ESG Program interim rule, sections 576.106(e) and 576.106(g).

H. Emergency Transfer Plan

Each subrecipient that administers ESG assistance is required to develop and implement an Emergency Transfer Plan (ETP). An ETP provides the subrecipient and other CHPs in the subrecipient’s funding stream with a process that enables participants who are victims of domestic violence to transfer from their existing unit to another safe unit without losing their ESG assistance.

Participants who are victims of domestic violence qualify for an emergency transfer under an ETP if:

- They expressly request the transfer; and,
- Either of the following is true:

⁵ Leases that incorporate all protections listed in 24 CFR Part 5, Subpart L, are not required to have a lease amendment re-articulating those provisions. However, most leases do not include most or all applicable protections, and even if a lease includes all applicable protections, rental assistance agreements must still include those protections.

Emergency Solutions Grant Program (ESG)

- They believe there is a threat of imminent harm from further violence if they remain within their existing unit; or,
- *Only if they are a victim of sexual assault:* if the sexual assault occurred on the premises of their existing unit within the 90-calendar-day period preceding the participant's transfer request

ETPs must:

- Meet all requirements for ETPs listed in 24 CFR 5.2005(e)
- Be modeled on HUD's "Model Emergency Transfer Plan for Victims of Domestic Violence," available here: <https://www.hud.gov/sites/documents/5381.docx>

Subrecipients are encouraged to customize HUD's model ETP based on local needs and resources. Potential considerations include but are not limited to:

- VAWA provides a minimum timeframe of 90 days for reporting a sexual assault on the premises of an assisted unit; does local data suggest that assaults may be reported after that time period experiences, and if so, can the CoC support extending that time period to 180 days or more?
- What are the minimum and maximum periods of time a project has to consider an internal transfer before moving onto an external transfer?
- Is the subrecipient's ESG ETP substantially similar to the CoC ETP? Can they be the same (or substantially similar)? Do they contradict, and if so, how can those contradictions be resolved?
- How does the ETP ensure external transfer candidates are referred before all other participants in the Coordinated Entry system?
- During an external transfer: which agency is responsible for inspecting units to ensure they meet the relevant program's quality standards during an external inspection?
- What local non-housing resources are available and commonly needed or accessed by ETP candidates? How does the ETP streamline connecting ETP candidates to those resources?
- Can the subrecipient's approach to housing ETP candidates integrate permanent housing offerings from other providers, including but not limited to CoC Program recipients, SSVF recipients, and public housing authorities (PHAs)?