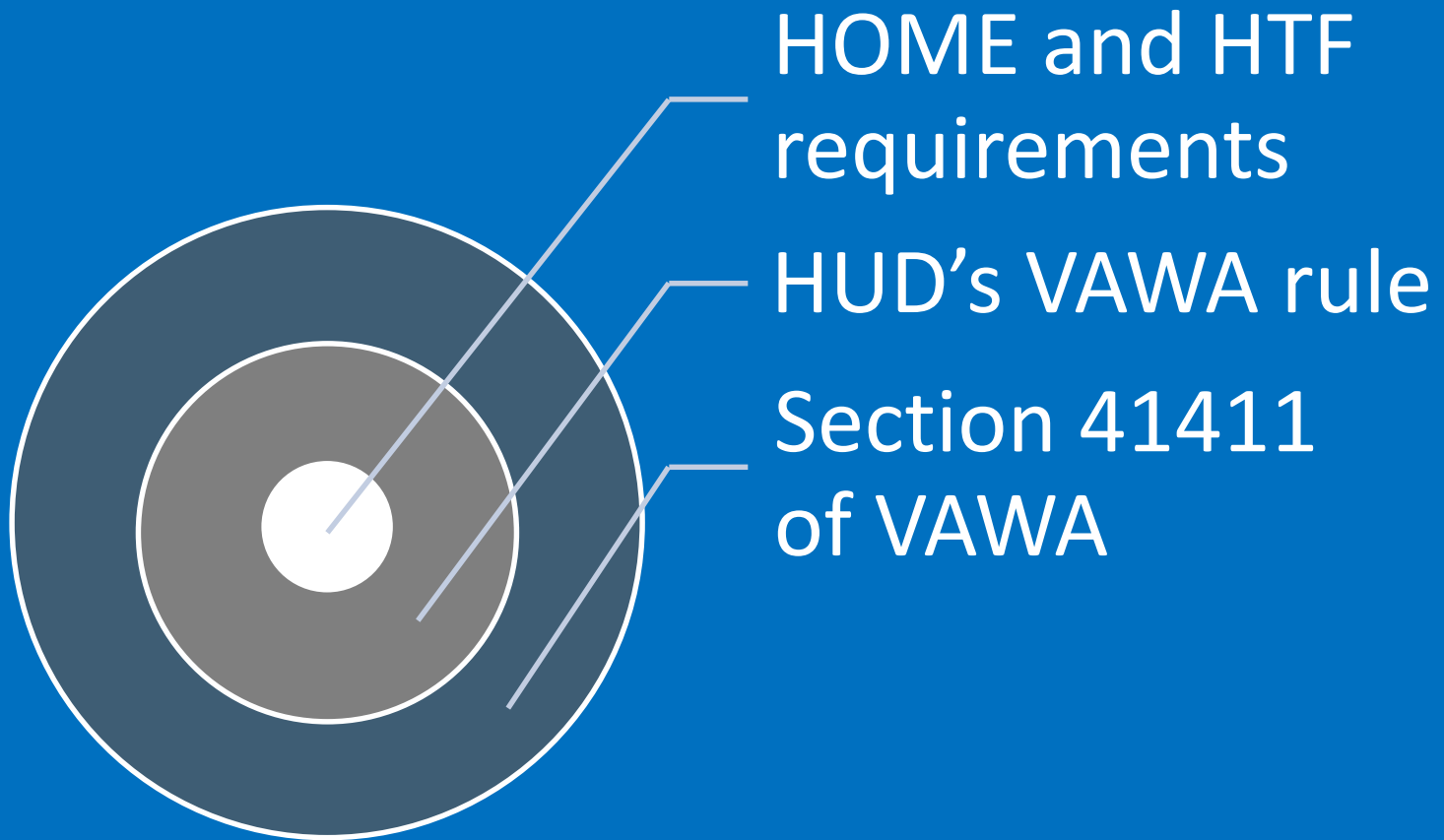


Implementing HUD's VAWA Rule in the HOME and HTF Programs

NCSHA HFA Institute
January 8, 2018



Today's focus



What is VAWA?

Covered Housing Programs

Original HUD programs

- Public Housing
- Section 8 Programs

Added HUD programs

- HOME
- Sections 202 and 811
- HOPWA
- McKinney-Vento Programs
- Multifamily Rental Housing

• Non-HUD Programs

- LIHTC
- Rural Housing Assistance



HUD's VAWA rule

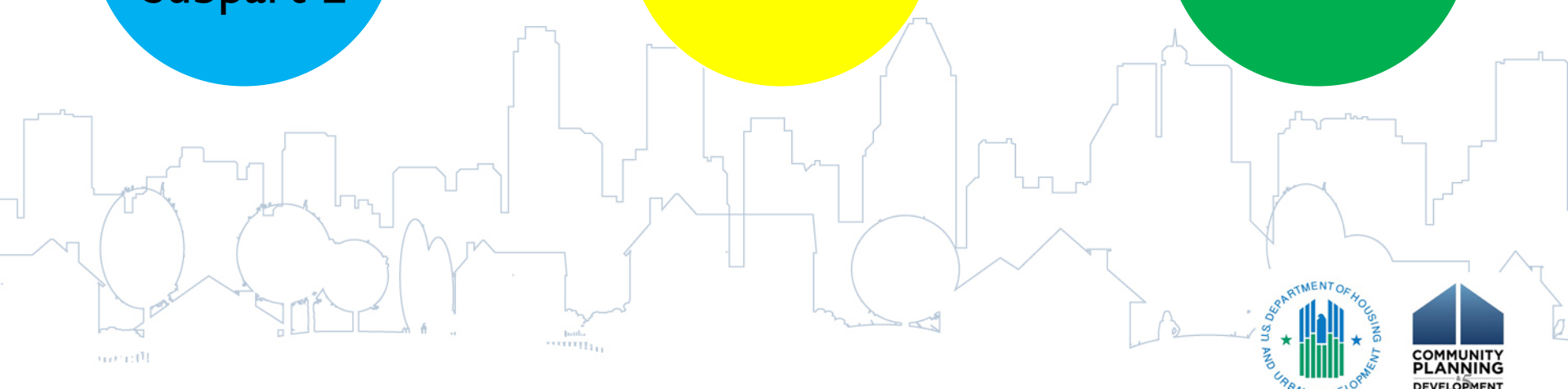
24 CFR
Part 5,
Subpart L



Program
rules



VAWA
rule



Who does HUD's
VAWA rule protect?

Protected Persons

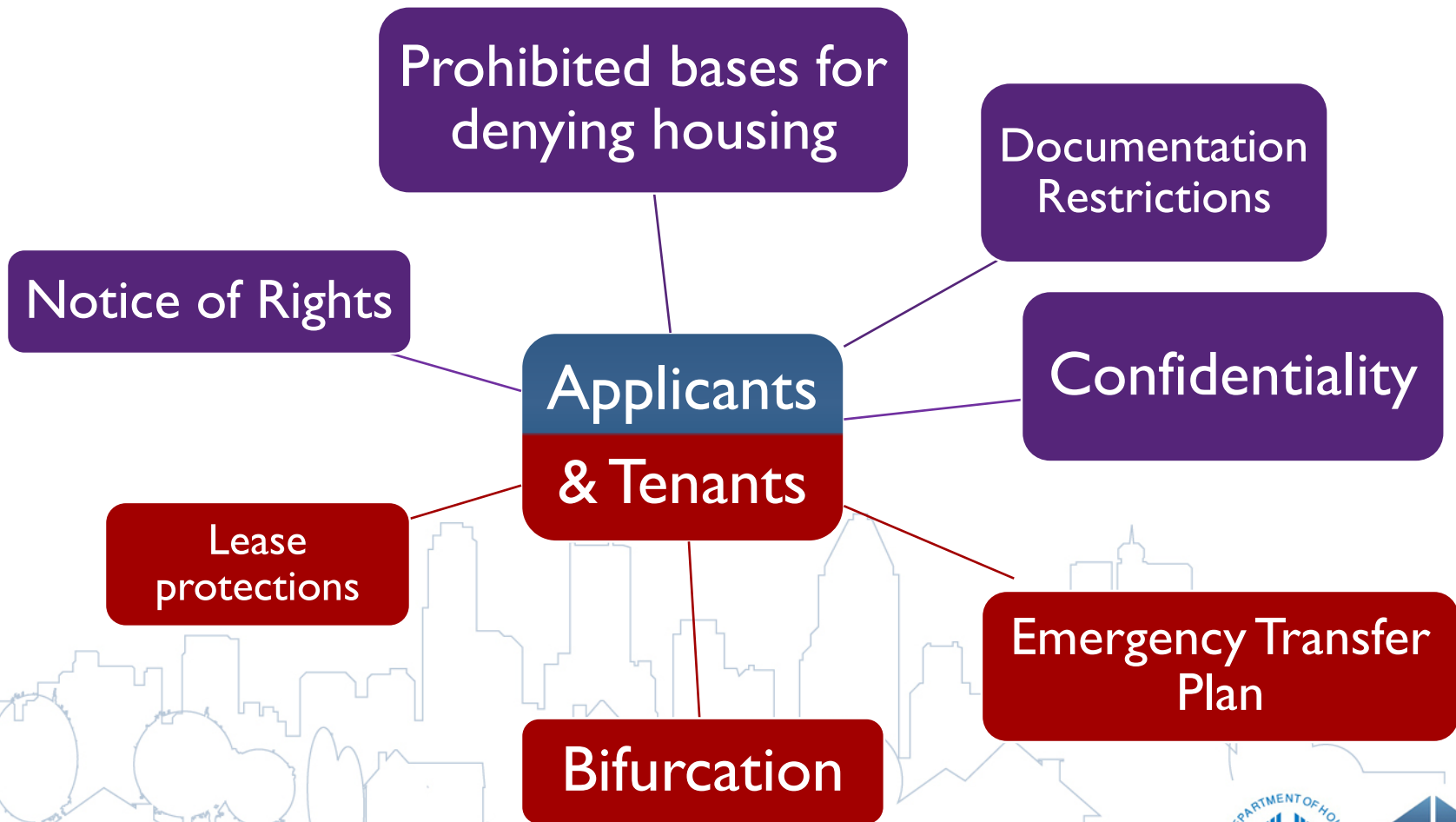
In general, HUD's rule protects any person who is—

- an applicant or tenant of a covered project **AND**
- a survivor of
 - Domestic violence,
 - Dating violence,
 - Sexual assault, or
 - Stalking



What are the
protections under
the VAWA rule?

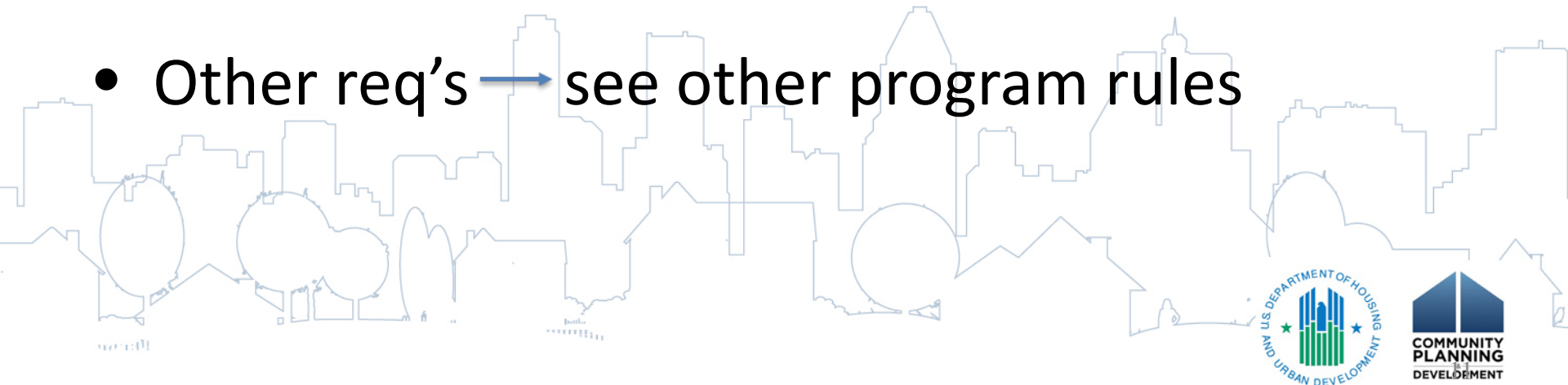
Protections under HUD's VAWA rule



Does VAWA apply to
all HOME and HTF
projects?

Covered projects

- HOME req's → HOME rental units and HOME TBRA where HOME commitment made after Dec. 15, 2016
- HTF req's → all HTF project units
- Other req's → see other program rules



Q&A

Notice Requirements

- **HUD-5380** Notice of Occupancy Rights under VAWA
- **HUD-5382** Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternative Documentation



Who must provide
the notice and
certification?

HUD's VAWA rule

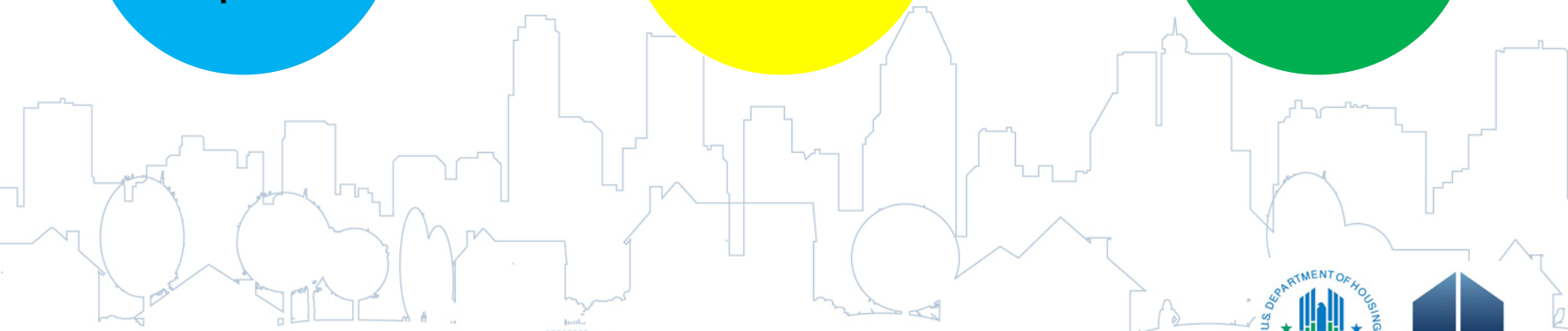
24 CFR
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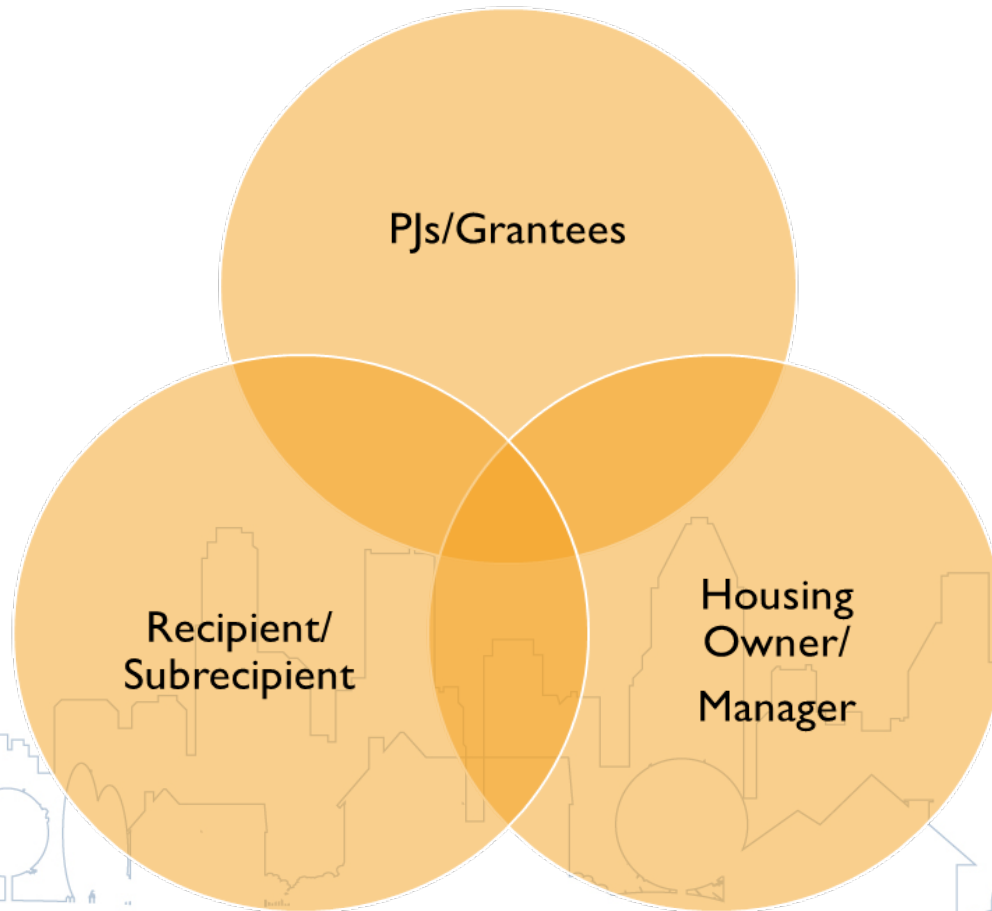
Program
rules



VAWA
rule



Covered Housing Provider



Who Provides Notice and Certification

HOME and HTF-assisted units

- PJ/HTF grantee customizes notice and provides notice and certification to owners for dissemination
- Owners provides notice and certification to applicants and tenants of covered projects

HOME TBRA

- PJ provides notice and certification to applicants and tenants



Notice and Certification

- **Must be provided to an APPLICANT**
 - When admitted to HOME/HTF unit
 - With notice of rejected application for HOME/HTF unit based on the owner's tenant selection policies and criteria
 - When TBRA application is denied or approved



Notice and Certification

- **Must be provided to a TENANT**
 - With notice of eviction from HOME/HTF unit
 - When PJ learns of notice of eviction for TBRA tenant
 - With notice of termination of TBRA



Q&A

Emergency Transfer Plan

- PJ/HTF Grantee must develop and implement an emergency transfer plan.
- Plan must meet the requirements in 24 CFR 5.2005(e), as supplemented by 24 CFR 92.359 (HOME) or 93.356 (HTF)
- HUD-5381 *Model Emergency Transfer Plan*



Emergency Transfer Plan

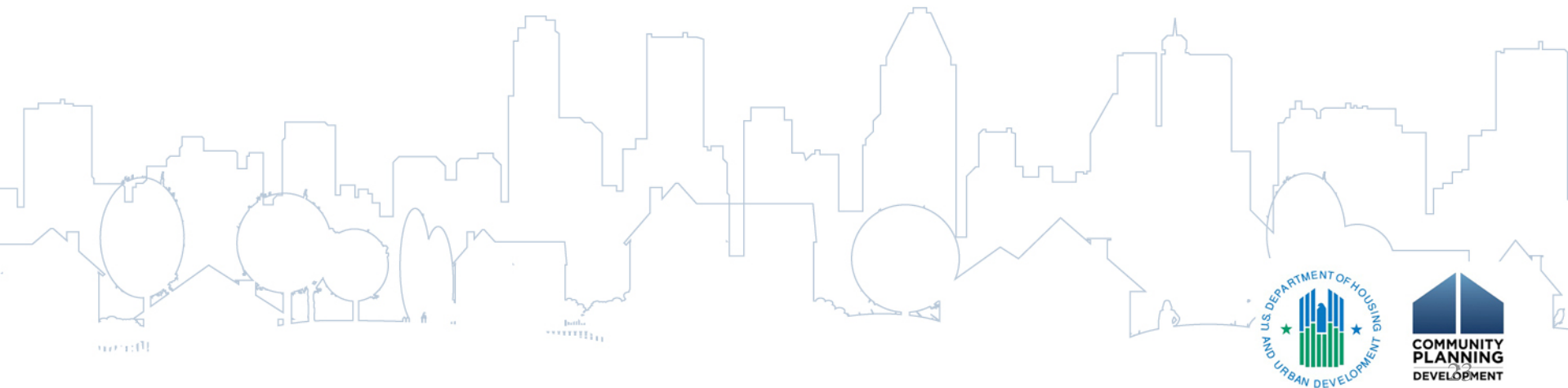
Key components:

- How to Qualify
 - qualification criteria
 - how and to whom to make request
 - documentation that will be required, if any
- Confidentiality policy
- Transfer policies and procedures



Qualification Criteria – Part 1

- Tenant is receiving TBRA or resides in a covered HOME or HTF-assisted unit
- Tenant is a victim of domestic violence, dating violence, sexual assault or stalking



Qualification Criteria – Part 2

- Tenant expressly requests an emergency transfer, **and either:**
 - Tenant reasonably believes threat of imminent harm from further violence if the tenant remains in current unit; or
 - In the case of sexual assault:
 - Tenant reasonably believes threat of imminent harm from further violence if Tenant remains current unit, or
 - The sexual assault occurred on premises of current unit during 90 calendar days preceding transfer request.



Qualification Disclaimers

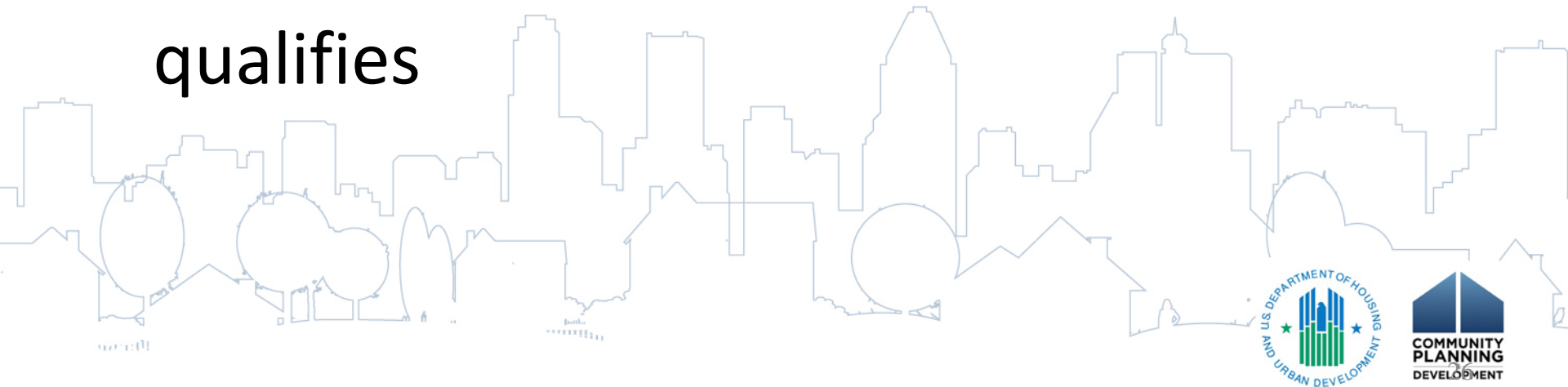
- ETP should make clear that qualifying for ET does not guarantee continued assistance under the HOME/HTF program.
- ET requirements do not supersede any eligibility or occupancy requirements.



Qualification process

Plan must explain

- how emergency transfer request can be made, and
- who determines whether a tenant qualifies



What does PJ/HTF grantee
do when it receives an
emergency transfer
request?

ETP Documentation

The plan may require tenant to submit:

- written request, certifying the tenant meets the qualification criteria, and
- if not already provided, documentation of DV, etc. that prompted emergency transfer request, subject to restrictions in 24 CFR 5.2007.



Emergency Transfer Process

Internal
Transfer

No New
Application

New
Applicant

External
Transfer



Emergency Transfer Process

Mandatory provisions

- Qualified tenant may terminate lease at tenant's option
- If applicable, policies for qualified TBRA recipient to move quickly with TBRA
- Qualified tenant must be allowed to move to another HOME/HTF unit in same project, if unit is immediately available and tenant considers it safe



Emergency Transfer Process

Mandatory provisions

For cases where tenant's project has no unit that is immediately available and safe:

- policies for assisting transfer within tenant's project, when safe unit becomes available
- must be given no less priority than if tenant had requested any other type of emergency transfer, such as emergency transfer due to fire.



Emergency Transfer Process

Mandatory provisions

For cases where tenant's project has no unit that is immediately available and safe:

- Policies for assisting tenant to make emergency move to other housing tenant considers safe
- Must detail tenant's priority relative to other categories of tenants seeking transfers and those already on waiting lists
- Must provide list of HOME/HTF projects



Emergency Transfer Process

List of other HOME/HTF projects

When a safe unit is not immediately available within tenant's project, a tenant **must** receive project list, which specifies:

- Address and contact information
- HOME/HTF unit sizes (number of bedrooms)
- Any known tenant preferences or eligibility restrictions for the HOME/HTF units



Emergency Transfer Plan

PJ/HTF grantee may:

- Establish a preference for tenants who qualify for an emergency transfer
- Provide HOME TBRA to tenants who qualify for an emergency transfer
- Coordinate with victim service providers and advocates to develop the plan, make referrals, and facilitate transfers to safe, available units



ETP Confidentiality Requirements

- Plan must include strict confidentiality measures so location of tenant's unit is not disclosed to anyone who committed or threatened violence against tenant
- Plan's confidentiality policy must also be consistent with victim status confidentiality requirements at 24 CFR 5.2007(c)



Policies & Procedures

Questions to ask:

- Has the Plan described reasonable efforts PJ/HTF grantee will take to assist a tenant?
- Are confidentiality measures described?
- Written or Oral requests for VAWA protections?
- Explained criteria used to qualify tenants for transfer?
- How are owners notified of transfer?
- Explained the process for provision of VAWA forms?
- Denial of VAWA protections?
- Appeals process explained?



Q&A

Prohibited Bases For Denying Assistance - Applicants

An otherwise qualified applicant cannot be denied admission/TBRA on the basis or as a direct result of the fact that the applicant is or has been a victim of domestic violence, etc.



Prohibited Bases For Termination or Eviction

Victim status of the tenant

Incident(s) of violence against the tenant

Direct results of violence against the tenant

Criminal activity directly relating to violence against the tenant or an affiliated individual



Affiliated Individual

- Tenant's spouse, parent, brother, sister, or child
- Any person to whom Tenant stands in the place of a parent or guardian
- Any individual living in Tenant's household



Bifurcation – HOME/HTF-units

Allows owner to
remove only the
tenant(s) engaged in
criminal activity



Remaining
tenant(s) may
remain in the
HOME- or HTF-
assisted unit



Bifurcation – HOME TBRA

Allows owner to
remove only the
tenant(s) engaged
in criminal activity



Remaining
tenant(s) retain
TBRA



Limits on VAWA protections

- VAWA does not supersede obligation to pay rent
- Violation not premised on an act of DV, etc.
- Court order re:
 - right of access/control of property (CPOs)
 - Distribution/possession of property
- Actual and imminent threat to other tenants
- Failure to provide victim status documentation, if requested by owner/PJ/HTF grantee



Victim status documentation

- VAWA rule does not require tenants or applicants to provide documentation of abuse or victim status
- But an owner or the PJ may require an applicant or tenant to submit this documentation, subject to the restrictions in 24 CFR 5.2007



Victim status documentation

Request for documentation of victim status or incident(s) must

- Be in writing
- Allow at least 14 business days for submission
- Accept any form of documentation described in 24 CFR 5.2007



Acceptable documentation

Applicant or tenant may choose to submit any of the following as documentation of victim status/incident(s) of violence:

- Certification form (HUD-5382)
- A professional's statement that meets 24 CFR 5.2007(b)(1)(ii)
- Record of a court or law enforcement agency
- Another type of statement or other evidence, if allowed by the covered housing provider



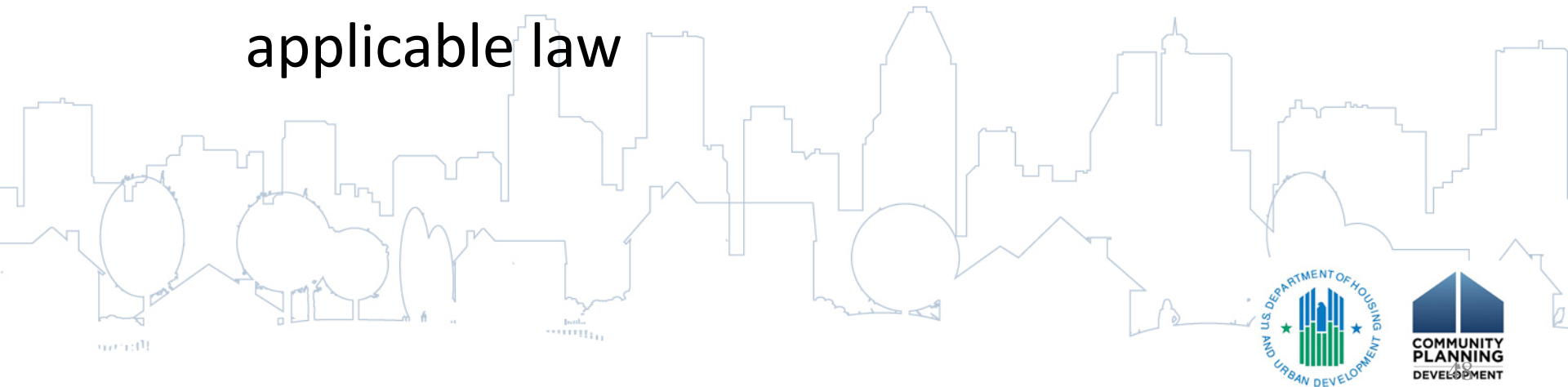
Confidential Information

- Any information concerning incident(s) of violence, including
 - fact that applicant or tenant is a victim
 - any information on certification form, other victim status documentation, or emergency transfer request
- Provided by applicant/tenant re VAWA inquiry/assertion of rights



Confidential Information

- Must be maintained in strict confidence
- Must only be accessed by employees/contractors:
 - With explicit authorization
 - for specific reasons requiring access under applicable law



Confidential Information

- Must not be entered into shared database or disclosed to any other entity or individual, except to extent disclosure is:
 - Requested/consented to in writing by victim in time-limited release,
 - Required for use in eviction proceeding or termination hearing, or
 - Otherwise required by applicable law



Lease Addendum

PJ/Grantee must develop a VAWA lease term/addendum to incorporate applicable requirements, including:

- Prohibited bases for eviction under VAWA
- VAWA limits on construing lease terms
- Tenant option to end lease without penalty if emergency transfer conditions are met



DEVELOPMENT

Lease Addendum

Additional rules for TBRA:

- Lease term/addendum must require owner to notify PJ before owner bifurcates lease or provides notification of eviction to tenant.
- VAWA lease term/addendum may be written to expire at end of the rental assistance period, unless it is required for other assistance to the unit.



Tracking Compliance

PJ/HTF grantee must maintain records and annually report on

- emergency transfers requested
- outcomes of those requests

