



VAWA Spotlight

National HOPWA Institute - 2017
Tampa, FL

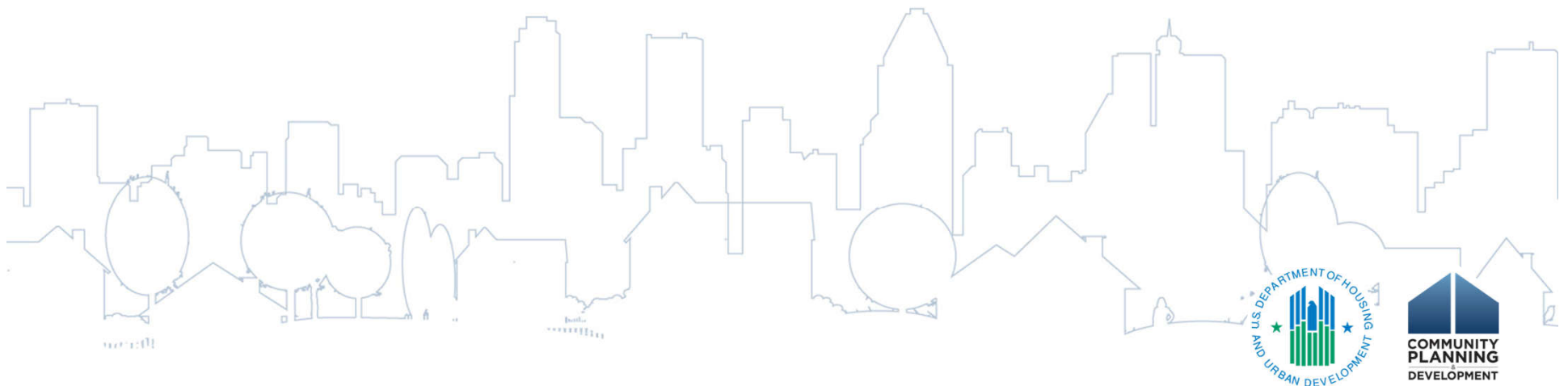


Presentation Objectives

- Provide an overview of the critical components of HUD's Final Rule implementing VAWA 2013 as applied to HOPWA;
- Increase understanding of the new protections for survivors of sexual assault, domestic violence, dating violence, or stalking; and
- Discuss OHH's plans for future guidance and Technical Assistance.



Section I. Background



What is VAWA 2013?

- On March 7, 2013, the Violence Against Women Reauthorization Act of 2013 (P.L. 113-4) (VAWA 2013) was signed into law.
- VAWA 2013 implemented several key changes related to housing protections for victims of domestic violence, dating violence, sexual assault, and stalking.
- VAWA 2013 expanded the applicability of the VAWA protections to HOPWA and several other HUD programs.
- VAWA 2013 specified sexual assault as a crime covered by VAWA in addition to domestic violence, dating violence, and stalking.



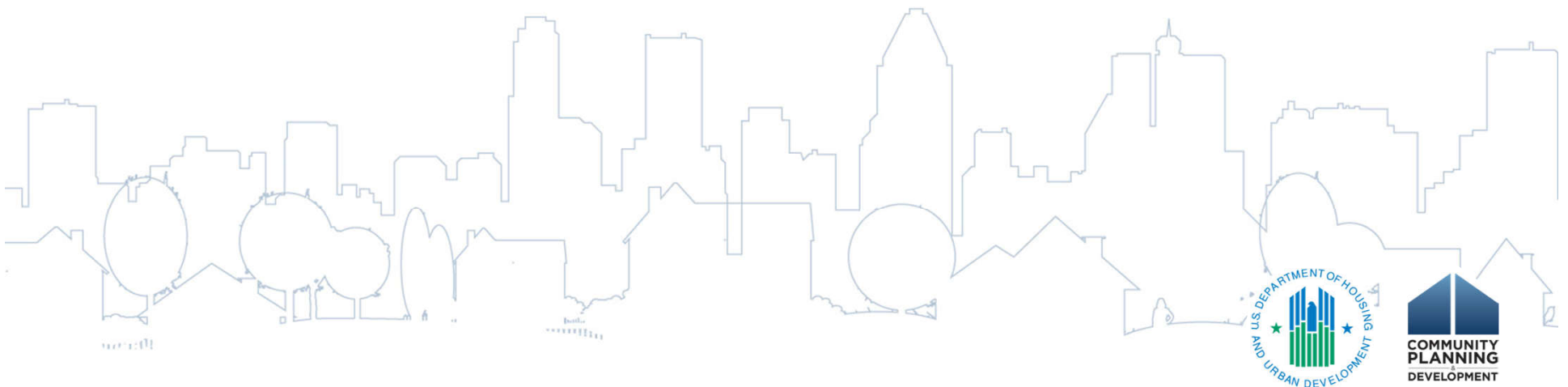
VAWA Final Rule

- On November 16, 2016, HUD published VAWA Final Rule implementing the requirements of VAWA 2013 through HUD regulations
- The VAWA Final Rule amended:
 - HUD's generally applicable regulations;
 - HUD's regulations for programs that were previously covered; and
 - Regulations of programs newly covered by VAWA 2013 (including HOPWA)



Key Regulations

- 24 CFR Part 5, Subpart L - Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
- 24 CFR Part 574: Housing Opportunities for Persons With AIDS



Effective Date

- The core statutory protections of VAWA that prohibit denial or termination of assistance or eviction because an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking applied upon enactment of VAWA 2013 on March 7, 2013.
- For HOPWA formula grants, compliance with the VAWA regulatory requirements is required for any project for which the date of the HOPWA funding commitment is made on or after December 16, 2016.
- For HOPWA competitive grants, compliance with the VAWA regulatory requirements is required for awards made on or after December 16, 2016.
- HOPWA grantees had 180 days from December 16, 2016, to develop emergency transfer plans. Emergency transfer provisions became effective on June 14, 2017.

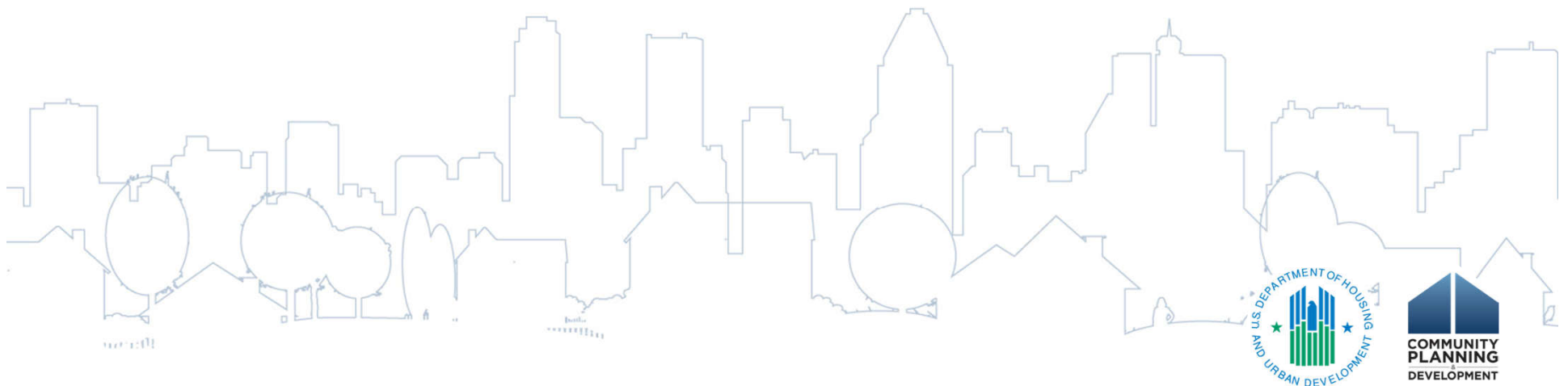


60 Day Notice of Proposed Information Collection

- HUD is seeking approval from the Office of Management and Budget (OMB) for information collection required by the VAWA Final Rule
- HUD is currently requesting public comment on proposed information collection (notice published 8/1/17; comment period closes 10/2/17)
- Revision of previously approved collection that expired on 6/30/17
- Information collection includes:
 - Forms: HUD-5380, HUD-5381, HUD-5382, and HUD-5383; and
 - Other: Emergency transfer reporting, lease addenda, and lease bifurcation



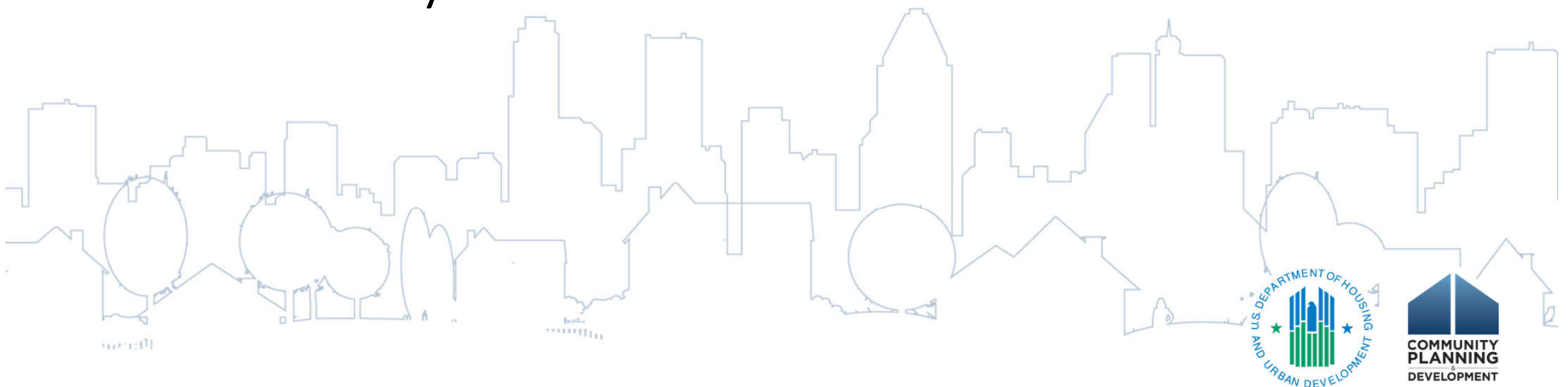
Section II. Applicability to HOPWA Eligible Activities



What HOPWA housing activities are subject to the VAWA Requirements?

The VAWA requirements in 24 CFR part 5, subpart L **apply** to:

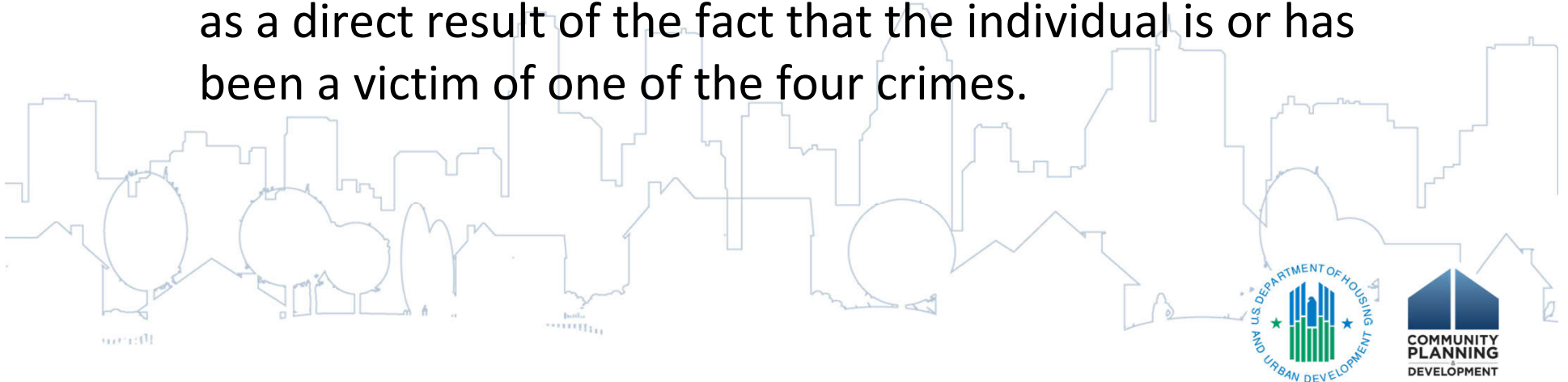
- Acquisition, rehabilitation, conversion, lease, and repair of facilities;
- New construction;
- Operating costs;
- Project-based and tenant-based rental assistance; and
- Community residences



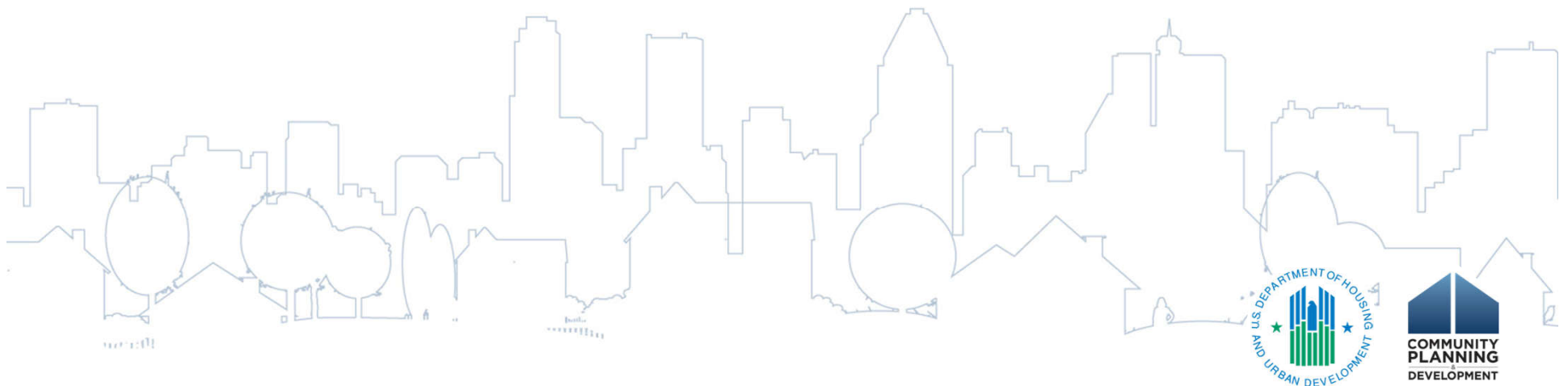
What HOPWA housing activities are **NOT** subject to the VAWA Requirements?

The VAWA requirements in 24 CFR part 5, subpart L **do not** apply to:

- HOPWA short-term supported housing (Short-Term Rent, Mortgage and Utility (STRMU) assistance and emergency/short-term facilities)
- **EXCEPT** that no individual may be denied assistance, have their assistance terminated, or be removed on the basis or as a direct result of the fact that the individual is or has been a victim of one of the four crimes.

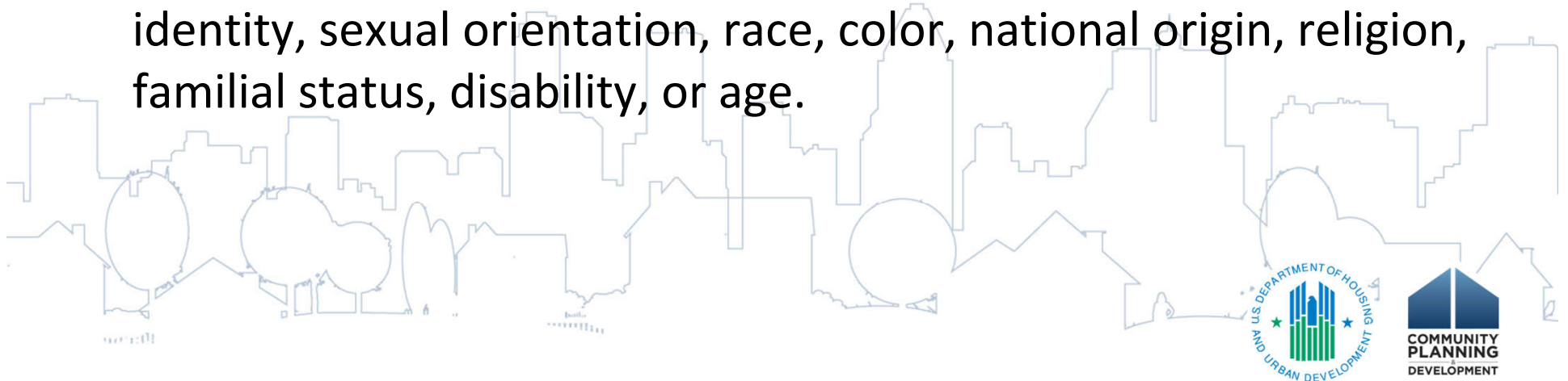


Section III. VAWA Protections



Who is eligible for VAWA Protections?

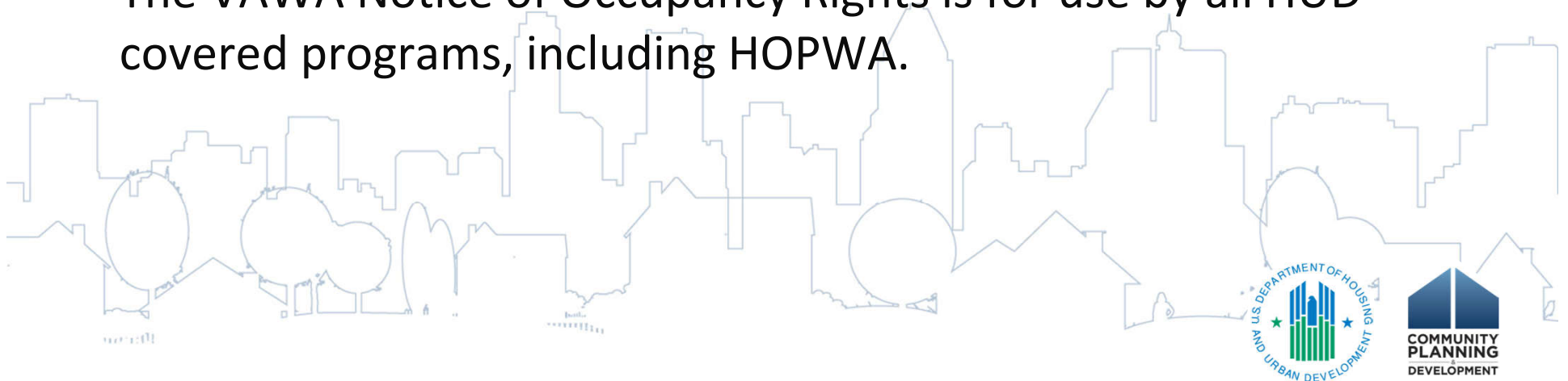
- VAWA protections cover HOPWA-assisted tenants as well as applicants for HOPWA housing assistance.
- VAWA protections are **not** limited to women.
- Victims of domestic violence, dating violence, sexual assault, or stalking are eligible for protections regardless of sex, gender identity, sexual orientation, race, color, national origin, religion, familial status, disability, or age.



Notice of Occupancy Rights

Notice of Occupancy Rights:

- VAWA 2013 required HUD to create a notice of VAWA rights.
- The VAWA Final Rule included a VAWA Notice of Occupancy Rights, form HUD-5380.
- The VAWA Notice of Occupancy Rights is for use by all HUD-covered programs, including HOPWA.



Notice of Occupancy Rights

HOPWA grantees are responsible for ensuring that each project sponsor carrying out HOPWA housing activities (**excluding STRMU, emergency/short-term facilities, and emergency hotel/motel vouchers**) provides the VAWA Notice of Occupancy Rights at the following times:

- At the time a person is denied rental assistance or admission to a HOPWA-assisted unit;
- At the time a person is admitted to a HOPWA-assisted unit or is provided rental assistance;
- With any notification of eviction from the HOPWA-assisted unit or notification of termination of rental assistance; and
- During the 12-month period following December 16, 2016.



Certification Form, HUD-5382

- VAWA 2013 required HUD to create a certification form to document incidents of domestic violence, dating violence, sexual assault, or stalking.
- The VAWA Final Rule included a certification form, HUD-5382, for use by all HUD-covered programs, including HOPWA.
- HOPWA grantees or project sponsors must provide form HUD-5382 to applicants and tenants with the VAWA Notice of Occupancy Rights (form HUD-5380) at the required times.



Certification Form, HUD-5382

- Optional way for victims to comply with a written request for documentation
- Requires that the victim or someone filling out the form on the victim's behalf must answer 10 numbered questions and provide a brief description of the incident(s)
- Clarifies that the name of the accused perpetrator does not have to be provided if it is unknown to the victim or it cannot be provided safely
- Clarifies that the date and time of incident should be completed only if known by the victim
- Requires the victim or someone filling out the form on the victim's behalf to certify to the truth and accuracy of the information being provided



Prohibited basis for denial or termination of assistance or eviction

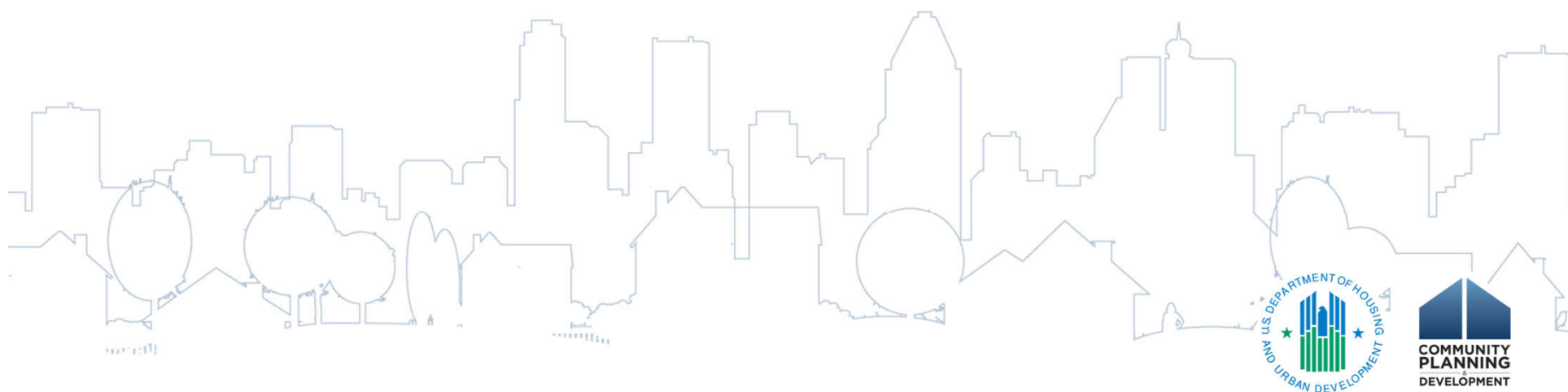
- An applicant for HOPWA assistance or HOPWA-assisted tenant may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis or direct result of being a victim of one of the four crimes.
- *Termination on the basis of criminal activity.* A HOPWA-assisted tenant may not be denied tenancy or occupancy rights solely due to criminal activity related to one of the four crimes if:
 - (i) The criminal activity is committed by a member of the tenant's household or any guest or other person under the control of the tenant, **and**
 - (ii) The tenant or an affiliated individual of the tenant is the victim or threatened victim.



Construction of Lease Terms and Terms of Assistance

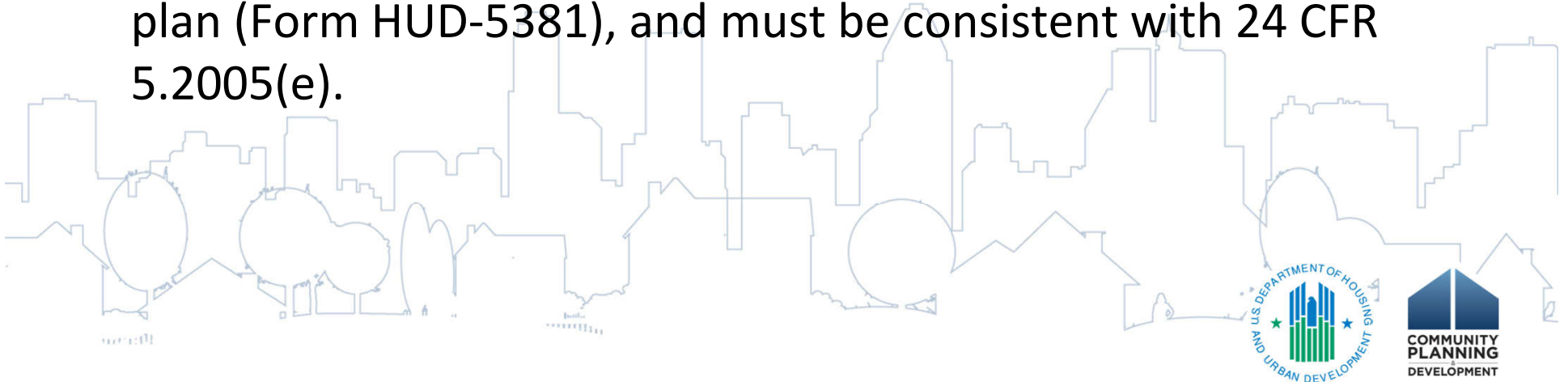
An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as:

- A serious or repeated violation of a lease; **or**
- Good cause for terminating assistance, tenancy, or occupancy rights of the victim or threatened victim of such incident.



Emergency Transfer Plan

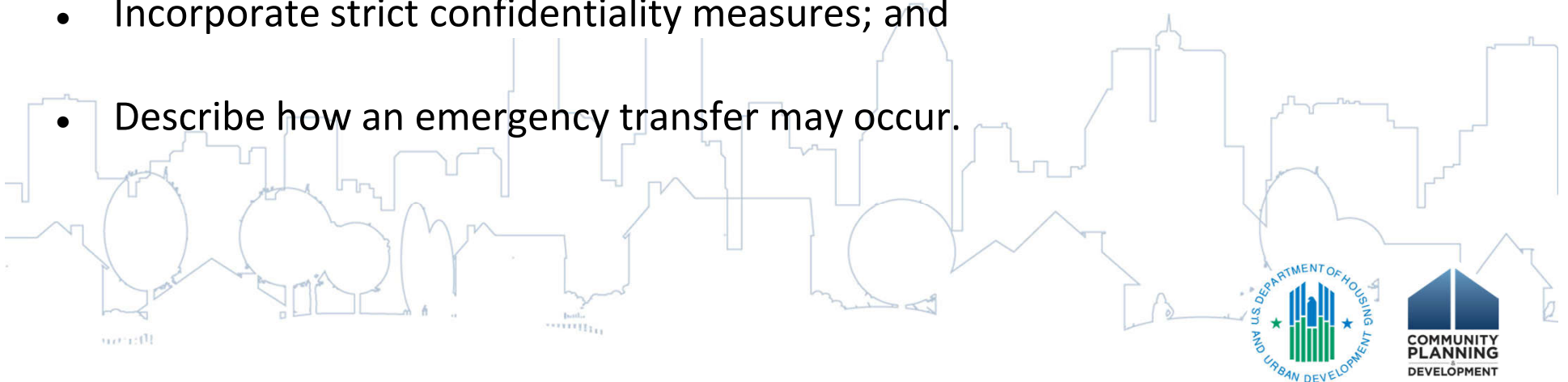
- HOPWA grantees are responsible for developing an emergency transfer plan that will be adopted and implemented by each project sponsor carrying out HOPWA housing activities (excluding STRMU and emergency/short-term facilities).
- The plan shall be based on HUD's model emergency transfer plan (Form HUD-5381), and must be consistent with 24 CFR 5.2005(e).



Emergency Transfer Plan

Each HOPWA Grantee's Emergency Transfer Plan **must:**

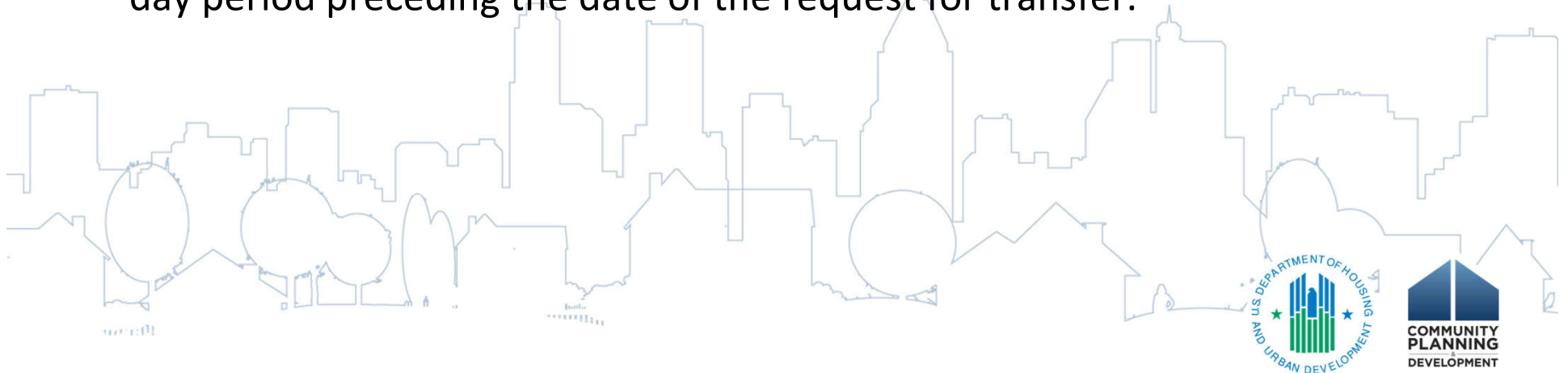
- Define tenants eligible for an emergency transfer;
- List documentation needed to request an emergency transfer;
- Detail the measure of any priority given to tenants who qualify for an emergency transfer under VAWA;
- Incorporate strict confidentiality measures; and
- Describe how an emergency transfer may occur.



Emergency Transfer Plan

The emergency transfer plan must allow for an emergency transfer by tenants who are victims of one of the four crimes that expressly request a transfer and:

- Reasonably believe that there is a threat of imminent harm from further violence if the tenant remains within the same unit; **or**
- In the case of sexual assault, either the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same unit, or the sexual assault occurred on the premise during the 90-day period preceding the date of the request for transfer.



Emergency Transfer Plan

A Grantee's Emergency Transfer Plan **must** indicate how HOPWA-assisted tenants can request an emergency transfer.

- Verbal self-certification is sufficient, or grantees may require a written request for an emergency transfer.
- The verbal self-certification, if permitted, or the written request must include:
 - a. A statement that the tenant requests an emergency transfer because the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same unit; or
 - b. A statement that the tenant requests an emergency transfer because the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-day period preceding the tenant's request for an emergency transfer.

HUD has created a model Emergency Transfer Request document that grantees requiring a written request for emergency transfer **may** use (Form HUD-5383).

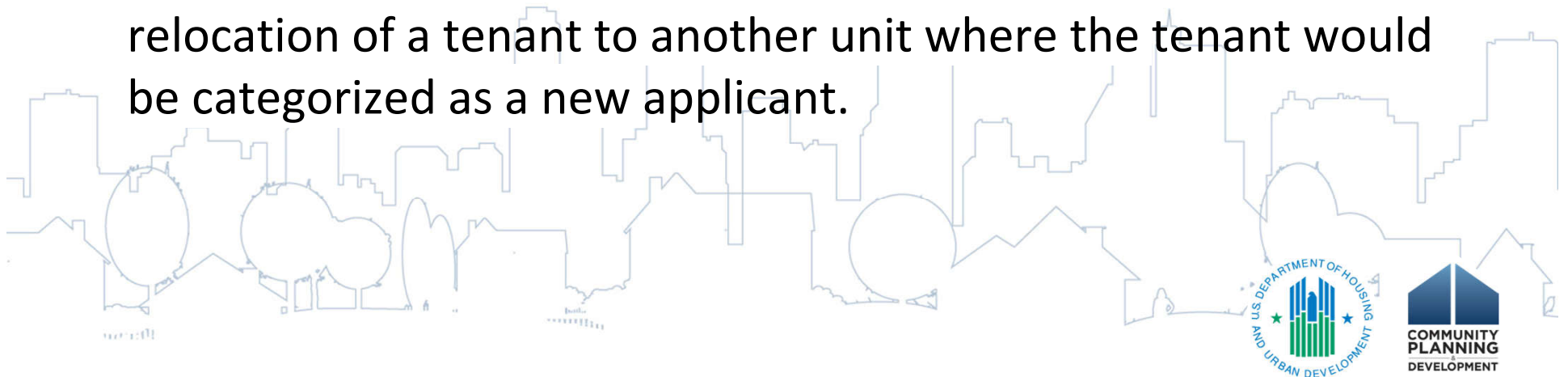


Emergency Transfer Plan

Definitions:

- **Internal emergency transfer** refers to an emergency relocation of a tenant to another unit where the tenant would not be categorized as a new applicant.

- **External emergency transfer** refers to an emergency relocation of a tenant to another unit where the tenant would be categorized as a new applicant.



Emergency Transfer Plan

Internal Emergency Transfers:

- A grantee's Emergency Transfer Plan must allow a HOPWA-assisted tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available.
- A grantee's Emergency Transfer Plan must describe policies for assisting a tenant in making an internal emergency transfer when a safe unit is not immediately available.
- The policies must ensure that requests for internal emergency transfers under VAWA receive, at a minimum, any applicable additional priority that may already be provided by the grantee to other types of emergency transfer requests.



Emergency Transfer Plan

External Emergency Transfers:

- The emergency transfer plan **must** describe reasonable efforts the grantee will take to assist a tenant who wishes to make an external emergency transfer when a safe unit is not immediately available.
- The plan **must** include policies for assisting a tenant seeking an external emergency transfer under VAWA out of the HOPWA grantee's program or project, and a tenant who is seeking an external emergency transfer under VAWA into the grantee's program or project from another HUD-covered program. These policies may include:
 - Arrangements, including memoranda of understanding, with other covered housing providers (PHAs, CoCs, etc.) to facilitate moves; and
 - Outreach activities to organizations that assist or provide resources to victims of the four crimes.



Recordkeeping and Reporting

- HOPWA grantees and project sponsors **must** keep confidential records of all emergency transfers requested under Emergency Transfer Plans, and the outcomes of such requests, and retain these records for a period of four years.
- Information on the requests and their outcomes **must** be reported to HUD annually. The requirement to report this information to HUD is not in effect until:
 - Grantees and project sponsors begin to provide emergency transfers,
 - HUD completes the Paperwork Reduction Act requirements (OMB approval), and
 - Fields are added to HOPWA annual reports to collect data from formula and competitive grantees on emergency transfer requests and outcomes.

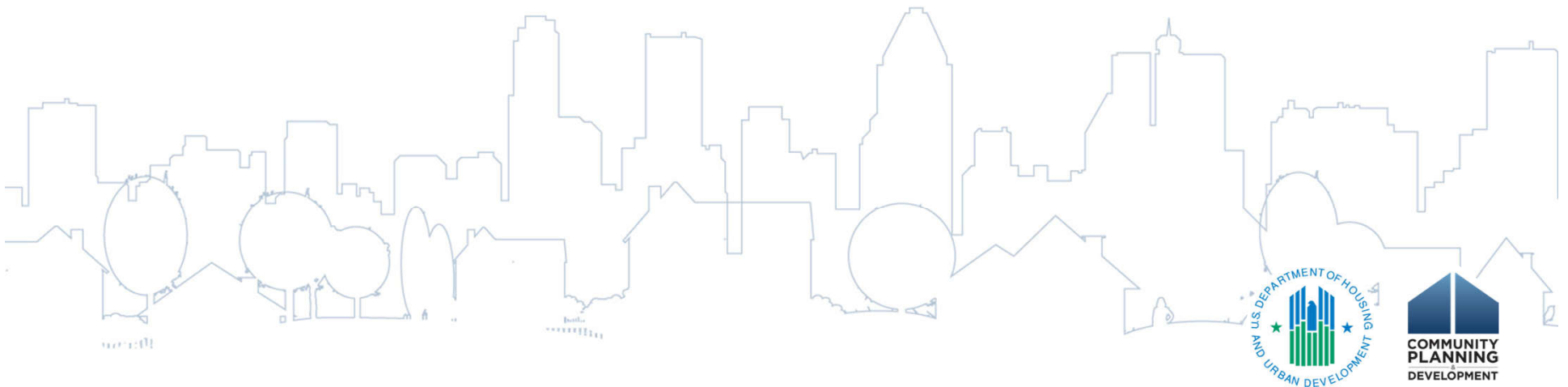


Lease Addendum

- The grantee or project sponsor is responsible for ensuring that the housing or facility owner or manager, as applicable, adds a VAWA lease term/addendum to the leases for all HOPWA-assisted units, and is aware of the option to bifurcate a lease to evict, remove, terminate occupancy rights, or terminate assistance to a household member for engaging in criminal activity directly relating to one of the four crimes.
- The VAWA lease term/addendum **must**:
 - Provide that the tenant may terminate the lease without penalty if the tenant has met the conditions for an emergency transfer;
 - Incorporate the applicable requirements at 24 CFR Part 5, Subpart L, including:
 - Definitions (24 CFR 5.2003);
 - Prohibited basis for denial or termination of assistance or eviction (24 CFR 5.2005(b));
 - Construction of lease terms and terms of assistance (24 CFR 5.2005(c));
 - Limitations of VAWA protections (24 CFR 5.2005(d)); and
 - Confidentiality requirements (24 CFR 5.2007(c)).

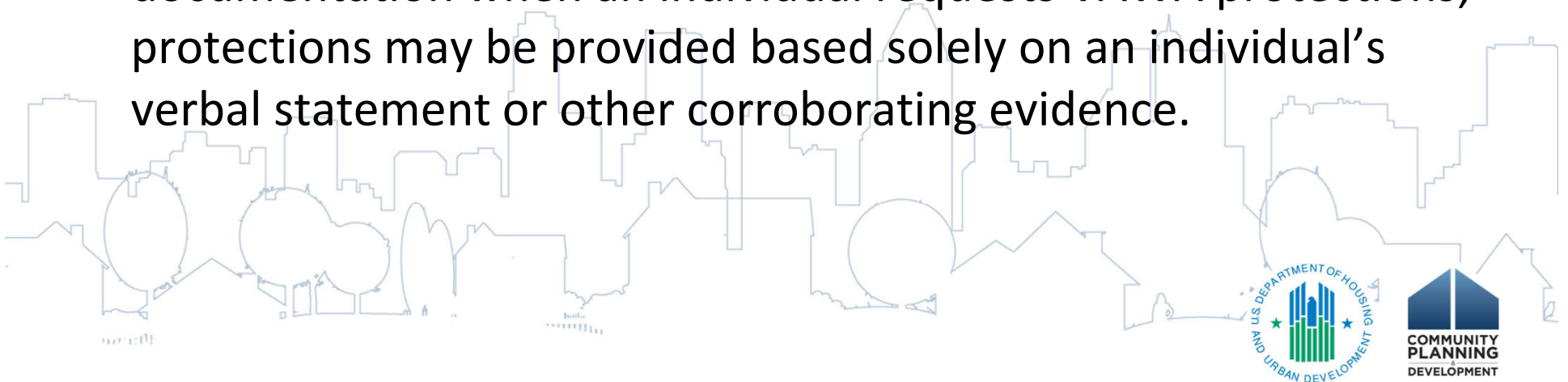


Section IV. Documentation



Documentation

- If an applicant for HOPWA assistance or HOPWA-assisted tenant seeks VAWA protections, the individual must submit the request through the grantee or project sponsor to facilitate protections on their behalf.
- Grantees/project sponsors are **not** required to ask for documentation when an individual requests VAWA protections; protections may be provided based solely on an individual's verbal statement or other corroborating evidence.



Documentation

- If the grantee or project sponsor chooses to request an applicant or tenant to document their claim of domestic violence, dating violence, sexual assault, or stalking, the grantee or project sponsor **must** make the request in writing.
- If a written request for documentation is made, grantees/project sponsors may require that the documentation be submitted within 14 business days after the date the individual received the request.



Documentation

Any of the following documents may be submitted in order to satisfy a request for documentation:

- ✓ Form HUD-5382; **or**
- ✓ A document:
 - Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse;
 - Signed by the applicant or tenant; and
 - That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident that is the ground for protection and remedies under the VAWA Final Rule, and that the incident meets the applicable definitions of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003; **or**
- ✓ A record of a Federal, State, tribal, territorial or local law enforcement agency (may include a police report), court, or administrative agency; **or**
- ✓ At the discretion of the grantee or project sponsor, a statement or other evidence provided by the applicant or tenant.



Third-Party Documentation

Grantees/project sponsors are **prohibited** from requiring the victim to provide third-party documentation of victim status, unless:

- More than one applicant or tenant provides documentation of victim status and the information in one person's documentation conflicts with the information in another person's documentation; **or**
- Submitted documentation contains information that conflicts with existing information already available to the grantee or project sponsor.



Third-Party Documentation

In situations of conflicting information, an applicant(s) or tenant(s) may submit **any** of the following to meet a third-party documentation request:

- ✓ A document:
 - Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse;
 - Signed by the applicant or tenant; and
 - That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident that is the ground for protection and remedies under the VAWA Final Rule, and that the incident meets the applicable definitions of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003; **or**
- ✓ A record of a Federal, State, tribal, territorial or local law enforcement agency (may include a police report), court, or administrative agency; **or**
- ✓ At the discretion of the grantee or project sponsor, a statement or other evidence provided by the applicant or tenant.



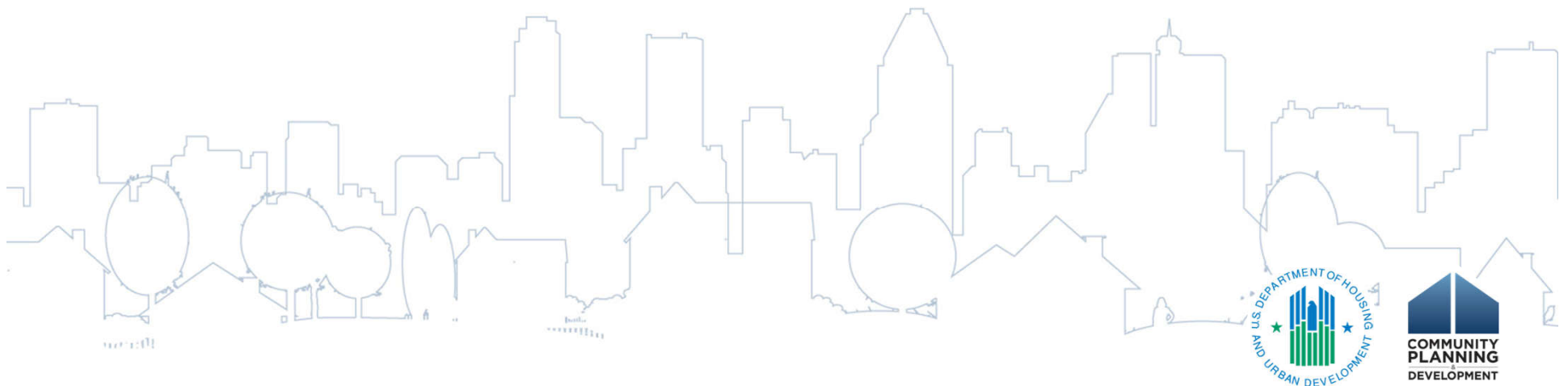
Confidentiality

Any information submitted to a HOPWA grantee, project sponsor, or housing owner or manager, including the fact that an individual is a victim of one of the four crimes, **must** be maintained in confidence:

- Employees of the grantee, project sponsor, or housing owner or manager (or those who administer assistance on their behalf, e.g., contractors), must not have access to the information unless specifically authorized for reasons that specifically call for these individuals to have access to such information under applicable Federal, State, or local law; and
- The grantee, project sponsor, or housing owner or manager must not enter this information into any shared database, or disclose this information to any other entity or individual, except to the extent that disclosure is:
 - Requested or consented to in writing by the individual (victim) in a time-limited release;
 - Required for use in an eviction proceeding or hearing regarding termination of assistance; or
 - Otherwise required by applicable law.



Section V. Lease Bifurcation

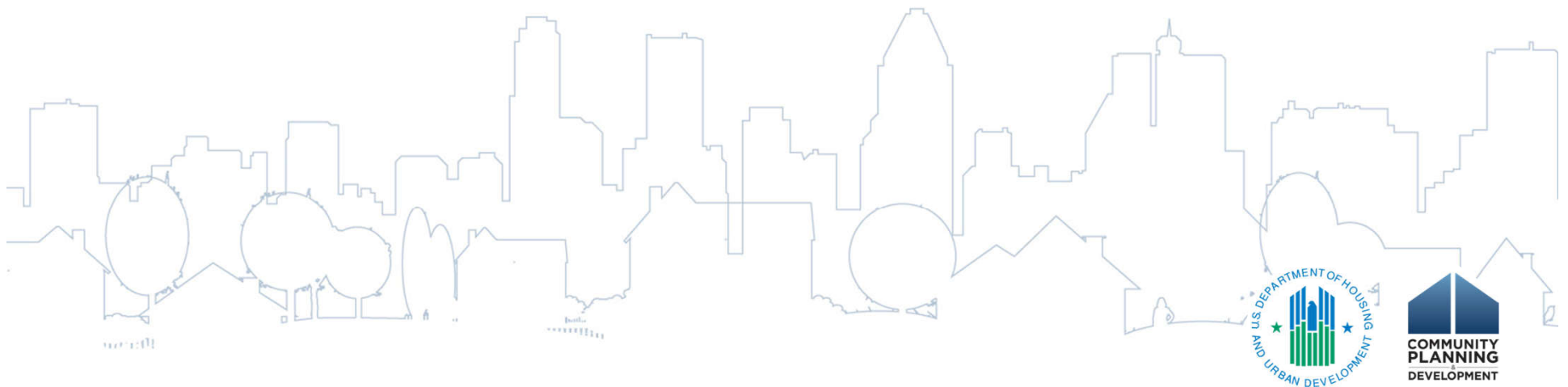


Lease Bifurcation

- A HOPWA grantee, project sponsor, or housing owner or manager **may** bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to a member who engages in criminal activity directly relating to one of the four crimes.
- When the option is exercised to bifurcate a lease to evict, remove, terminate occupancy rights, or terminate assistance to a HOPWA-eligible household member, the remaining persons residing in the unit must be provided a reasonable grace period to establish eligibility to continue receiving HOPWA assistance or find alternative housing.
- The grantee or project sponsor is responsible for setting the reasonable grace period and notifying the remaining members of its duration, which shall be no less than 90 calendar days, and not more than one year, from the date of the bifurcation of the lease.
- Housing assistance and supportive services continue to be provided to the remaining members during the grace period.



Section VI. Next Steps



Guidance and Technical Assistance

- HUD will publish a VAWA 2013 implementation notice for HOPWA grantees and project sponsors.
- A VAWA 2013 implementation Technical Assistance Initiative is currently in development.
- Grantees and project sponsors should submit VAWA-related questions through HOPWA Ask-A-Question Desk.



Resources

HUD's Final Rule: VAWA 2013

<https://www.hudexchange.info/resource/4718/federal-register-notice-proposed-rule-violence-against-women-act-2013-va-wa-2013/>

HUD's 60-Day Notice of Proposed Information Collection: Implementation of VAWA 2013

<https://www.federalregister.gov/documents/2017/08/01/2017-16110/60-day-notice-of-proposed-information-collection-implementation-of-the-violence-against-women>

HOPWA Ask A Question:

<https://www.hudexchange.info/program-support/my-question/>

