

Defending Tenants with Continuum of Care and Emergency Solutions Grant-Funded Housing

A TOOLKIT FOR ADVOCATES

February 2026



CONTENTS

- Legal notices and acknowledgments.....1
- I. Introduction 2**
 - A. Continuum of Care Program.....4
 - 1. What is the Continuum of Care (“CoC”)?4
 - 2. What types of housing programs can CoC funds support?.....4
 - 3. How do I know if my client’s housing is CoC-funded?5
 - B. Emergency Solutions Grant Program6
 - 1. What is the Emergency Solutions Grant (“ESG”)?.....6
 - 2. What types of housing programs can ESG funds support?.....6
 - 3. How do I know if my client’s housing is ESG-funded?7
- II. Defending Program Terminations 8**
 - A. Challenging Terminations from CoC-Funded Programs.....9
 - B. Challenging Terminations from ESG-Funded Programs.....10
 - C. Alternatives to Termination Due to CoC Funding Cuts and Housing Options for Program Participants in De-Funded Projects10
 - 1. Advocate for the participant to be transferred to a funded CoC or ESG program.11
 - 2. Explore non-CoC or ESG housing programs and assistance.12
- III. Defending Evictions 13**
 - A. Evictions where the landlord is the “subrecipient” of CoC funds14
 - B. Evictions where the landlord is not the “subrecipient” of CoC funds15
- IV. Cross-Cutting Considerations 16**
 - A. Fair Housing Protections and Reasonable Accommodation.....17
 - 1. Sources of protections for people with disabilities.17
 - 2. What is a reasonable accommodation?18
 - 3. When is a housing or shelter provider required to provide a reasonable accommodation?19
 - 4. Reasonable accommodations as a defense to an eviction or subsidy termination20
 - 5. Examples of reasonable accommodations in CoC and ESG Settings20
 - B. Violence Against Women Act.....22
 - 1. Applicability of “Core” VAWA protections22
 - 2. Applicability of full VAWA protections.....22
 - 3. Using VAWA to defend terminations and evictions22
- V. Appendix: Advocacy Opportunities With Your CoC 24**
- VI. Endnotes 36**



LEGAL NOTICES AND ACKNOWLEDGMENTS

This advocacy guide was primarily authored by National Homelessness Law Center (NHLC) Youth Shelter and Housing Attorney John Salois, National Housing Law Project (NHLP) Deputy Director Deborah Thrope, NHLP Managing Attorney Natalie Maxwell, and NHLP Senior Staff Attorney Hannah Adams.

This publication is designed to support legal services attorneys and tenant advocates in understanding the rights of Continuum of Care and Emergency Solutions Grant participants. It is intended to be used as background information only. It is not intended to provide legal advice or substitute for legal research. If you have specific questions regarding legal issues and compliance with federal and state laws, contact an attorney or other professional where you live.

© Copyright 2026 National Housing Law Project, National Homelessness Law Center.

I. INTRODUCTION



Roughly 750,000 individuals experiencing homelessness are served by the U.S. Department of Housing and Urban Development’s (“HUD”) Continuum of Care (“CoC”) program,¹ and hundreds of thousands are served by shelters funded by the Emergency Solutions Grant (“ESG”) program. The Homeless Emergency Assistance and Rapid Transition to Housing (“HEARTH”) Act of 2009² amended and reauthorized the 1987 McKinney-Vento Homelessness Assistance Act to create the infrastructure that provides federally-funded housing and services to unhoused individuals today.

The HEARTH Act consolidated HUD’s legacy homelessness-related competitive grant programs (Shelter Plus Care, Supportive Housing Program, and Moderate Rehabilitation/SRO) under the CoC program. Among other changes, CoC programs and ESG programs were changed to streamline access to housing and to prioritize rapid re-housing over temporary shelter, in response to growing evidence supporting a Housing First³ approach. The definition of homelessness was also broadened to include individuals at imminent risk of homelessness, as well as families or unaccompanied youth living unstably.⁴

HUD promulgated implementing regulations for the CoC program at 24 C.F.R. part 578 via an interim rule published July 31, 2012.⁵ HUD also promulgated regulations for the ESG program at 24 C.F.R. part 576 via an interim rule published on December 5, 2011.⁶

As of this writing, CoC funding, especially for permanent housing projects, are at risk. This toolkit is intended to provide resources and strategy ideas to advocates working to defend program participants from housing loss.



A. CONTINUUM OF CARE PROGRAM

1. What is the Continuum of Care (“CoC”)?

The continuum of care program is designed to address the critical problem of homelessness through a coordinated community-based process of identifying needs and building a system of housing and services to address those needs. A Continuum of Care (“CoC”) is the group organized to carry out the responsibilities prescribed in the CoC program rule⁷ for a defined geographic area. A CoC should be composed of organizations including non-profit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons.

Responsibilities of a CoC include operating the CoC, designating and operating a Homeless Management Information System (“HMIS”), planning for the CoC (including coordinating the implementation of a housing and service system within its geographic area that meets the needs of the individuals and families who experience homelessness there), and designing and implementing the process associated with applying for CoC Program funds.

2. What types of housing programs can CoC funds support?

Federal CoC funding supports housing programs that are aimed at housing and stabilizing individuals, including unaccompanied youth and families who are experiencing homelessness. Similar to other federally-assisted housing programs, such as the Section 8 Housing Choice Vouchers and Public Housing, participants of CoC-supported housing receive leasing or rental assistance to help cover the cost of their housing. The amount of assistance provided often depends on the participant’s income, but this can differ depending on the CoC’s established written standards.

The assistance or subsidy is administered on the participant’s behalf by the recipient or subrecipient of the CoC program funding. A recipient or subrecipient can be the local CoC, a homeless service provider, unit of local government, public housing agency, or other agency receiving CoC funds directly from the federal government or via a subrecipient agreement.

CoC-supported housing most commonly includes the following housing programs:

- Permanent Housing, including Permanent Supportive Housing and Rapid Re-Housing; and
- Transitional Housing.

Permanent Housing. All participants in PH must be the named tenant on a lease or sublease. All initial leases must be for a term of at least one year and automatically renew for at least a one-month term. Leases held by permanent housing participants may only be terminated “for cause.”⁸ There are two types of PH programs— permanent supportive housing and rapid re-housing.⁹

Permanent Supportive Housing (“PSH”) is permanent housing combined with voluntary supportive services, which can include case management, childcare, and employment assistance and training.¹⁰ PSH can be single-site, project-based assistance or scattered-site, tenant-based assistance. To be eligible for PSH, the individual or a member of the family (adult or child) must have a disability.¹¹ Additionally, the program participant must also meet all other eligibility requirements set forth in the Notice of Funds Availability (“NOFA”) for the project.

Additionally, many CoCs prioritize individuals or families experiencing chronic homelessness for PSH. This means that for many communities, an individual or family must be experiencing chronic homelessness in order to qualify for a PSH placement. Regulations define chronically homeless as a “homeless individual with a disability” who:

1. Lives in a place not meant for human habitation, a safe haven, or emergency shelter *and* has experienced homelessness and living as described above continuously for at least 12 months *or* has lived in the conditions described above on four separate occasions in the last three years for a combined total of 12 months;
2. Has been residing in an institutional care facility, including a jail, substance use or mental health treatment facility, hospital or similar facility, for less than 90 days and prior to their admission qualified as a “homeless individual with a disability”;
3. A family who meets the above definitions.¹²

Rapid Re-housing (“RRH”) is strictly tenant-based rental assistance that can consist of short-term (up to 3 months) and/or medium-term (3 to 24 months) assistance for individuals and families experiencing homelessness.¹³ It is nonetheless considered “permanent” because participants sign a lease agreement, live independently, and the goal is for the participant to take over rental payments and remain in the unit once the RRH assistance expires. Regardless of whether rental assistance exceeds one year, the program participant must hold an initial lease of one year. The level of RRH assistance, and the percentage or amount of rent each RRH participant will pay, is established by the local CoC.¹⁴ In addition to rental assistance, RRH participants also receive supportive services and must meet with a case manager at least once a month. Unlike with PSH, there is no requirement that an individual or family member have a disability to qualify for RRH. However, the program participant must meet the eligibility requirements as set forth under the NOFA funding the project. Eligibility also depends on the standards and priorities established by the individual CoC.¹⁵

Transitional Housing. Transitional Housing (“TH”) provides short-term housing and supportive services to individuals and families experiencing homelessness. Assistance cannot exceed 24 months. All program participants must have a signed lease, sublease, or occupancy agreement for a term of at least one month.¹⁶

3. How do I know if my client’s housing is CoC-funded?

HUD publishes a list of all annual CoC awards.¹⁷ If your client is receiving housing assistance through a particular agency, you can search the list of awardees to determine whether that agency is a recipient or subrecipient of CoC funding, and if so, the type of program funding it receives.

Additionally, the agency administering PSH, RRH or TH assistance is required to provide all program participants with a written copy of program rules prior to the participant receiving assistance.¹⁸ This paperwork, in conjunction with any lease, sublease or occupancy agreement your client has, may also confirm the type of funding that supports your client’s housing.

Lastly, in most cases, clients with CoC funded housing should also be assigned a caseworker. In those cases, obtain a signed release and request this information from the caseworker and/or agency (i.e. recipient/subrecipient) directly.

Note that in some jurisdictions, PSH program participants may not be receiving that subsidy from a CoC recipient or subrecipient, so it is important to know the local subsidy landscape and verify the source of assistance. For example, in some states, Housing Finance Agencies administer Project-Based Vouchers that can be used by Low-Income Housing Tax Credit (“LIHTC”) developers for PSH. These units would not be subject to CoC rules.

B. EMERGENCY SOLUTIONS GRANT PROGRAM

1. What is the Emergency Solutions Grant (“ESG”)?

The HEARTH Act revised the Emergency Shelter Grants Program and renamed it the Emergency Solutions Grants (“ESG”) program. The ESG interim rule¹⁹ took effect on January 4, 2012. The change in the program name reflects the change in focus from addressing the needs of people experiencing homelessness in emergency or transitional shelters to “assisting people to quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness.”²⁰

The program authorizes HUD to make grants to states, units of general purpose local government, and territories for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain expenses related to operating emergency shelters, for essential services related to emergency shelters and street outreach for the homeless, and for homelessness prevention and rapid re-housing assistance. CoCs are required to consult with ESG recipients regarding coordinated entry and establishing written standards for CoC assistance.²¹

The ESG program provides funding to:

- Engage homeless individuals and families living on the street;
- Improve the number and quality of emergency shelters for homeless individuals and families;
- Help operate these shelters;
- Provide essential services to shelter residents;
- Rapidly re-house homeless individuals and families; and
- Prevent families and individuals from becoming homeless.²²

One way in which the ESG program is different from the CoC program is that Permanent Supportive Housing is not a component of the ESG program or permitted use of ESG funds.

2. What types of housing programs can ESG funds support?

ESG funds may be used for five program components: street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, and HMIS; as well as administrative activities. The five program components and the eligible activities that may be funded under each are set forth in § 576.101 through § 576.107. Eligible administrative activities are set forth in § 576.108. Eligible activities include:

- **Street Outreach:** ESG funds may be used for costs of providing essential services necessary to reach out to unsheltered homeless people; connect them with emergency shelter, housing, or critical services; and provide urgent, non-facility-based care to unsheltered homeless people who are unwilling or unable to access emergency shelter, housing, or an appropriate health facility.²³
- **Emergency Shelter:** ESG funds may be used for costs of providing essential services to homeless families and individuals in emergency shelters, renovating buildings to be used as emergency shelter for homeless families and individuals, and operating emergency shelters.²⁴
- **Homelessness Prevention:** ESG funds may be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance necessary to prevent an individual or family from moving into an emergency shelter as long as they meet provisions and criteria under the interim rule. The costs of homelessness prevention are only eligible to the extent that the assistance is necessary to help the program

participant regain stability in the program participant's current permanent housing or move into other permanent housing and achieve stability in that housing.²⁵

- **Rapid Re-housing:** ESG funds may be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing, as long as individuals meet certain criteria under the rule.²⁶

3. How do I know if my client's housing is ESG-funded?

It is more challenging to determine if your client's housing is ESG-funded because HUD does not have a public-facing site to search ESG subgrantees. If the client is residing in a federally-funded shelter, it is likely that ESG funds are involved. Advocates may have to investigate to determine conclusively whether the site is ESG-funded by reviewing paperwork related to residency (if available), contacting the housing or shelter provider, or searching for public-facing resources supplied by the state or local entity that received the ESG funds to determine whether ESG is the source of a client's subsidy.



II. DEFENDING PROGRAM TERMINATIONS

First, it is important to distinguish between program termination, program exit, and eviction. Termination of a program participant's assistance ends the housing assistance to the program participant, often due to alleged violation of program rules. A program participant is exited from the program when they no longer meet program eligibility requirements or reach the 24 month limit for rental assistance if applicable. An eviction is a legal action taken by an owner or landlord for the removal of a tenant from housing due to a lease violation, including nonpayment of rent. When a program participant who receives CoC or ESG-housing assistance is evicted from a unit, the recipient or subrecipient may continue to provide housing assistance to the program participant in another unit.

A. CHALLENGING TERMINATIONS FROM COC-FUNDED PROGRAMS

Whether program participants of CoC-supported housing (i.e. PSH, RRH, and TH) have a property interest in their federally-assisted housing under the due process clause of the U.S. Constitution is a largely untested question. However, the laws and regulations governing CoC programs explicitly require recipients and subrecipients to follow certain processes prior to terminating a program participant's housing assistance. The HEARTH Act even references "due process" and may thus create a property interest for those residing in CoC-assisted housing, stating:

If an individual or family who receives assistance under this part (not including residents of an emergency shelter) from a recipient violates program requirements, the recipient may terminate assistance in accordance with a formal process established by the recipient that recognizes the rights of individuals receiving such assistance to due process of law, which may include a hearing.²⁷

Federal regulations governing the CoC program provide more specific direction on what type of due process is required before terminating assistance:

Due process. In terminating assistance to a program participant, the recipient or subrecipient must provide a formal process that recognizes the rights of individuals receiving assistance under the due process of law. This process, at a minimum, must consist of:

- (1) Providing the program participant with a written copy of the program rules and the termination process before the participant begins to receive assistance;
- (2) Written notice to the program participant containing a clear statement of the reasons for termination;
- (3) A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and
- (4) Prompt written notice of the final decision to the program participant.²⁸

Notably, unlike other federally-assisted housing programs, HUD does not identify any grounds that warrant mandatory termination of CoC participants. Instead, HUD directs recipients and subrecipients to exercise caution when deciding to terminate a participant's assistance, requiring recipients and subrecipients to "exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination so that a program participant's assistance is terminated *only in the most severe cases*."²⁹ While this language applies to terminations of assistance for hard-to-house populations residing in PSH, HUD guidance³⁰ directs recipients and subrecipients to exercise discretion when terminating assistance to *any* program participant, regardless of whether they are part of a hard-to-house population.

HUD has provided no clear guidelines on what constitutes a “most severe case.” While manufacturing and selling drugs and violence or the threat of violence likely qualify as “most severe,” a notice, hearing, and decision are still required *prior* to the termination of a participant’s assistance.

Termination of assistance to a particular participant *does not* prevent a recipient or subrecipient from providing assistance to the same program participant in the future.³¹

Practice Tip – Each recipient or subrecipient must have a written termination policy and procedure in place that governs their process for terminating assistance. A local CoC can require all recipients and subrecipients to adopt the same termination policy approved by the CoC. A CoC may also allow recipients or subrecipients to develop and implement their own termination policy and procedure. All termination procedures must, at a minimum, comply with 24 C.F.R. § 578.91.

If your client is facing a proposed termination, request a copy of the recipient or subrecipient’s termination policy. Termination policies vary widely. However, each policy should lay out notice requirements, how to request an appeal, and a basic description of the appeals process, including who is involved in any decision making. You may also consider requesting a copy of your client’s file, including a copy of the program rules provided to your client at enrollment and the notice proposing to terminate your client’s assistance.

Remember that CoC-supported housing is the last resort for many participants, and that a return to homelessness is almost certain if assistance is terminated. Advocacy opposing a termination should emphasize any extenuating circumstances, mitigating factors, and whether the proposed grounds rise to the level of a “most severe case.”

Clients terminated from TH who face imminent homelessness may still be entitled to case management support for the 6 months immediately following their termination.³² Clients terminated from RRH may similarly be entitled to ongoing supportive services for the 6 months following their termination.³³ Advocates can work with the recipient/subrecipient to ensure case management support continues and that every effort is made to re-house the participant as soon as possible.

B. CHALLENGING TERMINATIONS FROM ESG-FUNDED PROGRAMS

The federal statute and regulations governing ESG program terminations largely mimic those that govern CoC programs.³⁴ A key difference is that recipients and subrecipients are required to “exercise judgment and examine all extenuating circumstances” and may terminate assistance “only in the most severe cases” for all program participants, not just those in hard-to-house populations. Another difference is that, unlike the CoC regulation, the ESG termination regulation does not require that the participant have been provided with a written copy of the program rules and the termination process before the participant began to receive assistance. According to HUD, this is a best practice for ESG residents, but not required.³⁵ Additionally, the due process requirements in 24 C.F.R. § 576.402(b) only apply to program participants receiving rental assistance or housing relocation and stabilization services.

C. ALTERNATIVES TO TERMINATION DUE TO COC FUNDING CUTS AND HOUSING OPTIONS FOR PROGRAM PARTICIPANTS IN DE-FUNDED PROJECTS

As of this writing, CoCs are at risk of funding cuts. Your CoC should begin planning for CoC program cuts now. The first step is seeking community input on how to best mitigate consequences for homeless individuals and families who face termination due to loss of CoC program funding. Reach out to your CoC leadership and ask how it plans to address cuts to PSH, RRH and TH. Contact information for your local CoC can be found on

HUD’s website.³⁶ Leveraging existing non-CoC funds to help move impacted participants into non-CoC assisted housing is a good option. Below are other options for moving impacted participants into existing CoC projects.

1. Advocate for the participant to be transferred to a funded CoC or ESG program.

Historically, HUD has instructed recipients and subrecipients facing CoC-funding cuts to “try as hard as possible to ensure that program participants do not become homeless once the project shuts down.”³⁷ One approach to minimizing returns to homelessness is to transfer participants to another CoC or ESG-funded program. In many CoCs, this may require that the CoC amend or develop a program-to-program transfer policy that gives participants in de-funded programs priority over other populations.³⁸ The individual or family, however, still must meet the eligibility requirements for the existing CoC or ESG-funded program.

Permanent Supportive Housing. PSH participants may be transferred to another CoC-funded PSH project so long as they met the eligibility requirements of the new PSH before entering the original PSH.³⁹ In context, this means that a PSH participant who initially met the definition of chronically homeless when establishing their eligibility for the original PSH would maintain their chronically homeless status when transferring to another project. Thus, these individuals and families should be eligible to transfer to another funded PSH, RRH or TH project, subject to any additional eligibility criteria established in the project grant agreement.

Rapid Re-Housing. According to HUD guidance, RRH participants also “maintain their homeless status for the purpose of eligibility for other permanent housing programs, such as ... CoC-funded permanent supportive housing (so long as they meet any other additional eligibility criteria for these programs).”⁴⁰ This means that if the individual or family met the definition of homeless or chronically homeless prior to their RRH enrollment, they will retain that status when transferring to another program. Note that, in addition to any other eligibility criteria identified in the project’s grant agreement, PSH projects often require that an individual or family member have a documented disability.⁴¹

Transitional Housing. Individuals or families residing in TH are considered homeless and would be eligible for other CoC-funded TH.⁴² Impacted participants may also be eligible for RRH or PSH as well, but again must meet the requisite homeless definition and any other eligibility criteria established in the project grant agreement.

Exploring eligibility for ESG-funded homeless prevention assistance. Individuals and families residing in de-funded PSH, RRH or TH projects should also be assessed for eligibility under available ESG programming, including homeless prevention assistance.⁴³ Homeless prevention assistance may consist of assistance to cover the cost of rental application fees, security deposits, utility deposits, or provide short- or medium-term rental assistance. This assistance can be used to support impacted participants who are ready for independent living with securing housing in the private market. To qualify, individuals and families must be considered “at risk of homelessness”⁴⁴ or “homeless”⁴⁵ and have an annual income below 30 percent of the median family income for the area.⁴⁶ Advocates should consult with local ESG recipients and subrecipients to determine if this option is available to impacted participants.

Practice Tip – If a participant’s assistance is terminated due to funding cuts and they are provided no alternate housing options or support, you can file a grievance with the CoC recipient/subrecipient. The grievance should request that the CoC recipient/subrecipient provide supportive services, facilitate the participant’s transfer to another CoC program for which they are eligible, and, if needed, that the CoC amend or establish a program-to-program transfer policy that allows for and gives special preference to impacted participants. If the grievance policy is not publicly available, request a copy from the recipient/subrecipient or CoC directly. The participant may be required to initiate their grievance with the recipient/subrecipient directly before bringing their complaint to the CoC.

2. Explore non-CoC or ESG housing programs and assistance.

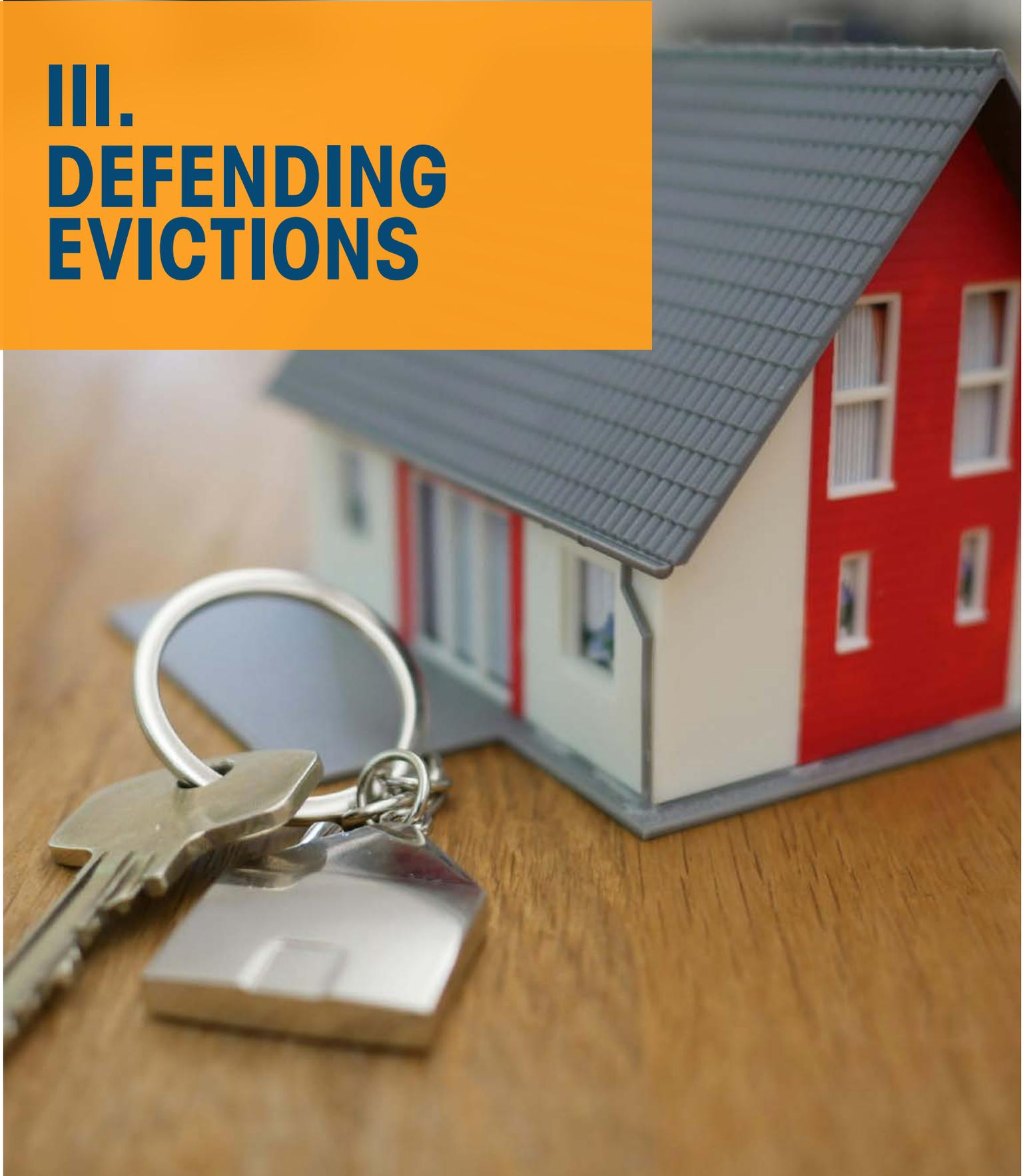
Many CoCs have access to other funds or resources not funded through HUD's CoC or ESG programs. Ask your CoC about the availability of other housing funds to support impacted participants.

Additionally, explore other housing programs available in your community and whether impacted participants can be transferred to another program. Your state or local government may administer other federally-funded programs like Home Investment Partnerships ("HOME") or Community Development Block Grant ("CDBG"), or other state or local grants that could be used to re-house participants in de-funded programs. State and local governments will bear the costs of increased homelessness when programs are de-funded, and therefore may have an incentive to direct funds or resources to solving the problem.

Your Public Housing Authority ("PHA") may administer public housing, Section 8 Housing Choice Vouchers ("HCV"), or Section 8 Project-Based voucher units. Check to see if your PHA has a waitlist preference for individuals and families experiencing homelessness or at-risk of homelessness. Waitlist preferences are criteria established by local PHAs to prioritize applicants, moving certain groups up the list based on urgent needs like homelessness, disability, elderly status, or veteran status. Waitlist preferences for the Housing Choice Voucher Program are identified in the PHA's Administrative Plan; for the public housing program they would appear in the Admissions and Continued Occupancy Policy ("ACOP"). Both documents should be publicly available on your local PHA's website or in its office. If a homeless preference exists:

1. Ensure the impacted participant notifies the local PHA of their homeless/at-risk of homelessness status and update this information with the PHA accordingly; and
2. Explore whether impacted participants can be transferred to the HCV Program. If your Administrative Plan and/or ACOP do not include a homeless preference, advocate for the inclusion of a homeless preference.

III. DEFENDING EVICTIONS



As previously discussed, in the CoC and ESG programs an eviction may be a separate and distinct proceeding from a subsidy termination (similar to the Section 8 Housing Choice Voucher program). Put differently, a tenant may be evicted and still retain their subsidy. The question of whether an eviction terminates the tenant’s subsidy– and therefore what process is required– hinges on whether the landlord is the “recipient” or “subrecipient” of federal funds.

HUD defines “recipient” as “an applicant that signs a grant agreement with HUD.”⁴⁷ A “subrecipient” is “a private non-profit organization, State, local government, or instrumentality of State or local government that receives a subgrant to carry out a project.”⁴⁸

Case Study

In Anycity, U.S.A., Anycity Continuum of Care (“ACC”) is the entity that applies for and receives CoC funds from HUD. ACC is therefore the “recipient.”

ACC subcontracts with Fellowship Housing (“FH”), a non-profit organization that manages Permanent Supportive Housing, including a property with 50 single-room occupancy units for chronically homeless individuals. FH signs leases directly with the individuals who live at the property, and charges them rent roughly equal to thirty percent of their income. In this example, FH is the landlord and the “subrecipient” of CoC funds.

ACC also subgrants to Helping Hands (“HH”), a non-profit organization that uses its CoC funds to provide mental health counseling and housing subsidies to PSH participants. Here, the CoC participant must find a private landlord in Anycity who will accept rental funds from HH, and then HH signs a subsidy contract with the landlord and pays the subsidy portion of the rent directly to the landlord. In this example, HH is the “subrecipient” of CoC funds. The private landlord is neither a recipient nor subrecipient.

A. EVICTIONS WHERE THE LANDLORD IS THE “SUBRECIPIENT” OF COC FUNDS

Where a CoC landlord is the subrecipient of CoC funds– i.e. they are a non-profit or government housing provider that receives the subsidy payment directly from the CoC–the regulatory due process protections discussed in the previous section apply. This might occur where the landlord is a non-profit organization that provides both housing and supportive services. In these cases, advocates should argue that any eviction filing is deficient or premature where the following elements have not been met:

1. The participant must have been provided with a written copy of program rules and the termination process at the beginning of tenancy;
2. The subrecipient must have provided written notice to the tenant containing a “clear statement of the reasons for termination;” and
3. The participant must have been provided with a “review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision” from which a “prompt written decision” was issued.⁴⁹

In addition, advocates should argue that the regulations expressly provide that “. . . subrecipients that are providing permanent supportive housing for hard-to-house populations of homeless persons must exercise

judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination so that a program participant’s assistance is terminated only in the most severe cases.”⁵⁰ If the subrecipient has failed to consider extenuating circumstances, such as disability, death in the family, unexpected illness or bills, etc., this should defeat the eviction.

Case Study

In the Anycity example above, Fellowship Housing would have to follow the process laid out above prior to evicting a tenant and could only evict in the “most severe cases.”

B. EVICTIONS WHERE THE LANDLORD IS NOT THE “SUBRECIPIENT” OF COC FUNDS

Many tenants who have a CoC-supported Permanent Supportive Housing subsidy rent from private landlords who are not the subrecipient of CoC funds; rather, the private landlord has a subsidy contract with the subrecipient service provider. As explained previously, these landlords are not “subrecipients,” because they are not non-profit or government housing providers that receive a subgrant directly from the CoC recipient.⁵¹ As such, they are not subject to the aforementioned regulations requiring pre-eviction process.

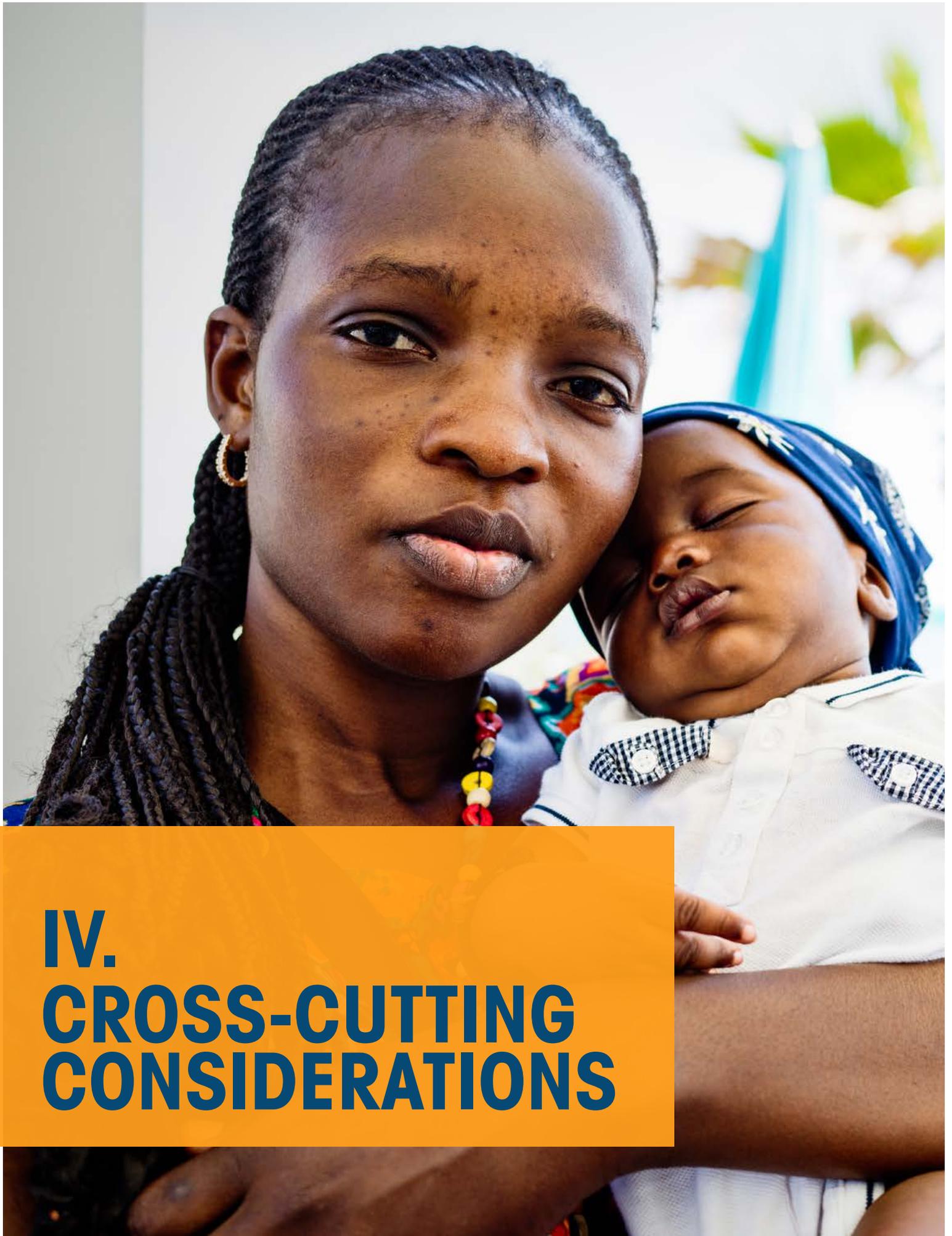
In addition to state or local protections, these tenants have some protections under federal law. For example, in jurisdictions where the Coronavirus Aid, Relief, and Economic Security Act (“CARES”) Act is enforceable, CoC and ESG-funded tenants are entitled to 30 days’ notice of eviction because the landlord participates in a covered housing program.⁵² The CARES Act uses the same list of “covered” housing programs as the Violence Against Women Act (“VAWA”).⁵³ CoC and ESG are funded under the McKinney-Vento Homeless Assistance Act, which is covered by VAWA.⁵⁴ Advocates are encouraged to review NHLP’s most updated memorandum on the status of CARES Act enforcement and appellate decisions.⁵⁵

Defenses may also be available under federal fair housing laws and VAWA. The next section explores these cross-cutting considerations that may arise in the context of a subsidy termination, an eviction, or both.

In a worse-case scenario where such a tenant is evicted, participants will still have the right to due process related to the subsidy termination. A subrecipient must satisfy the due process requirements before terminating the subsidy and, if the subsidy is not terminated, the subrecipient must allow the tenant to secure new housing and execute a new subsidy contract with that landlord.

Case Study

In Anycity, a private landlord who rents to a CoC program participant and receives a monthly subsidy payment from Helping Hands is not required to follow the requirements of 24 C.F.R. § 578.91(b) before eviction. This is because the private landlord is not the subrecipient of CoC funds. However, Helping Hands is a subrecipient, so Helping Hands must follow the due process requirements before terminating the participant from the program.



**IV.
CROSS-CUTTING
CONSIDERATIONS**

A. FAIR HOUSING PROTECTIONS AND REASONABLE ACCOMMODATION

About half of people experiencing homelessness experience some type of disability, at a rate 2.5 times higher than that of the general U.S. population.⁵⁶ People experiencing homelessness have a range of physical, mental, cognitive, and developmental disabilities. In 2024, 22% of adults experiencing homelessness had a serious mental illness, 18% had a substance use disorder, and 2% had HIV/AIDs.⁵⁷ CoC and ESG housing and shelter providers, along with advocates, must be aware of the needs of people with a wide range of disabilities and well as the legal protections available to them.

This section of the toolkit discusses special considerations for working with CoC participants that experience disabilities. We will focus on the right to reasonable accommodations and how the failure of CoC and ESG providers to grant an accommodation could be a defense to a termination or eviction and a violation of civil rights laws.

1. Sources of protections for people with disabilities.

Legal protections for people with disabilities arise from a range of sources. The Fair Housing Amendments Act (“FHAA”)⁵⁸ and the Rehabilitation Act of 1973⁵⁹ are federal laws that require reasonable accommodation for individuals with disabilities in the shelter and housing context.

a) The Fair Housing Amendments Act (FHAA)

The FHAA amended the Fair Housing Act (“FHA”) to prohibit discrimination against people with “handicaps.”⁶⁰ The Act provides that discrimination under the act includes “a refusal to make reasonable accommodation in rules, policies, practices, or services, when such accommodation may be necessary to afford such person equal opportunity to use and enjoy a dwelling . . .” Denial of a reasonable accommodation may constitute discrimination.

The scope of the Fair Housing Act is broad. With few exceptions,⁶¹ the FHA’s protections apply in most housing settings. The FHA defines a “dwelling” as “any building, structure, or portion thereof” that is “occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.”⁶²

Generally, courts have interpreted the definition of “dwelling” broadly, holding that a variety of structures are subject to FHA protections.⁶³ Courts have found the following structures to be “dwellings” under the FHA: cabins that house migrant farmworkers,⁶⁴ summer bungalows,⁶⁵ nursing homes,⁶⁶ timeshare units,⁶⁷ an AIDS hospice,⁶⁸ university student housing,⁶⁹ and a carriage house,⁷⁰ among others. However, courts have also concluded that jails,⁷¹ bed and breakfasts,⁷² and motels⁷³ do not constitute dwellings. At least one federal court of appeals has determined that shared living accommodations do not fall within the definition of “dwellings.”⁷⁴ Courts have also been split as to whether shelters constitute dwellings under the FHA.⁷⁵

Many CoC programs such as Permanent Supportive Housing, for example, clearly fall under the definition of dwelling and are therefore covered by the FHA. On the other hand, to determine whether ESG-funded emergency shelter residents are protected under the FHA, it is necessary to do a fact-driven analysis including considering such factors as the length of time the resident has been staying in the shelter and whether they are treating the shelter like a home.

b) Section 504 The Rehabilitation Act of 1973

Section 504 provides that no qualified individual with a disability shall “be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency. . .”⁷⁶ This statute only applies to those housing providers receiving federal assistance, and provides strong protections for people with disabilities including the right to reasonable accommodations and modifications. Section 504 applies to CoC and ESG-funded recipients and subrecipients.

c) State and Local Protections

State and local laws may also give rise to fair housing and anti-discrimination protections for people with disabilities, including the right to a reasonable accommodation. For example, under the California Fair Employment and Housing Act (“FEHA”)⁷⁷ people with disabilities are a protected class. California’s FEHA creates obligations independent of federal law to provide reasonable accommodations for people with disabilities.⁷⁸

What law applies in any given situation will depend on a number of factors including the type of housing (congregate nightly shelter versus permanent supportive housing) and in some cases, the nature of the disability (for example, an individual with certain substance use disorders may be covered under state but not federal law).

2. What is a reasonable accommodation?

A reasonable accommodation is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. Failure to provide a reasonable accommodation may be construed as discrimination.⁷⁹

For purposes of a reasonable accommodation, a person with a disability is defined under federal law as any person who:

1. Has a physical or mental impairment that substantially limits one or more major life activities;⁸⁰
2. Has a record of such impairment; or
3. Is regarded as having such an impairment.⁸¹

Disability may include a past substance use disorder, but does not include current, illegal use of or addiction to a controlled substance.⁸²

In some cases, the housing provider may want to verify that the individual experiences a disability. There are three possible verification scenarios:

- If a person’s disability is obvious or known, and the need for the requested accommodation is known, then the housing provider should not ask for any more information;
- If the disability is known or obvious, but the need is not, then the housing provider should ask only for information necessary to verify the need for the accommodation;
- If neither the disability nor the need for the accommodation is readily apparent, the housing provider may ask for verification of both the disability and the need for the accommodation.⁸³

Once a tenant tells a housing provider that she is disabled and needs something changed to accommodate her disability, the provider is obligated to begin the reasonable accommodation process.⁸⁴

A request for an accommodation may be oral or written.⁸⁵ A housing provider may adopt a formal proceeding for requesting a reasonable accommodation. However, a reasonable accommodation request cannot be denied if a tenant fails to fill out a form or follow the formal proceeding.⁸⁶

In a request, an applicant or tenant must:

1. Demonstrate that they experience a disability that can be accommodated by the request;
2. State the specific accommodation being requested; and
3. Explain how the accommodation is related to the person's disability and how it will help the tenant access or remain in the housing program.

3. When is a housing or shelter provider required to provide a reasonable accommodation?

If a CoC or ESG housing or shelter provider has verified the need for the accommodation and the requested accommodation is reasonable, then she must provide it.⁸⁷ The term “reasonable” means that the accommodation does not cause the housing provider an undue burden or fundamentally alter the nature of the program.⁸⁸ Each request must be analyzed on a case-by-case basis.⁸⁹

An undue burden may be financial or administrative.⁹⁰ In order to determine if an undue financial burden exists, HUD regulations suggest four factors should be considered:

1. The housing provider's financial resources;
2. The costs of the requested accommodation;
3. The benefit to the tenant; and
4. The availability of a less expensive accommodation.⁹¹

A housing provider also does not have to grant a reasonable accommodation request if the request includes services or policies that would “fundamentally alter the nature of the service, program, or activity.”⁹² For example, an accommodation may be considered unreasonable if a tenant asks a landlord to provide daily transportation services when the building currently has no such service.⁹³ Conversely, one court found that allowing a financially eligible relative to rent an apartment for a disabled individual did not fundamentally alter the essential obligations of tenancy, even though the landlord did not ordinarily permit such rentals.⁹⁴

Finally nothing in the FHAA requires a landlord to make a dwelling available “to an individual whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.”⁹⁵ However, the threat must be objective, not subjective. Furthermore, the housing provider has an obligation to provide a reasonable accommodation that may help eliminate the threat.⁹⁶ A number of courts have found that a housing provider violated its fair housing obligations when it refused to consider a reasonable accommodation that would mitigate a threat, even where physical violence was involved.⁹⁷ In some cases, courts have even held that a reasonable accommodation may be necessary where a person has pleaded to or been convicted of criminal activity that would threaten the health and safety of others.⁹⁸

An example of how the court has upheld the requirement for housing providers to consider a reasonable accommodation can be found in *Roe v. Sugar River Mills Assoc.*⁹⁹ In this case, the Plaintiff, who was a person with a mental health disability, threatened another tenant with physical violence by using obscene and offensive language, which resulted in that tenant vacating his unit and plaintiff receiving a criminal conviction. The court held that the FHAA required a showing that no reasonable accommodation would minimize the risk to others before plaintiff can be lawfully evicted.

4. Reasonable accommodations as a defense to an eviction or subsidy termination

Tenants facing termination or eviction because of acts related to a disability may face illegal discrimination when an accommodation request related to the adverse action is denied. Such cases may involve shelter living requirements, allegations of poor housekeeping, minor damage to the unit, or behaviors that disturb or make other tenants uncomfortable.

Where CoC/ESG housing providers seek to terminate or evict disabled individuals for conduct that disturbs other residents, including criminal activity, tenants may have defenses under the Fair Housing Act and Section 504 of the Rehabilitation Act.¹⁰⁰ For example, a CoC participant can ask for an accommodation if the reason for the termination is related to the tenant's disability.

Importantly, a participant in a covered CoC program has the right to a reasonable accommodation at any time. The right to a reasonable accommodation continues at least until a tenant is evicted, even if eviction proceedings may have already commenced.¹⁰¹

Courts have also recognized the rights of disabled tenants to reasonable accommodations in the context of nonpayment or delayed payment of rent.¹⁰²

Though the elements of a reasonable accommodation defense may vary under state law, they generally mirror the elements of a federal failure to accommodate claim. To prove failure to accommodate under 42 U.S.C. § 3604(f)(3)(B) a [tenant] must prove:

1. that the [tenant] or his associate is handicapped within the meaning of 42 U.S.C. § 3602(h);
2. that the defendant knew or should reasonably be expected to know of the handicap;
3. that accommodation of the handicap may be necessary to afford the handicapped person an equal opportunity to use and enjoy the dwelling;
4. that the accommodation is reasonable; and
5. that defendant refused to make the requested accommodation.¹⁰³

Where a tenant is a participant in Permanent Supportive Housing, advocates should argue that the landlord's knowing participation in the program is proof that they knew or should have known that the tenant had a disability.¹⁰⁴

5. Examples of reasonable accommodations in CoC and ESG Settings

Reasonable accommodations are often best illustrated by example because they are fact-specific. Below are scenarios that provide examples of the right to an accommodation in the CoC-program termination process.

Joe

Joe lives in Permanent Supportive Housing, in a building run by a nonprofit organization that is a subrecipient of the CoC. The building has five floors, with 20 units on each floor. Each floor has its own shared space for residents to congregate. Joe experiences a mental health disability and goes off of his medication for a brief time. When Joe goes off his medication he usually behaves erratically, which is what happened this time. Joe was using the shared space in the building and quietly reading a book when another resident came in, listening to loud music. Joe became irritable and started yelling at the other resident, using obscene language. The other resident was scared and went to the manager to complain. The manager quickly wrote up the complaint in Joe's file and proceeded to process an eviction. Joe met with the manager and explained that he was off his medication and that he required an accommodation for another chance at his tenancy. He assured the manager that he is working with his social

worker on strategies to stay on his medication in the future. He even brought in a letter for his social worker that explained they were working together to help Joe stay medicated.

Joe's manager is required to give him a second chance at his tenancy as a reasonable accommodation under the Fair Housing Act (and Section 504) and should rescind the termination letter. Joe demonstrated his disability, there is a nexus between the accommodation and the disability, and the request is reasonable.

Joe's property manager might argue that Joe is a danger to other residents in the permanent supportive housing building and that nothing in the FHAA requires a landlord to make a dwelling available "to an individual whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others."¹⁰⁵ However, the threat must be objective, not subjective.

Joe's property manager did the right thing by providing an accommodation and a second chance at success.

Nadina

Nadina lives in a federally-funded congregate shelter that is part of the CoC and receives funding under ESG. Nadina was recently asked to leave because she has a service animal and the facility does not allow pets. Nadina requested an accommodation to keep her service animal with her in the shelter. The shelter manager said they have to deny the request because they are a no pets facility and to allow an animal would be a fundamental alteration of the program. Nadina asked to appeal the decision but the manager just handed her a bag of her belongings and asked her to leave.

Nadina has a claim that she was discriminated against based on her disability by not allowing her to keep her service animal in the shelter. In addition, Nadina should have been provided an opportunity to appeal the initial termination. Under Section 504 of the Rehabilitation Act, federally-assisted housing providers are required to create grievance procedures designed to address claims of discrimination against program participants with disabilities.¹⁰⁶

Sally

Sally lives in Permanent Supportive Housing, a program administered by a non-profit that is a subrecipient of the local CoC. Sally is arrested and charged with possession of a controlled substance. She completes a court-ordered diversion program that includes several weeks of inpatient rehabilitation. While she is in treatment, she finds out through a neighbor that her landlord has served her with an eviction notice for criminal activity.

Although current illegal use of a controlled substance does not qualify as a disability under federal law, a past substance use disorder does. Sally should argue in the eviction that she is in treatment and currently sober, and request that the landlord rescind the eviction based on her history of substance use disability as a reasonable accommodation. Sally should also argue to the court that her eviction should be postponed until she is out of the hospital as an accommodation.¹⁰⁷

If the subrecipient non-profit that pays her subsidy subsequently tries to terminate her assistance, it must provide her with notice and a pre-termination hearing under 24 C.F.R. § 578.91(b). In addition, advocates should argue that the regulations expressly provide that ". . . subrecipients that are providing permanent supportive housing for hard-to-house populations of homeless persons must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination so that a program participant's assistance is terminated only in the most severe cases" under 24 C.F.R. § 578.91(c). Based on these requirements, her assistance should not be terminated.

B. VIOLENCE AGAINST WOMEN ACT

The Violence Against Women Act of 2022 (“VAWA”) provides protections for survivors of domestic violence, dating violence, sexual assault, and stalking (“VAWA crimes”) to access or maintain federally-assisted housing.¹⁰⁸ VAWA covers many federal housing programs and homeless assistance programs, including CoC and ESG-funded programs.¹⁰⁹ Generally, CoC and ESG tenants must be informed of their VAWA rights in their rental agreements.¹¹⁰

VAWA’s housing protections for survivors protect any individual who is or has been a survivor of actual or threatened VAWA crimes, and is living in, or seeking admission to, any of the covered housing programs. VAWA also protects a VAWA crime victim’s “affiliated individual,” defined as a spouse, parent, sibling, or child of that victim; an individual to whom the victim stands in loco parentis; or an individual, tenant, or lawful occupant in the victim’s household. VAWA applies to survivors of all gender identities, including male survivors; VAWA also protects LGBT+ survivors.

1. Applicability of “Core” VAWA protections

VAWA prohibits otherwise qualified tenants and applicants from being denied or terminated from housing assistance, or from being denied admission or evicted from, a covered housing program on the basis that the tenant or applicant is or has been the survivor of a VAWA crime.¹¹¹ HUD has provided guidance that these “core” VAWA protections apply to all HUD programs covered by VAWA.¹¹² In certain short-term shelter programs that have no rental agreements, only VAWA’s core protections apply.¹¹³

2. Applicability of full VAWA protections

Transitional and permanent rental housing programs administered by the CoC, whether considered supportive or not, require full VAWA protections in the lease. These full protections include the “core” protections plus additional protections including the right to request an emergency transfer to a new unit and bifurcation of the lease.¹¹⁴ Lease bifurcation refers to the ability of covered housing providers to remove the harm-doer from the unit while allowing the survivor to remain.¹¹⁵ Full VAWA protections also apply to ESG and CoC short-term rental agreements.¹¹⁶ If a tenancy will continue after short-term rental assistance ends, HUD encourages but does not require private landlords to retain VAWA lease terms.¹¹⁷

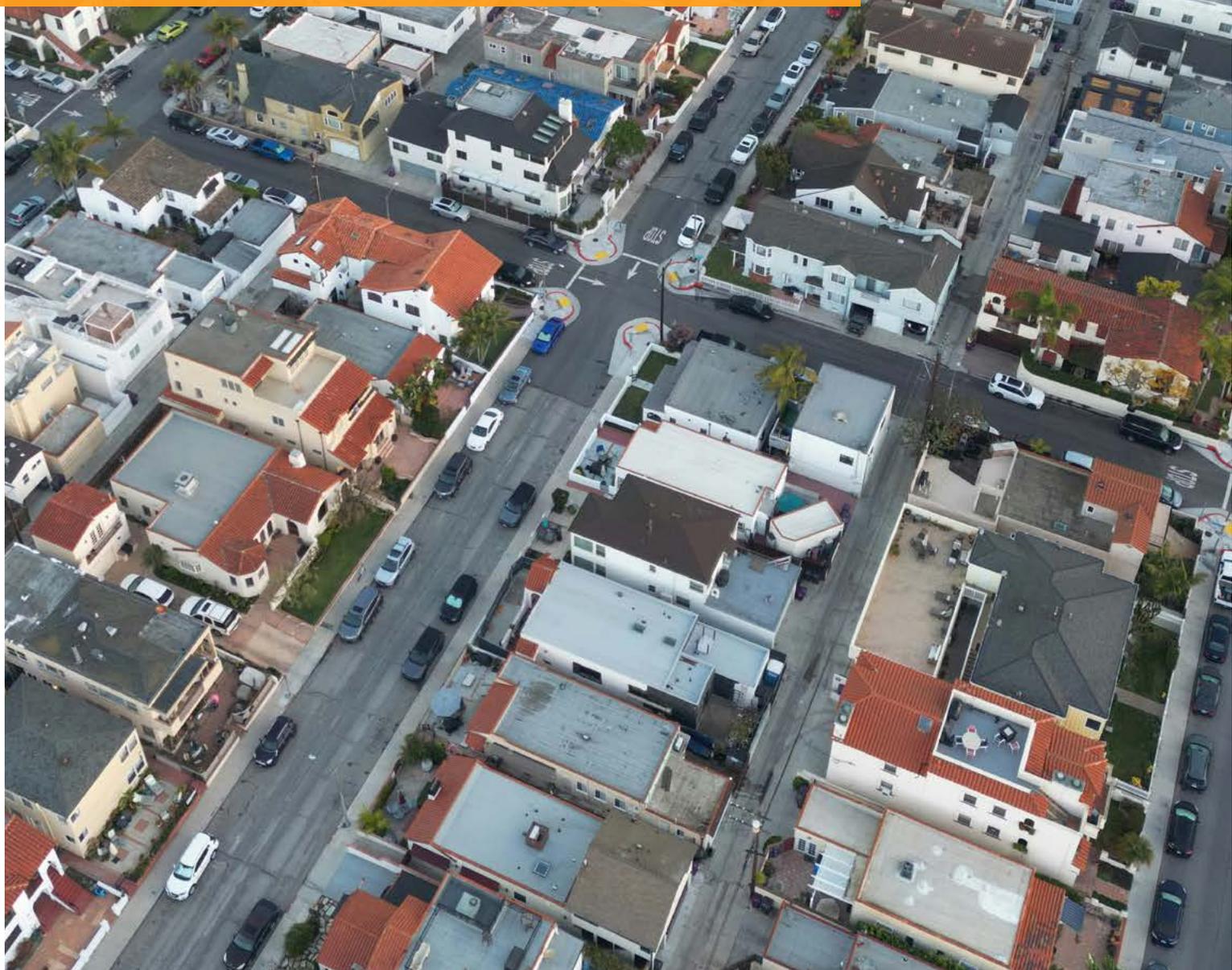
3. Using VAWA to defend terminations and evictions

VAWA provides that actual or threatened VAWA violence or abuse will not be construed as a serious or repeated lease violation by the survivor and will not be considered good cause for terminating the survivor’s tenancy or rental assistance.¹¹⁸ For example, damage to the assisted unit that results from an incidence of violence cannot be used as a basis for evicting or terminating a survivor. VAWA prohibits the eviction of a tenant “solely on the basis of criminal activity directly relating to” a VAWA crime if the tenant or an affiliated individual of the tenant is the victim or threatened victim of the crime.¹¹⁹ VAWA also prohibits retaliation, intimidation, and interference with a VAWA housing right in covered housing.¹²⁰ For example, VAWA could be used as a defense where a housing provider files an eviction because the tenant did not obtain an order for protection or divorce from the harm-doer following an incidence of violence. Except where there is conflicting evidence as to which household member is entitled to VAWA protections, VAWA prohibits housing providers from mandating that a survivor obtain a certain type of documentation to be eligible for VAWA protections.¹²¹ VAWA may be used as a defense to an eviction for nonpayment of rent where there is a connection between the violence and the nonpayment, such as nonpayment as a result of economic abuse or violation of a court order requiring the harm-doer to pay the survivors’ rent.¹²²

Some of VAWA's housing protections are available to anyone regardless of the individual's survivor status. VAWA covered housing providers are required to provide the VAWA Notice of Occupancy Rights under the Violence Against Women Act (Form HUD 5380) with any notice of eviction or termination.¹²³ Failure to provide the notice may be raised as a defense to any eviction, regardless of a person's survivor status.¹²⁴ VAWA also protects the right of tenants, owners, and others to report crime and seek emergency assistance on their own behalf or on behalf of another person in need of assistance.¹²⁵ This protection is available regardless of a person's survivor status and may be raised as a defense to an eviction, for example, for calling 911 too many times.



V.
APPENDIX:
ADVOCACY OPPORTUNITIES
WITH YOUR COC



There are a number of ways advocates can work with their CoCs to increase tenant protections beyond those required by federal statute and regulations. Working with your CoC to draft and implement the following documents and policies can help protect tenants:

- Lease addendum for CoC-funded rental housing (See Appendix A)
- Termination policy and form termination letter that prioritizes housing maintenance and due process (See Appendix B)
- Transfer policy that prioritizes participants impacted by funding lapses (See Appendix C)



APPENDIX A

Tenancy Addendum

Permanent Supportive Housing Continuum of Care Program *(to be attached to Tenant Lease)*

1. Definitions

- a. Agency: The agency or organization responsible for disbursing Housing Assistance Payments to the landlord pursuant to a Housing Assistance Payment (HAP) Contract.
- b. Housing Assistance Payment (HAP): The portion of rent paid by the Agency.
- c. Tenant Rent: The portion of rent for which the tenant is responsible, as determined by the Agency.

2. Program Participation

- a. The landlord is leasing the contract unit to the tenant for occupancy by the tenant's family with assistance under the agency's Permanent Supportive Housing (PSH) Continuum of Care Program.
- b. The landlord has entered into a Housing Assistance Payment (HAP) contract with the agency. Under the HAP contract, the agency will make housing assistance payments to the landlord to assist the tenant in leasing the unit.

3. Lease

- a. The landlord has given the agency a copy of the lease, including any revisions agreed by the landlord and the tenant. The landlord certifies that the terms of the lease are in accordance with all provisions of the HAP contract and that the lease includes this Tenancy Addendum.
- b. If there is any conflict between this Tenancy Addendum and any other provision of the lease, the language of the Tenancy Addendum shall control. The tenant has the right to enforce this Tenancy Addendum against the landlord.

4. Rent

- a. The Tenant is only responsible for the Tenant Rent identified in landlord's Housing Assistance Payment (HAP) contract with agency, or any subsequent amendment notice. The Tenant Rent, in accordance with the HAP, is the maximum amount the landlord may charge the Tenant for rent, including all services, maintenance, and utilities for the contract unit, unless the HAP specifies the Tenant is responsible for utilities.
- b. The Tenant is not responsible for paying the portion of rent paid by agency. The agency's failure to pay the housing assistance payment is not a violation of the lease agreement between landlord and tenant. The landlord may not terminate the tenancy for nonpayment of the agency's HAP.
- c. The landlord may not charge or accept from the Tenant any payment for rent of the unit in addition to the aforementioned Tenant Rent. The landlord must immediately return any excess rent payment to the tenant.
- d. Any changes in the lease or amount of rent must be approved by agency at least 30 days before they go into effect.
- e. In addition to Tenant Rent, only the following fees and charges are permitted: (1) applicable late fees, not to exceed \$25 per month, (2) reasonable service and repair charges for damage above normal wear caused by tenant misuse or neglect, (3) refundable security deposit, (4) refundable pet deposit if applicable, and (5) utility charges if the HAP contract specifies that Tenant is responsible for utilities. The enumerated

fees and charges are separate from Tenant Rent. Tenant Rent payments may not be applied to other fees and charges unless specifically authorized by tenant.

5. Security Deposit

- a. The landlord may collect a security deposit from the tenant, refundable to tenant in accordance with state law.
- b. Should the landlord wish to make deductions from the deposit, the landlord must provide proof of damages and estimate of cost to repair from a qualified professional.

6. Maintenance and Repairs

- a. The landlord must maintain the unit in a decent, safe and sanitary condition. The landlord is responsible for making necessary repairs during the tenancy.
- b. The landlord may only charge the tenant for repairs necessary due to Tenant's damage above normal wear, misuse or neglect.
- c. The landlord may seek reimbursement for repairs under subsection b, but may not delay necessary repairs pending tenant payment.
- d. The landlord must provide 24 hours' written notice before entry into the unit, with the exception of emergencies (including but not limited to fire, flood, or gas leak).

7. Termination of Tenancy by Landlord

- a. The landlord may only terminate the tenancy, or refuse to renew the lease agreement at termination of the original or any subsequent term, because of:
 - i. Serious or repeated violation of the terms and conditions of the lease, if the lease violation continues after a written notice to cease and desist and opportunity to cure of at least 5 days;
 - ii. Violation of federal, state or local law which imposes obligations on the individual in connection with the occupancy and use of the dwelling unit and surrounding premises;
 - iii. Other good cause, such as withdrawal of unit from PSH program at the end of HAP contract term.
- b. The landlord may evict the tenant only by institution of court action.
- c. The landlord must provide tenant with:
 - i. Written notice of at least _____ days in the case of nonpayment or other lease violation;
 - ii. Written notice of at least _____ days in the case of nonrenewal.
- d. The landlord must notify the agency in writing of the commencement of eviction proceedings at the same time the landlord notifies the tenant.
- e. Landlord and tenant may not waive minimum notice requirements under state law.

8. Termination of Tenancy by Tenant

- a. The tenant may terminate tenancy with 30 days' written notice to the landlord prior to expiration of the original or any subsequent lease term.
- b. Where the agency requires tenant to move prior to the end of the lease due to landlord's noncompliance with program rules or the HAP contract, the tenant shall not be deemed in violation of the lease agreement.

9. Termination of Tenancy by Agency

- a. In the event that the agency terminates its HAP contract with the landlord due to the landlord’s noncompliance, the tenant’s termination from the PSH program, or loss of program funding, the lease agreement between the landlord and tenant also terminates on the same day.

10. Reasonable Accommodation under the Fair Housing Act (FHA)

- a. At any time during tenancy, a tenant with disabilities has the right to request a reasonable accommodation. A reasonable accommodation is an exception to a normal rule, policy, practice, or service necessary for the tenant’s full use and enjoyment of their home despite tenant’s disability.
- b. If the tenant’s disability, or disability-related need for an accommodation, is not obvious to the landlord, the landlord is permitted to request that tenant present verification from a qualified professional. The landlord is not entitled to the tenant’s detailed medical records.
- c. Evictions are subject to consideration of whether a reasonable accommodation could mitigate the alleged lease violation for which the tenant is being evicted.

11. Protections for Victims of Abuse under the Violence Against Women Act (VAWA)

- a. Any incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as serious or repeated violations of the lease or other “good cause” for termination of the assistance, tenancy, or occupancy rights of such a victim.
- b. Criminal activity directly relating to abuse, engaged in by a member of the Tenant’s household or any guest or other person under the Tenant’s control, shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant’s family is the victim or threatened victim of domestic violence, dating violence, or stalking.
- c. If a victim of domestic violence must terminate a lease agreement early for safety reasons, this shall not be construed as a violation of the lease agreement.

Landlord (print name)	Signature	Date
-----------------------	-----------	------

Tenant (print name)	Signature	Date
---------------------	-----------	------

APPENDIX B: TERMINATION POLICY AND LETTER

Sample Policy – Client Terminations

Please note that this sample policy was drafted for a youth program, but can easily be adapted for other programs.

1. Onboarding – Ensuring Understanding of Program Rules

Getting started off on the right foot is important. When a youth joins our program, _____ staff will provide them with a written copy of the program rules and the termination policy before the youth begins to receive assistance. It is best practice to email or text a copy of the program rules to the youth as well.

Staff should be sure to discuss key rules and requirements with the youth and ensure the youth understands what will be expected from them.

2. Offering Support – Termination as a Last Resort

Homeless youth are vulnerable and have limited options for housing in our community. The case manager's goal is to support the client so they can succeed in their housing placement and participation with _____. A client's assistance will be terminated only in the most severe cases.

To protect against terminations:

- a. Any time the case manager has concerns about compliance, the case manager will meet informally with the client to remind them of program rules and offer support to ensure the client's continued participation in the Program.
- b. If the case manager suspects the client is or may violate program rules, the Program Director will facilitate a meeting with the client and case manager to review any violations and the consequences of continued non-compliance with program rules. The Program Director and case manager should counsel the client and offer assistance to support the client's ability to remain in the program.
- c. If the client persists in serious violations of the program rules the case manager may recommend the client's termination from the program. The case manager must provide written documentation supporting the reasons for termination and identify the specific conduct that warrants termination of housing.

3. Termination Step 1: Written Notice (*Before Termination*)

Before beginning any termination process, _____ staff must exercise judgment and examine all extenuating circumstances. Most of the time, the client's infractions will not be so serious as to warrant complete termination from the program. Staff should work with the client to learn how _____ can support the client to succeed and then offer that support.

If the case manager has exhausted all efforts to support the client to remain in the program and the client maintains rule violations, the case manager may begin the termination process. The first step is to provide written notice to the program client. This notice (example attached) will contain:

- a. The date of the notice;
- b. The manner the notice was delivered to client;
- c. The name of the staff member issuing the notice;
- d. A clear statement of the reasons for termination, including the rule(s) that the client has violated and the facts the case manager believes demonstrate the client's violation of the rule(s);
- e. A notice that the client has the right to appeal the termination decision;

- f. An explanation of all the ways the client can request an appeal;
- g. The date by which the client must request an appeal; and
- h. The date by which the client will be terminated if they do not pursue and appeal.

Case managers and staff should encourage clients who are notified of termination to pursue an appeal, and support clients to empower themselves by assisting them in seeking an appeal. If a participant seeks an appeal, _____ must continue to provide case management and supportive services to the participant until a decision is reached. While discharge planning should be an on-going process, once the termination process begins, case management should focus on securing alternate safe and stable living arrangements for the client in the event the termination decision becomes final.

4. Termination Step 2: Hearing (*Before Termination*)

_____ will provide clients who request an appeal hearing to review the termination decision. The hearing must be conducted by an individual who did not have a hand in the termination decision and who is not a subordinate of the person who made or approved the decision. It is also the responsibility of this individual to document the discussion at the hearing.

The purpose of the hearing is to give the client an opportunity to tell their side of the story, to review the evidence or information _____ relied on in making its decision, to ask questions of witnesses and/or staff person(s), and to present evidence in support of their continued participation in the Program. Upon request, _____ must provide its evidence to the client prior to the hearing. An advocate or representative of the client and individual(s) having information relevant to the termination may attend and participate in the hearing at the client's request.

Staff will be responsible for scheduling the hearing, notifying all individuals of the hearing date, and ensuring the client's availability to participate in the meeting. The hearing should take place no later than 30 days from the Notice of Termination.

5. Termination Step 3: Written Decision

The individual conducting the hearing must issue a written decision to the client within 10 days of the hearing. This written decision must include:

- a. Date, time and place of the hearing;
- b. Names of all attendees;
- c. Alleged grounds or reason for the proposed termination;
- d. List of all documents and witnesses presented at the hearing;
- e. A statement of the individual's decision, including an explanation of the facts and evidence relied upon for the decision; and
- f. A statement of the client's right to appeal the decision to the Continuum of Care and how to request an appeal.

6. Client Appeal to the Continuum of Care (CoC)

If after a hearing _____ upholds its decision to terminate the client from the Program, the client has the right to appeal the termination to the CoC, whose decision is binding. If the client appeals, _____ will not terminate assistance before the CoC makes a decision on the appeal.

7. Termination Step 4: Discharge Planning and Participation Termination

Any final termination decision will be effective 30 days from the date the notice of the termination decision is received by the client. After the 30 days have expired, the client will have seven (7) days to leave the premises. _____ will make every effort to assist the client with removing their belongings from the premises, including providing packing supplies and transportation, if needed. _____ will store any belongings remaining on the premises for a period of 60 days before discarding the items. Discharge planning should be accelerated once termination from the Program is certain. Termination from the Program shall not bar the client from receiving services and housing from this Program or any other program within the CoC program region.

_____ must continue to provide case management and supportive services to the client until the client has exited the Program. Case management and supportive services will focus on discharge planning and providing meaningful resources and referrals to the client, including re-enrolling the client into Coordinated Entry and assisting the client with accessing medical care, mental health services, legal services, and life skills as necessary to promote a healthy and successful discharge process. Referrals to other housing providers within the CoC program region should be documented and a firm hand-off to that program should take place.

Notice of Termination of Participant Assistance

TO: Program Participant

FROM: Housing Provider; Staff Name

Agency Name

DATE: Date

DELIVERED VIA:

- Hand-delivery**
- Email**
- Text**
- Mail**
- Posting**

RE: Termination of Rental Assistance

You joined the [program name] on [date]. At that time, we provided you with a handbook, including a list of rules and requirements to participate in our program.

We believe you have not followed the following rules:

- List Violation(s). Each listed violation should state the rule/requirement, and specific information about why you believe the participant broke the rule. For example:
- Mishandling keys. On p. # of the handbook, we state, “[quote rule].” We believe you have broken this rule by [specify actions].
- Unauthorized occupants. On p # of the handbook, we state, “[quote rule].” We believe you have broken this rule by [specify actions].

Before sending this letter, we attempted to discuss these problems with you. [Explain what happened.] Because you have violated the rules, **you will be terminated from the program in 30 days on [specify date].**

You have the right to appeal this decision. If you want to appeal, you have the right to a hearing. A hearing is a meeting where you can tell us why you disagree with this decision. You can bring someone with you to help you explain what happened. You can also bring any documents or other information with you that helps support your position.

You have 10 days to ask for an appeal. To appeal, you can send a text to [number] or an email to [address], or you can sign the form at the bottom of this letter and bring it to [address]. **Remember, you must ask for your appeal by (date) or else our decision to terminate your housing will become final.**

I wish to receive a hearing on the termination of my rental assistance.

Print name

Signature

APPENDIX C

Sample Transfer Policy – Continuums of Care

Purpose: This outlines steps and processes for program participants who are currently housed within a Continuum of Care (CoC) funded program to transfer to another CoC funded program via a transfer. If a participant is need of relocation but not a transfer to another program does not need to submit a transfer request.

This policy outlines the conditions for transferring between programs of the same type to different types of CoC-funded programs. All CoC should have a transfer workgroup through the Coordinated Entry or similar System.

The process works best if it is driven by “what does the client need” rather than by provider eligibility. Through this, the Coordinated Entry System (CE) or similar system seeks to prevent and reduce the number of people exiting back to homelessness. To accomplish that, CE must provide flexibility to programs and households to transfer between program types to better meet the needs and preferences of a household. A key component of any transfer process is an assessment of a household to determine whether the levels of service are appropriate, need to be increased, or be reduced. Transfers between programs occur when a participant needs to move from one program or project to another. There may be various reasons to transfer, but the priority is to keep the participant stable and housed.

A household may need to transfer to another program for several reasons, such as needing an increased or decreased level of services, change in family composition, the closure of a program, a pending eviction from a master leased property, or various other reasons.

Definition of a Transfer: A CoC program transfer is a transfer from a CoC or ESG funded housing program to another CoC or ESG funded housing program via a requested transfer. This does not cover any transfer that is outside of the CoC. Such as from CoC funded programs to non-CoC funded programs, such as ESSHI, Assisted living etc. Any transfer to non-CoC funded program is not a required to go through the CE transfer committee. The transfer may be initiated by participants or agency to better meet a household’s ongoing needs and reduce the household’s risk of returning to homelessness and/or other adverse outcomes.

A transfer describes a process where a client enrolled in one housing program is moved or transferred to another housing program. Transfers take place when there is a presentation of strong evidence indicating that a particular type of housing is unfit based on a client’s needs, safety, and overall well-being.

1. Transfers Between the Same Program (PSH to PSH or RRH to RRH)

When a transfer is deemed necessary from one HUD CoC PSH program to another, the transfer request will be prioritized within the CES upon approval. Transfers should be reserved for grievance issues that are not able to be resolved within the current program and/or violation of program rules at the current service agency due to program termination. When a transfer from a housing program is deemed necessary and approved by the Transfer Workgroup (which should include at least one participant), the transfer request will be prioritized to the next available opening over other households on the Housing Priority List. Transfer requests must be submitted by the current service agency and communicated to the Lead in writing by completing the Request for Transfer Template, and in coordination with the household or participant. Approved transfers will be processed in a timely manner. However, based on housing availability accommodations may take longer.

2. Transfers between/from Rapid Rehousing (RRH) to Permanent Supportive Housing (PSH)

Transfers from an RRH program to a PSH program are allowable if the household met all requirements for chronic homelessness when entering the RRH program. Households do not accrue time toward chronic homelessness while enrolled in the RRH program. Transfer requests must be submitted by the current RRH program and be submitted to the CES team via email. A completed RRH to PSH Transfer Form detailing the specific reasons for the transfer request and documentation of chronic homelessness must be included. Approved transfers will be processed in a timely manner based on PSH availability and the need within CES. For instance, if a household is currently housed in an RRH program, and is not at imminent risk of a return to homelessness, a literally homeless household may be prioritized.

3. Emergency Transfers

In compliance with the Violence Against Women Act (VAWA), the CES allows emergency transfers for households that are victims of domestic violence, dating violence, sexual assault, or stalking. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation.

HUD 24 CFR Part 5 states that a household qualifies for a VAWA emergency transfer when the household requests a transfer, reasonably believes there is a threat of imminent harm from further violence if the tenant remains in the same unit, or a sexual assault.

The transfer request will be processed as quickly as possible. In the meantime, the program will evaluate the need for an internal transfer to a new unit based on need and availability.

4. Transfers Based on a Grievance/Program Violation

If a household/participant has a grievance that cannot be resolved or is in violation of a program rule and is in jeopardy of program termination, a transfer to another program (instead of termination) is the best-case scenario and the preferred option. Exiting a household to homelessness should be avoided in nearly every scenario.

As a reminder: “The recipient or subrecipient may terminate assistance to a program participant who violates program requirements. However, the recipient or subrecipient must exercise judgment and examine all extenuating circumstances in determining when violations warrant termination so that a program participant’s assistance is terminated **only in the most severe cases**. It also indicates “Recipients and subrecipients should provide special consideration and examination of extenuating circumstances when considering **termination of assistance** for difficult-to-house populations, such as those individuals residing in permanent supportive housing projects (§24 CFR 578.91(a) and §24 CFR 576.402(a)).”

It is the policy of this organization to transfer clients and or/households rather than terminate them back into homelessness and that means to and from one CoC funded program to another CoC funded program depending upon and taking into account eligibility status as well as household or participant need.

5. Transfers Based on a Program Change

When a program is losing its funding or is shutting its doors program staff and the Transfer Workgroup must work diligently to transfer clients or households to another program. This is especially true of those in Permanent Supportive Housing (PSH) in light of the current political climate to eliminate PSH. It is the policy of this organization to be flexible in allowing transfers to other CoC funded housing.

Those who have experienced or are chronically homeless should have priority entering a Permanent Supportive Housing program. This also means if programs are cut by funding or policy, those who have experienced chronic

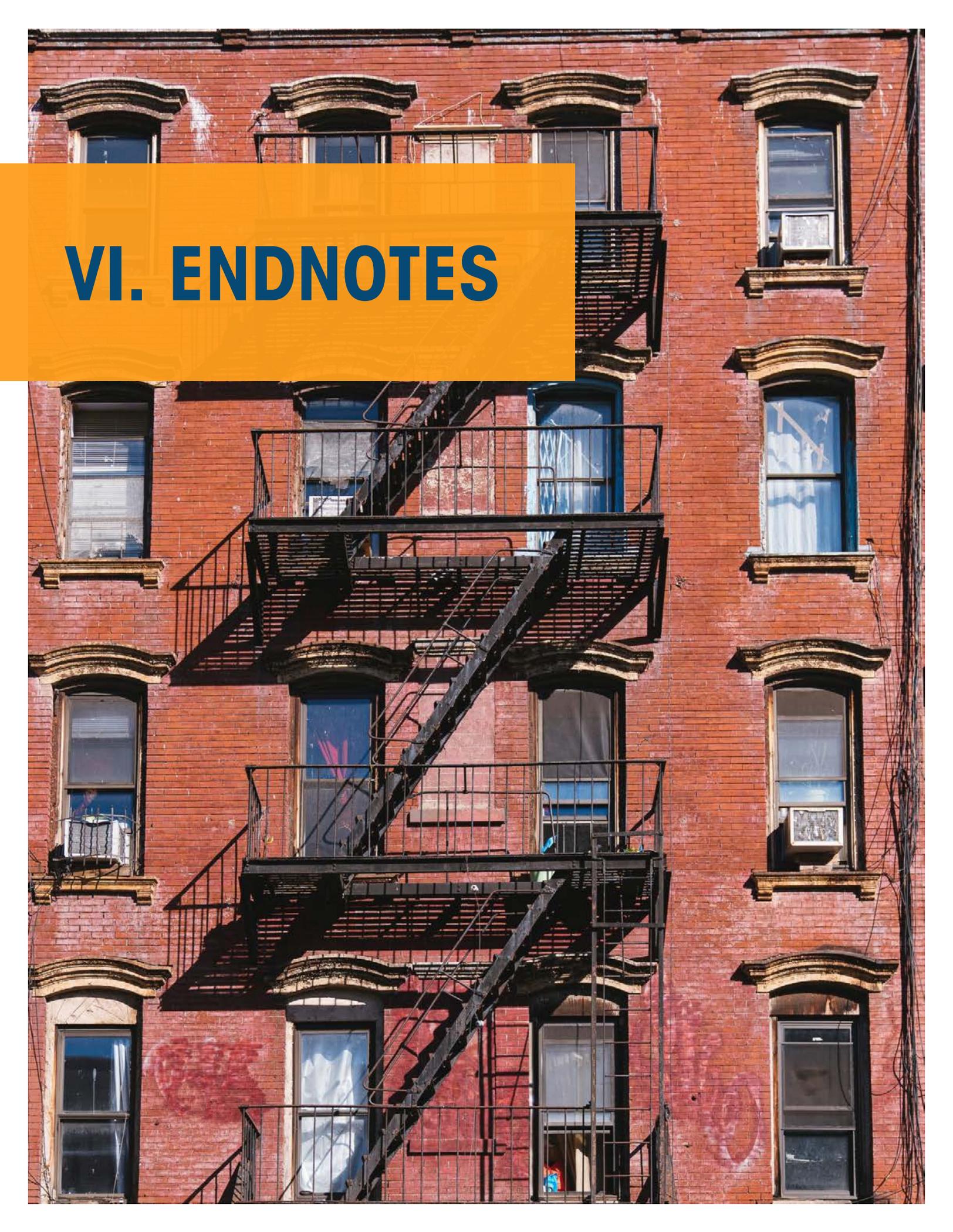
homelessness before entering PSH, should continue to be prioritized as once experiencing chronic homelessness and be allowed to enter programs with the most lenient viewing of the policy and the language and in the light most favorable to the client's eligibility.

6. Alternatives to termination due to funding cuts.

Programs and CoC's should begin planning for CoC-programming cuts now and receiving community input on how to best mitigate consequences for homeless individuals and families who face termination due to loss of CoC-program funding. CoC leadership should prioritize, engage in strategic planning and ask how it plans to address cuts to PSH in their desired area.

7. Housing Options for Program Participants in De-Funded Projects.

Historically, HUD has instructed recipients and subrecipients facing CoC-funding cuts to "try as hard as possible to ensure that program participants do not become homeless once the project shuts down." One approach to mitigating returns to homelessness for impacted participants is to prioritize and transfer participants to another CoC or ESG-funded housing program. In some CoCs, this may require that the CoC amend their prioritization standards to give individuals and families in de-funded programs priority over others on the housing list. The individual or family, however, must still meet the eligibility requirements for the existing CoC or ESG-funded program. This may pose a barrier for some individuals and families who do not meet the homelessness definition required for program admittance. However, many of those impacted will retain their homeless or chronically homeless status, which is often needed to establish eligibility for other ESG and CoC programming. Again, the language and experience of the household or individual should be viewed in favor the most flexible situation for the participant, which will not send them back into homelessness.



VI. ENDNOTES

- 1 National Low Income Housing Coalition, Trump Administration Releases CoC Funding Notice Drastically Cutting Funding for Permanent Housing and Putting 170,000 People At Risk of Homelessness (Nov. 14, 2025), <https://nlihc.org/resource/trump-administration-releases-coc-funding-notice-drastically-cutting-funding-permanent>.
- 2 Pub. L. No. 111-22, 123 Stat. 1632, 1663, 42 U.S.C.A. §11301 (West 2004) et seq.
- 3 National Low Income Housing Coalition, Housing First, <https://nlihc.org/explore-issues/housing-programs/housing-first>.
- 4 National Alliance to End Homelessness, Summary of the HEARTH Act (Oct. 21, 2008), <https://endhomelessness.org/resources/policy-information/summary-of-hearth-act-2/>.
- 5 Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program, 77 Fed. Reg. 45442 (July 31, 2012); amended by Housing Counseling: New Certification Requirements, 81 Fed. Reg. 90632 (Dec. 14, 2016).
- 6 Homeless Emergency Assistance and Rapid Transition to Housing: Emergency Solutions Grants Program and Consolidated Plan Conforming Amendments, 76 Fed. Reg. 75954 (Dec. 5, 2011); amended by Housing Counseling: New Certification Requirements, 81 Fed. Reg. 90632 (Dec. 14, 2016).
- 7 Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program, supra note 5.
- 8 24 C.F.R. § 578.3.
- 9 Id.
- 10 See 24 C.F.R. § 578.53.
- 11 24 C.F.R. § 578.3.
- 12 24 C.F.R. § 578.3.
- 13 The individual or family must meet the definition of homelessness as provided in 24 C.F.R. § 578.3.
- 14 24 C.F.R. § 578.37(a)(1)(ii)(C-F)
- 15 24 C.F.R. § 578.37(a)(1)(ii)(A).
- 16 24 C.F.R. § 578.3.
- 17 HUD Awards and Allocations, HUD Exchange, <https://www.hudexchange.info/GRANTEES/ALLOCATIONS-AWARDS/>.
- 18 24 C.F.R. § 578.91(b)(1).
- 19 Homeless Emergency Assistance and Rapid Transition to Housing: Emergency Solutions Grants Program and Consolidated Plan Conforming Amendments, supra note 6.
- 20 HEARTH: ESG Program and Consolidated Plan Conforming Amendments – ESG Program Interim Rule, HUD Exchange (Oct. 2023), <https://www.hudexchange.info/resource/1927/hearth-esg-program-and-consolidated-plan-conforming-amendments/>.
- 21 24 C.F.R. § 578.7(a)(8)-(9).
- 22 24 C.F.R. § 576.1.
- 23 24 C.F.R. § 576.101(a).
- 24 24 C.F.R. § 576.102.
- 25 24 C.F.R. § 576.103.
- 26 24 C.F.R. § 576.104.
- 27 42 U.S.C.A. § 11386(g) (West 2009).
- 28 24 C.F.R. § 578.91(b).
- 29 24 C.F.R. § 578.91(c) (emphasis added).
- 30 Participant Termination, HUD Exchange, <https://www.hudexchange.info/homelessness-assistance/coc-esg-virtual-binders/coc-esg-additional-requirements/participant-termination/>.
- 31 24 C.F.R. § 578.91(a).
- 32 24 C.F.R. § 578.53(b)(3).
- 33 24 C.F.R. § 578.37(a)(1)(ii)(D).
- 34 See 42 U.S.C.A. § 11375(e) (West 2009); 24 C.F.R. § 576.402.
- 35 CoC and ESG Additional Requirements- Participant Termination, HUD Exchange, <https://www.hudexchange.info/homelessness-assistance/coc-esg-virtual-binders/coc-esg-additional-requirements/participant-termination/>.
- 36 Grantee Contact Information, HUD Exchange, <https://www.hudexchange.info/grantees/contacts/>.
- 37 Competition Resources: Next Steps for Projects Not Renewed in the FY 2015 CoC Program Competition, HUD Exchange (June 10, 2016) (on file with NHLP).
- 38 CoCs are federally required to establish written policies for prioritizing eligible individuals and families receiving PSH, RRH and TH. 24 C.F.R. § 578.7(a)(9).
- 39 Competition Resources, supra note 36.
- 40 CoC FAQs, HUD Exchange, <https://www.hudexchange.info/faqs/529/is-an-individual-or-family-that-is-receiving-rapid-re-housing-assistance/>.
- 41 CoC at a Glance: Disability Definition, HUD Exchange, <https://files.hudexchange.info/resources/documents/Virtual-Binders-At-A-Glance-Disability-Definition.pdf>.
- 42 Competition Resources, supra note 36.
- 43 24 C.F.R. § 576.103.
- 44 24 C.F.R. § 576.2. At risk of homelessness means:
 - (1) An individual or family who: (i) Has an annual income below 30 percent of median family income for the area, as determined by HUD; (ii) Does not have sufficient resources or support networks . . . immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the “homeless” definition in this section; and (iii) Meets one of the following conditions: (A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance; (B) Is living in the home of another because of economic hardship; (C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance; (D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by Federal, State, or local government programs for low-income individuals; (E) Lives in a single-room occupancy

or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than 1.5 persons reside per room, as defined by the U.S. Census Bureau; (F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or (G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient’s approved consolidated plan; (2) A child or youth who does not qualify as “homeless” under this section, but qualifies as “homeless” under [other federal statutes]; or (3) A child or youth who does not qualify as “homeless” under this section, but qualifies as “homeless” under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

45 24 C.F.R. § 576.2. To qualify as “homeless” for preventative assistance, the individual or family must meet on of the following criteria:

(1) an individual or family who will imminently lose their primary nighttime residence, provided that: (i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance; (ii) No subsequent residence has been identified; and (iii) The individual or family lacks the resources or support networks, *e.g.*, family, friends, faith-based or other social networks, needed to obtain other permanent housing . . . ;

(2) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who: (i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a); (ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance; (iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and (iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(3) Any individual or family who: (i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual

assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual’s or family’s primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence; (ii) Has no other residence; and (iii) Lacks the resources or support networks, *e.g.*, family, friends, faith-based or other social networks, to obtain other permanent housing.

46 24 C.F.R. § 576.103.

47 24 C.F.R. § 578.3

48 24 C.F.R. § 578.3

49 24 C.F.R. § 578.91(b).

50 24 C.F.R. § 578.91(c).

51 24 C.F.R. § 578.3.

52 15 U.S.C.A. § 9058(c) (West 2020).

53 15 U.S.C.A. § 9058(a)(2)(A)(i) (West 2020).

54 34 U.S.C.A. § 12491(a)(3)(D) (West 2020).

55 NHLP, Enforcing the CARES Act 30-Day Eviction Notice Requirement (Feb. 4, 2025), <https://www.nhlp.org/wp-content/uploads/2025.02.04-Enforcing-the-CARES-Act-30-Notice.pdf>.

56 U.S Department of HUD, Office of Community Planning and Development, Annual Homelessness Assessment Report to Congress (AHAR) (December 2022), <https://www.huduser.gov/portal/sites/default/files/pdf/2022-ahar-part-1.pdf>.

57 HUD, CoC Homeless Populations and Subpopulations Report (2024).

58 42 U.S.C.A. §§ 3601 et seq. (West 1968).

59 29 U.S.C.A. § 794 (West 2016).

60 42 U.S.C.A. § 3604(f) (West 1988).

61 *E.g.* the FHA does not apply to single-family homes that are “sold or rented by an owner,” so long as the owner does not own (or have an ownership interest in) more than three single-family homes simultaneously. 42 U.S.C.A. § 3603(b) (1) (West 1968). The FHA does not apply in “rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently,” if the owner maintains their residence in one of those rooms or units. 42 U.S.C.A. § 3603(b)(2) (West 1968).

62 42 U.S.C.A. § 3602(b) (West 1988).

63 For a brief overview of how courts have considered the question of what constitutes a “dwelling” under the FHA, see Renee Williams, *Shelters and the Definition of “Dwelling” Under the Fair Housing Act*, 43 *Hous. L. Bull.* 225, 230–31 (Nov./Dec. 2013), <https://www.nhlp.org/wp-content/uploads/Shelters-and-the-Definition-of-Dwelling-43-Hous.-L.-Bull.-225-230-31-Nov-Dec-2013.pdf>.

64 *Villegas v. Sandy Farms, Inc.*, 929 F. Supp. 1324 (D. Or. 1996).

65 *United States v. Columbus Country Club*, 915 F.2d 877 (3d Cir. 1990).

66 *Hovsons, Inc. v. Twp. of Brick*, 89 F.3d 1096 (3d Cir. 1996).

67 *Louisiana Acorn Fair Hous. v. Quarter House, Inc., et al.*, 952

- F. Supp. 352 (E.D. La. 1997); but see *Angstman v. Carlsbad Seapoint Resort II, L.P.*, 2011 WL 2009999 (S.D. Cal. May 23, 2011).
- 68 *Baxter v. City of Belleville, Ill.*, 720 F. Supp. 720 (S.D. Ill. 1989).
- 69 *United States v. Univ. of Neb. at Kearney*, 940 F. Supp. 2d 974 (D. Neb. 2013).
- 70 *Drazen v. Town of Stratford*, 2013 WL 4094355 (D. Conn. Aug. 13, 2013) (granting tenant’s motion for reconsideration and vacating prior ruling granting summary judgment to defendants since carriage house, which is an accessory building, “represents a facility that residents use for meetings in connection with their residency,” and, thus, would fall under the FHA’s “contemplation of provision of services or facilities in connection with a dwelling”).
- 71 *Garcia v. Condarco*, 114 F. Supp. 2d 1158 (D.N.M. 2000).
- 72 *Schneider v. County of Will*, 190 F. Supp. 2d 1082 (N.D. Ill. 2002).
- 73 *Patel v. Holley House Motels*, 483 F. Supp. 374 (S.D. Ala. 1979).
- 74 *Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216 (9th Cir. 2012).
- 75 See *Williams, Shelters and the Definition of Dwelling*, supra note 60, at 230–31 (citing cases).
- 76 H.R. Rep. 100-711 at 18 (1988), reprinted in 1988 U.S.C.C.A.N. 2179, 2183.
- 77 California Government Code § 12900 et seq.
- 78 California Code of Regulations § 12176.
- 79 42 U.S.C.A. § 3604(f) (West 1988).
- 80 29 U.S.C.A. § 706(20)(B) (West 2014); 42 U.S.C.A. § 3602(h) (West 1988).
- 81 See *Matarese v. Archstone Pentagon City*, 2011 WL 2144533, slip op. (E.D. Va. May 31, 2011) (finding that tenant with multiple chemical sensitivities did not prove she had disability, but that was irrelevant because owner regarded her as having a disability).
- 82 42 U.S.C.A. § 3602(h) (West 1988).
- 83 Joint Statement of The Department of Housing and Urban Development and Department of Justice, Reasonable Accommodations Under the Fair Housing Act, 12 (2004), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf (hereinafter “Joint Statement”). Note that as of this writing, this document has not been rescinded by HUD and DOJ as part of their mass rescission of civil rights guidance.
- 84 *Id.* at 10.
- 85 *Id.*
- 86 *Id.*
- 87 42 U.S.C.A. § 3604(f)(3)(B) (West 1988).
- 88 *Bryant Woods Inn, Inc. v. Howard County, Maryland*, 124 F.3d 597 (4th Cir. 1997); *Lapid-Laurel, L.L.C. v. Zoning Bd. Of Adjustment of the Twp. of Scotch Plains*, 284 F.3d 442 (3d Cir. 2002); *Giebeler v. M & B Assoc.*, 343 F.3d 1143 (9th Cir. 2003); *Schwarz v. City of Treasure Island*, 544 F.3d 1201 (11th Cir. 2008).
- 89 *Huynh v. Harasz*, 2016 WL 2757219, (N.D. Cal. May 12, 2016) (Court determined that a blanket policy of denying all reasonable accommodations without an analysis of each one on a case-by-case basis was a violation of the Fair Housing Act, Section 504, and the ADA.)
- 90 24 C.F.R. § 8.11 (pertains to employment and housing); see also Joint Statement, supra note 80, at 7.
- 91 Joint Statement, supra note 80, at 8.
- 92 Joint Statement, supra note 80, at 7.
- 93 See also *Schwarz*, 544 F.3d at 1223 (finding that request to waive occupancy turnover rule for halfway house would fundamentally alter zoning scheme intended to create pockets of stable, single-family neighborhoods); *Estate of Stoick v. McCorvey*, No. 10-1030, 2011 WL 3419939, at *7 (D. Minn. July 29, 2011) (finding that request to waive criminal history of potential tenant fundamentally altered the nature of landlord’s policy to protect the health and safety of its tenants).
- 94 *Giebeler*, 343 F.3d at 1157-59; See also *Utah Labor Comm’n v. Paradise Town*, 660 F.Supp.2d 1256 (finding that granting exception to single family zoning requirement would not fundamentally alter nature of zoning plan since tenant seeks only a conditional use permit, not a re-zoning of their lot).
- 95 42 U.S.C.A. § 3604(f)(9) (West 1988).
- 96 24 C.F.R. § 9.131 (stating that “(c) In determining whether an individual poses a direct threat to the health or safety of others, the agency must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.)
- 97 *Super v. D’Amelia & Assocs., LLC*, 2010 WL 3926887 (D. Conn. Sept. 30, 2010) (finding that housing authority violated FHA and Section 504 when it terminated a tenant’s voucher for assaulting an employee without considering her request for reasonable accommodation which included her seeking mental health treatment.)
- 98 *Housing Auth. of Camden v. Williams*, 2011 WL 1261109 (N.J. Super. Ct. App. Div. Apr. 6, 2011) (unreported) (remanding case to consider whether a reasonable accommodation would prevent eviction where a public housing tenant after she threatened a building security guard with a knife and pleaded guilty to terroristic threats).
- 99 820 F. Supp. 636 (D.N.H. 1993)
- 100 See, e.g. *Sinisgallo v. Islip Hous. Auth.*, 865 F.Supp.2d 307 (E.D.N.Y. 2012) (tenants showed likelihood of success on their claim that PHA violated reasonable accommodation requirements by terminating tenancy for violent criminal activity where assault occurred because of a mental health disability and condition had been treated through adjustment of medication); *Roe v. Hous. Auth. of Boulder*, 909 F. Supp. 814 (D. Colo. 1995) (before eviction, PHA must show no reasonable accommodation would eliminate or minimize risk tenant poses to other tenants); *Roe v. Sugar River Mills*

- Assoc., 820 F. Supp. 636 (D.N.H. 1993) (accommodation must be attempted before proceeding with eviction against mentally disabled tenant for misconduct); *Boston Hous. Auth. v. Bridgewater*, 452 Mass. 833 (2009) (before evicting a public housing tenant, the PHA must consider whether a causal link existed between tenant’s psychiatric disability and assault on another tenant, for purposes of determining whether requested reasonable accommodation was related to disability). But see *Groteboer v. Eyota Econ. Dev. Auth.*, 724 F. Supp. 2d 1018 (D. Minn. 2010) (where eviction was based on alleged reckless operation of tenant’s electric wheelchair, reasonable accommodation defense rejected because tenant failed to provide evidence that owner refused to accept accommodation requests, whereas tenant had refused to accept negotiated agreement); *Herriot v. Channing House*, 2008 WL 3929214 (N.D. Cal. Aug. 26, 2008) (Continuum of Care facility did not violate Fair Housing Act by requiring resident to move into assisted living facility because resident required around-the-clock assistance).
- 101 See *Radecki v. Joura*, 114 F.3d 115, 116 (8th Cir. 1997); *Kravis v. Justice of the Peace Court 17*, No. 311, 2022, 2023 WL 2975136, * 4, n. 34 (Del. April 17, 2023) (“In the context of an eviction action, the request [for a reasonable accommodation] can be made any time before the tenant is ‘actually evicted.’”, citing numerous federal and state court opinions and law review); *Anast v. Commonwealth Apts.*, 956 F. Supp. 792 (N.D. Ill. 1997) (holding that tenant sufficiently pled that landlord should have postponed eviction hearing while she was hospitalized); *Cobble Hill Apts. Co. v. McLaughlin*, 1999 Mass. App. Div. 166 (Mass. App. Div. 1999) (holding that landlord should have considered staying eviction pending agreement to secure mental health assistance as RA); *City Wide Assoc. v. Penfield*, 409 Mass. 140, 564 N.E.2d 1003 (Mass. 1991) (affirming that a proposal to “forbear from further eviction steps . . . to give her an opportunity to pursue a program of outreach and counselling” to address disability-related damage was reasonable).
- 102 *Galia v. Wasatch Advantage Grp. LLC*, No. 19-CV-08156-JCS, 2021 WL 1516372, at *6 (N.D. Cal. Apr. 16, 2021) (Where tenant incurred late fee every month due to late payment as a result of social security check arriving after the first, the facts were sufficient to state a prima facie case of discrimination based on failure to reasonably accommodate under § 3604(f)(3) of the FHA); *Watson v. Vici Cmty. Dev. Corp.*, No. CIV-20-1011-F, 2021 WL 1394477, at *9 (W.D. Okla. Apr. 12, 2021) (“The factual allegations, accepted as true, indicate that allowing Watson to pay her rent on the third Wednesday of the month [when she received her social security check] was necessary to enable her to live in the apartment unit.”) *Fair Hous. Rts. Ctr. in Se. Pennsylvania v. Morgan Props. Mgmt. Co., LLC*, No. CV 16-4677, 2017 WL 1326240, at *9 (E.D. Pa. Apr. 11, 2017) (“Even though granting SSDI recipients more time to pay their rent may provide them with preferential treatment, such accommodation may be necessary because a disabled person may have to wait until she receives her SSDI check to afford housing policy to charge people with disabilities late charges because they receive their benefits after the first of the month.”)
- 103 *Dubois v. Ass’n of Apartment Owners of 2987 Kalakaua*, 453 F.3d 1175, 1179 (9th Cir. 2006).
- 104 *Renewal Homes v. Laneheart*, 2017-0199 (La. App. 4 Cir. 10/18/17), 316 So. 3d 936, 942 (“The appellant’s mere participation in the Louisiana Permanent Supportive Housing Program is confirmation that the appellant was, and always has been, aware of the appellee’s disabling condition.”)
- 105 42 U.S.C.A. § 3604(f)(9) (West 1988).
- 106 24 C.F.R. § 8.53.
- 107 *Anast*, 956 F. Supp. at 801 (holding that tenant sufficiently pled that landlord should have postponed eviction hearing while she was hospitalized).
- 108 34 U.S.C.A. § 12491, et seq. (West 2022).
- 109 34 U.S.C.A. § 12491(a)(3)(West 2022) (listing covered housing programs).
- 110 For CoC lease agreements, see 24 C.F.R. §§ 578.99(j)(5)(i)-(iv), 578.99(j)(6)(i)-(ii). For ESG lease agreements, see 24 C.F.R. §§ 576.106 (e) & (g), 576.409(a).
- 111 34 U.S.C.A. § 12491(b)(1)(West 2022).
- 112 Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, 81 Fed. Reg. 80,724, 80,724 – 80,725 (Nov. 16, 2016).
- 113 E.g., ESG “emergency shelters,” 24 C.F.R. § 576.409(f); “safe haven” shelters funded under the CoC program, 24 C.F.R. § 578.99(j)(9).
- 114 34 U.S.C.A. § 12491(b)(3)(B) (West 2022) (lease bifurcations); 34 U.S.C.A. § 12491(e) (West 2022) (emergency transfers); 24 C.F.R. § 578.99(j)(VAWA protections in CoC programs).
- 115 34 U.S.C. § 12491(b)(3)(B)(i) (West 2022); 24 C.F.R. § 578.99(j)(7) (lease bifurcations in CoC programs).
- 116 Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, supra note 109, at 80,790. VAWA lease terms are not required where ESG assistance is “solely for rental arrears.” 24 C.F.R. § 576.106(g).
- 117 *Id.* at 80,789.
- 118 34 U.S.C.A. § 12491(b)(2) (West 2022).
- 119 34 U.S.C.A. § 12491(b)(3)(A) (West 2022).
- 120 34 U.S.C.A. § 12494 (West 2022).
- 121 34 U.S.C.A. § 12491(c)(3) (West 2022).
- 122 Violence Against Women Reauthorization Act of 2013 Guidance, PIH 2017-08 (HA), 7-8 (May 19, 2017).
- 123 34 U.S.C.A. § 12491(d)(2) (West 2022); 24 C.F.R. § 578.99(j)(4)(i).
- 124 *DHI Cherry Glen Associates, L.P.*, 259 Cal. Rptr. 3d 410, 415-17 (Calif. App. Div. 2019); *Housing Authority of City of Hartford v. Shahine*, 2022 WL 2663954 (Conn. Super. Ct. Apr. 26, 2022) (unpublished).
- 125 34 U.S.C.A. § 12495 (West 2022).