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Ms. Colette Pollard
Departmental Reports Management Officer
QDAM
Department of Housing and Urban Development
451 7th Street, SW., Room 4160
Washington, DC 20410-5000
By E-mail: Colette.Pollard@hud.gov

Re: Comments on *OMB Control Number 2577-0216*
Form HUD 50900

Dear Ms. Pollard:

The National Housing Law Project (NHLP) is a charitable nonprofit national housing law and advocacy center. NHLP provides legal assistance, advice and housing expertise to attorneys, paralegals and tenant leaders nationwide to advance housing justice for low-income people. NHLP consults and works in coalition with advocacy groups, other intermediaries and policymakers. Since 1968, NHLP has worked extensively on innumerable housing justice issues under all of the major federal affordable housing programs.

The Housing Justice Network (HJN) is an informal network of more than 900 experienced housing advocates and clients from throughout the country. A subgroup of HJN includes advocates who work with clients and community members in the jurisdictions of public housing agencies (PHAs) that have Moving to Work (MTW) status.

HUD's Obligation to Collect Data from MTW PHAs. The purpose of the MTW demonstration includes providing flexibility to a PHA so as to reduce the costs of providing housing, assist families in obtaining self-sufficiency and increase housing choice. HUD's effort to collect more information about Moving to Work (MTW) jurisdictions is also an essential element of the MTW demonstration. Congress, in establishing the MTW demonstration, directed HUD to identify replicable program models that promote the purposes of the program. It also required participating PHAs to submit reports to HUD that

(A) Document the use of funds made available under [the MTW demonstration];

- (B) Provide such data . . . to assist the Secretary in assessing the demonstration; and
- (C) Describe and analyze the effect of assisted activities in addressing the objectives of [the MTW demonstration].¹

To fulfill that congressional mandate, we urge HUD to gather the additional data necessary to assess how PHAs are using their funds, whether PHAs are fulfilling their obligations under the relevant statutes and regulations, and whether PHA activities are serving the statutory objectives of the demonstration. If the MTW program is to serve as a true demonstration, it is imperative that HUD collect more substantive and accurate information.

As advocates working with residents who are living in the jurisdiction of an MTW PHA and eligible for affordable housing, we appreciate the opportunity to comment on the proposed information collection. However, we believe that HUD should have done more than announce to the general public in the Federal Register that the form is revised and seek comments. The MTW statute states that HUD shall consult with residents and their representatives in making an assessment of the MTW demonstration.² The Annual MTW Report section of form HUD 50900 should be the basis of any assessment. Thus, residents should have been consulted on revisions to the form as PHAs were,³ so that residents' comments could have also been reflected in the proposed form. Because tenants and their advocates were not consulted, these and any other comments from residents and/or their advocates must be fully considered and given substantial weight. We urge that the final form incorporate each of these comments.

The dual purpose of the form HUD 50900. The form HUD 50900 has a dual purpose. It is the MTW PHA's Annual Plan and Report that the MTW PHA must make available to the public and residents to explain its policies and programs and seek their input. The PHA must certify that the Annual Plan was submitted to the public for comment prior to the public hearing and that it took into consideration resident and public comment prior to Board approval of the plan.⁴ Meaningful resident and public input requires that information is gathered and reported in a manner that is comprehensible and facilitates communication and comment on the MTW Plan. Moreover, if the Plan and Report are comprehensible, it will facilitate the public and residents' understanding of the unique program rules for their MTW PHA.

The data and information in the form also should assist HUD in evaluating a PHA's compliance and determine if there are replicable program models. To date, HUD has not been able to accomplish those objectives due to the lack of consistent data that is beyond anecdotal

¹ Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 204(g)(2), 110 Stat. 1321.

² § 204 at (h)(1).

³ *MTW Updates*, Moving to Work Newsletter (HUD), Spring 2011, at 6.

⁴ Form HUD 50900, Elements for the Annual MTW Plan, Annual MTW Report and FDS Submission Instructions (revision proposed May 16, 2011); HUD, Public Housing Authority Desk Guide §6.6, 114 (2001).

observation. According to HUD's most recent report to Congress, many MTW PHAs lack rigorous data collection and evaluation methodologies.⁵

To address these problems, we recommend the changes below, which will make the information easier to understand at the local level and will help HUD obtain the data necessary to evaluate and improve PHA performance under MTW. Our comments are focused upon achieving the purposes of the MTW program and soliciting the data necessary to evaluate whether those purposes are met. In reviewing the purposes and objectives of the MTW demonstration, the most critical elements HUD should address include:

- Resident outreach and engagement
- Ensuring the statutory objectives of increasing housing choice and economic self-sufficiency are achieved⁶
- Ensuring that seventy-five percent of families assisted must be very low-income⁷
- Ensuring that substantially the same total number of eligible low-income people must be served⁸
- Ensuring that a comparable mix of families served (by family size) must be maintained⁹
- Documenting how each MTW PHA has used the funds made available under the MTW program,¹⁰ and
- Ensuring full compliance with the civil rights laws

To facilitate the review of these recommendations, they are listed below according to the relevant section of form HUD 50900.

1. Resident Outreach and Engagement

Proposed Location: Plan § VI, Administrative, at 27; Report § VI, Administrative, at 27.

Resident involvement is consistent with the MTW demonstration legislation which seeks to substitute local accountability for federal regulation. With respect to the initial application for

⁵ HUD, Report to Congress, *Moving to Work: Interim Policy Applications and the Future of the Demonstration* 63 (2010).

⁶ § 204 at (a).

⁷ *Id.* at (c)(3)(A) (“families to be assisted, which shall require that at least 75 percent of the families assisted by participating demonstration public housing authorities shall be very low-income families, as defined in section 3(b)(2) of the United States Housing Act of 1937”). Significantly, for three California MTWs, the legislation requires that 75 percent of families provided with Section 8 voucher assistance be extremely low income families. Department of Housing and Urban Development Appropriations Act of 2006, Pub. L. No. 109-115, § 328, 119 Stat. 2396 (2011) (“upon turnover, existing requirements on the re-issuance of Section 8 vouchers shall be maintained to ensure that not less than 75 percent of all vouchers shall be made available to extremely low-income families.”).

⁸ *Id.* at (c)(3)(C) (“continuing to assist substantially the same total number of eligible low-income families as would have been served”).

⁹ *Id.* at (c)(3)(D) (“maintaining a comparable mix of families (by family size) as would have been provided”).

¹⁰ *Id.* at (g)(2)(A) (“document the use of funds made available under this section”).

MTW authority, the MTW demonstration legislation included public participation through a public hearing and comment requirement. The PIH Notice inviting applicants awarded up to 10 points to an applicant based on the degree of resident involvement.

The spirit of the legislation and Notice takes concrete form beyond the application stage in the text of the MTW Standard Agreement. The importance of community involvement in the MTW demonstration is reflected in four components of the Standard Agreement:

- Part II, “Requirements and Covenants,” Paragraph C.
- Part V, “Amendments and Continuation of Activities,” Paragraphs A “Amendments of this Restated Agreement” and B “Amendment of the Annual MTW Plan.”
- Part VII, “Administrative Responsibilities,” Paragraph A “Annual MTW Planning and Reporting,” items 1.f and 1.g.
- Attachment C, Part A “General Conditions,” item 3.

HUD’s proposed changes to form HUD 50900 do not contain provisions that would demonstrate compliance with basic resident and community involvement in the Annual Plan and Report process. In fact, one HUD proposed change to form HUD 50900 would delete the sole reference to any resident involvement: the requirement for the PHA to provide documentation of a public hearing regarding any rent reform initiative (V. Proposed MTW Activities: HUD Approval Requested, item G.).

Instead of deleting an obligation to demonstrate community involvement, form HUD 50900 should, at §VI “Administrative,” add considerably more detail.

Also there should be community involvement with respect to the MTW Report. Currently, there is no HUD requirement for community involvement regarding the Report. Such involvement is essential because these Reports review whether the objectives of the Annual Plan were met, which is of utmost importance to the residents and community. Moreover, the Reports most likely will form the basis of any HUD assessment of the MTW program and resident consultation is essential to that effort.

The form should include a community involvement section detailing the public participation activities carried out through the MTW Annual Plan process, including the MTW Report. The information collected should include:

- The date the draft Annual Plan and/or Report was made available to residents.¹¹
- The dates and locations of public hearings.
- The number of tenants present at the public hearing. In conjunction with the RAB and any Resident Council or other resident organization, HUD should urge the MTW PHA to establish a minimum number of tenants (a quorum) to be at a public hearing. A tenant sign-in sheet from each hearing should be attached.

¹¹ HUD, Public Housing Authority Desk Guide §4.4, 98 (2001).

- The number of community members (advocates, public officials, others) present at the public hearing.
- A description of any additional efforts made to inform tenants and obtain their input, if undertaken.¹²
- An attachment summarizing public comments, distinguishing tenant and tenant representative comments from those who are not tenants.
- A list of resident and community comments accepted without modification; accepted but with modifications, along with an explanation of the reason for modification; and not accepted, along with the reason for not accepting the suggestion.
- The number of working days between the last public hearing and action by the Board of Commissioners.¹³

The value of a 30-day availability period for a draft Annual Plan¹⁴ is diminished if residents are not aware that it is available. Therefore, the introductory section of form HUD 50900 (pages 1 – 6 of Attachment B as currently proposed) should promulgate minimum requirements. These requirements should address:

- Notification of residents and the community.
 - Notice of the availability of the draft Annual Plan and/or Report and of upcoming hearings and other means of public input should be sent to each RAB member, each Resident Council president (where Resident Councils exist), other resident organizations, and any resident or advocate requesting to be informed of any MTW Annual Plan or Report activity.
 - Notices should be placed in common areas and other areas where residents are likely to gather or see such a notice.
 - Articles in resident newsletters should also be considered if their publication date is timely.
- Notification in the legal section of newspapers should not be considered adequate. (HUD’s Consolidated Plan regulations specifically state that small print notices in newspapers a few days before a hearing are not considered adequate notice).
- The 30-day comment period should not commence until 2 days after the first formal notice has been delivered (giving residents time to actually obtain the draft Annual Plan and/or Report).
- Copies of the draft Annual Plan and/or Report should be available at each development as well as at the PHA’s central office or Central Office Cost Center (COCC).
 - In addition, draft Annual Plans and/or Reports should be provided at no cost to each RAB member, Resident Council President, resident organization, resident-designated advocate, or any resident requesting a copy for personal use.

¹² HUD, Moving to Work Standard Agreement 19, (2007) (recommending that agencies provide for citizen participation through public hearings and other appropriate means”); HUD, Public Housing Authority Desk Guide 18, 96 (2001).

¹³ HUD, Moving to Work Standard Agreement 19, (2007) (recommending that there should be at least fifteen days).

¹⁴ A draft of Report should also be available for at least a 30-day period for resident and public review and comment.

- Draft Annual Plans and/or Reports should be posted on the PHA’s website.
- Public hearings must be at times and locations convenient for residents, including residents working varying shifts.
- Public notices and hearings must address residents with limited English proficiency when relevant.
- Public notices and hearings must be accessible for people with physical disabilities.

Form HUD 50900 should be further modified to require MTW PHAs to demonstrate how they have complied with the above additional suggestions.

When the MTW Plan and the MTW Report are each finalized at the local level and sent to HUD, the PHA should provide notice as suggested above and make copies available as suggested above. These actions should also be reflected on form HUD 50900. The process of posting and making the documents available must be repeated once HUD approves the Plan and Report.

The instruction section of form HUD 50900 should echo the CDBG statute and the Consolidated Plan regulations which require jurisdictions to “encourage” public involvement, particularly by those who will be most affected. In addition, the Consolidated Plan regulations require jurisdictions “to take whatever actions are appropriate” to encourage involvement by minorities and non-English speaking people, as well as people with disabilities.

2. Require PHAs to Report on Numbers of Deep Subsidy Units (ACC Rental Units and Housing Choice Vouchers)

Proposed Location: Plan § II.1, A., Housing Stock Information, at 7; Report § II.4, A., Housing Stock Information at 11.

PHAs should be required to report deep subsidy unit data for the period before they became MTW PHAs, the initial year of MTW participation, and each subsequent year. Further, they should be required to report this information by the following categories so that changes in the inventory during MTW participation can be tracked.

Federal public housing units (ACC rental units)

Rental

Ownership/Management:

Conventional PHA owned and operated (if privately managed indicate manager)

Mixed Finance (if privately owned and/or managed indicate owner and/or manager)

Type of Occupancy

Elderly only

Disabled nonelderly only

Mixed elderly and nonelderly disabled

Family/General Occupancy

Homeownership

Authorized HCV units

Included in MTW Block Grant

Not included in MTW Block Grant

Type of Voucher (use categories reported in VMS system and reports)

Tenant based

Used as Project-based Voucher

General Occupancy/Family

Elderly only

Disabled nonelderly only

Mixed elderly and nonelderly disabled

Used as HCV Homeownership

Family Unification

Litigation

Welfare to Work

Enhanced voucher

Tenant Protection Vouchers

Public Housing Replacement

Public Housing Relocation

Housing Conversion Actions

Port-Outs Administered by the PHA

Port-Ins Billed to Another PHA

Other: _____ (please specify)

Federal Authorized non-MTW Voucher (HCV) Units

VASH

Mainstream

Other: _____ (please specify)

3. Provide Greater Details about Housing Stock

Current Location: Plan § II.1.A., Housing Stock Information, at 7; Plan § II.2 B., Leasing Information at 9; Report § II.4 A., Housing Stock Information, at 11; Report § II.5 B., Leasing Information, at 13.

As proposed, the Plan and the Report include a breakdown of the households served in public housing, vouchers, and non-traditional units/subsidies, but do not provide much additional detail about the different programs within these general categories. For example, under Federal Authorized MTW Voucher (HCV) units, there is no breakdown by tenant-based and project-based. Under Federal Authorized non-MTW (HCV) units, there is no breakdown by program type (e.g. VASH, FUP, Mainstream, DHAP, enhanced voucher). A housing authority may have

several/many types of non-Traditional MTW Units/Subsidies, but, as proposed, they are all grouped together with no breakdown by program.

In order to meaningfully comment on a proposed initiative, e.g. a new non-traditional voucher program or changing a project-based voucher program, it is important for residents and the community to have the data described above. For example, by having a breakdown among the types of non-traditional programs, the residents and public will know the size of the proposed initiative (e.g. a few versus a large number) and whether the housing authority is creating new resources or transferring from existing programs. Likewise, the breakdown between tenant and project-based vouchers raises important policy questions.

In addition, a new category needs to be added so that HUD, residents, and the public can determine how many units the housing authority formerly owned and administered (just prior to MTW) and how many it currently owns and/or administers and the source of new units. For example, are the new units incremental vouchers due to the conversion of assisted housing units to enhanced vouchers? How many public housing units existed in the past and have been converted to vouchers?

Thus the following information ought to be provided, by year from the beginning of the granting of the MTW status to the present:

- Federal public housing units
 - Rental (by bedroom size)
 - Elderly only
 - Disabled nonelderly only
 - Mixed elderly and nonelderly disabled
 - Family
 - Homeownership
- Federal Authorized MTW vouchers (HCV)
 - Tenant-based
 - Project-based
 - If applicable, breakdown by Family, Elderly only, Disabled nonelderly only, and Mixed elderly and nonelderly disabled
 - Enhanced voucher
- Tenant Protection Vouchers
- Federal Authorized non-MTW Voucher (HCV) Units
 - VASH
 - Mainstream
 - DHAP
 - FUP
 - Other (please specify)
- Mod Rehab

Other (please specify)

Local Non-Traditional MTW Units

Tenant-based (separate for each program)

Project-based (separate for each program)

Other (separate for each program)

4. Require PHAs to Report on the Location of Replacement Units

Current Location: Plan § II.1, A., Housing Stock Information, at 7; Report § II.4, A. Housing Stock Information, at 11.

The number and location of planned as well as actual replacement units, bedroom size and intended occupancy should be reported. This information will assist with evaluating whether the goal of improving housing choice is met and if the PHA is affirmatively furthering fair housing (see Section 6, below).

5. Require PHAs to Report how Many Units are Funded

Current Location: Plan § II.1, A., Housing Stock Information, at 7; Report § II.4, A., Housing Stock Information, at 11.

MTW PHAs should be required to report the number of authorized units, the initial number of baseline MTW units, and the number of units currently funded. For HCV's, this information should also include the number of vouchers leased as reported in HUD's VMS system and should be broken out separately for HCV's included in the MTW block grant and not included in the block grant. This information is currently available to HUD and PHAs through HUD's Voucher Management System (VMS) but often is not provided in an understandable format to residents, voucher holders, local officials or other stakeholders. In addition, the VMS data may not be released to the public at all until well after a PHA's MTW report is submitted.

Public Housing:

Authorized units: The number of units in the PHAs inventory and under an ACC amendment as of October 1, 1998

MTW Baseline units: The number of units under ACC amendment that were included in determining the PHA's base year funding for operating subsidy and capital funds pursuant to the PHA's MTW Agreement, Attachment A, Calculation of Subsidies

Current MTW funded units: The number of units under ACC amendment included in the calculation of the PHAs current year funding for operating subsidy and capital funds pursuant to the PHA's MTW Agreement, Attachment A,

Calculation of Subsidies as adjusted for any subsequent removal or addition of units to the inventory

Housing Choice Voucher Program:

Number of Authorized Vouchers

MTW Baseline Vouchers: Number of vouchers under lease as determined by VMS used to calculate the PHA's baseline Housing Choice Voucher funding pursuant to the PHA's Moving to Work Agreement, Attachment A, Calculation of Subsidies

Subsequent Allocations of incremental or tenant protection vouchers by year and purpose

MTW Currently Funded Vouchers: Number of vouchers currently covered by the PHA's voucher funding, calculated by dividing the agency's funding level by its average cost per voucher

Number of leased vouchers as reported in HUD's VMS system

PHA's HCV success rate (number of vouchers leased divided by number of vouchers issued during fiscal or calendar year)

Amount of HCV dollars used for leasing as reported in HUD's VMS system and the PHA's average Per Unit Cost (PUC)

6. Collect Data Related to Fair Housing

Proposed Location: Report § II.5, B., Leasing Information, at 13.

MTW agencies are required to Affirmatively Further Fair Housing,¹⁵ and an AFFH certification is included in the MTW proposed form.¹⁶ But the proposed Annual Report form collects no demographics by which to evaluate whether actions undertaken by MTW PHAs are promoting residential segregation, or whether they have a disparate impact on protected classes (defined by race, color, national origin, disability, age, gender, and familial status). Such impacts should be measured by numerical data describing the number and protected-class-status of families served separated out by program and by project, and tracked over time. Demographic data on neighborhoods where new assisted housing units are sited, as well as neighborhood characteristics for all Section 8 voucher families should be collected. This data should also include impacts of loss of units, if any, on protected classes, and the location of replacement

¹⁵ 42 U.S.C. § 3608 (2011); 24 C.F.R. § 903.2 (2011).

¹⁶ Form HUD 50900 (revision proposed May 16, 2011). As noted below, this Certification must be revised to include reference to Limited English Proficiency (LEP) obligations.

housing and locations of relocated families. To assess the impacts of admissions policies and practices, data on the racial and ethnic characteristics of families on the waitlist, and families recently admitted, are also important as well (see Section 11, below). All data should be separated by program and by project, and tracked over time.

One of three statutory goals of the MTW demonstration is to increase housing choice for families, but there is no data requested to demonstrate if this goal is met. The type of data that would be helpful is a comparison of the number, unit size and type of housing (elderly or family, rental or homeownership) by location such as by zip code or census tract and income and racial and ethnic mix of the housing pre-MTW, over time, and currently. Similar information should be reported for the location, census tract and household demographics of HCV families.

7. Collect Data Related to Income and Other Characteristics of Persons Served

Proposed Location: Plan § II.2.B., Leasing Information at 9; Report § II.5, B., Leasing Information, at 13.

The proposed Annual Plan and Report form collects no demographics by which to evaluate how actions undertaken by MTW housing authorities have served households at particular income levels (low-income, very low income, extremely low income as statutorily defined) or the mix of family size. Such impacts should be measured by numerical data describing the number and income levels of families served by each category in Section II.B (Public Housing, Housing Choice Vouchers, MTW Households, etc.) and tracked over time. This data should include impacts of loss of units on families within each income level.

The collection of such data is in accordance with the rules that at least 75% of the families assisted by a MTW housing authority must be very low income; a MTW housing authority must assist substantially the same total number of eligible low income families as would have been served had voucher and public housing funds not been combined; and a MTW housing authority must maintain a comparable mix of families by family size as would be provided had the amounts not been used under the demonstration.¹⁷

Families not housed through the PHA, but served through MTW funded Local Non-Traditional Services Only, should be accounted for separately as this data does not count toward the PHA's obligations to serve substantially the same number of households with MTW-funded housing as would have been served had voucher and public housing funds not been combined, nor does it count toward the obligation to house 75% very low income households.

HUD should also establish more specific guidelines for how non-traditional housing assistance should be counted in determining the number of families assisted. For example, in cases where MTW funds are combined with other government funds or tax credits to provide assistance, the

¹⁷ § 204.

number of families counted as assisted should be prorated by the share of total subsidies covered by the MTW funds. In addition, HUD should establish some standard for excluding minor forms of housing. For example, families whose rents are not reduced substantially below market levels should not be counted toward the total number of families receiving housing assistance.

Accordingly, we request that HUD add the following requirements to the Annual Report:

- 1) In the first box on page 13 starting with “Actual Number of Units...” a column should be added for data as of the baseline (e.g. the households served on the date just prior to the implementation of MTW).
- 2) Chart(s) showing income brackets, ethnicity, race, and number of bedrooms by each program type.¹⁸

8. Define “Local Non-Traditional MTW Units” and Collect More Specific Data about Non-Traditional Units

Current Location: Plan § II.2 B., Leasing Information at 9; Report § II.5, B., Leasing Information, at 13.

Provide more detail about all “Non-traditional MTW Housing Units” listed in the MTW Plan or Report, or otherwise administered by the PHA, including a breakdown of the form and amount of MTW funding received in connection with a unit, the amount of other federal, state, and local subsidies provided for the unit, the number, type and income levels of people served by each distinct type of non-traditional housing, and average tenant rent burden as a dollar amount and percentage of income. Again, historical information should be included so that it is clear if, for example, a PHA had a Section 8 mod rehab property that it is listed here or if a Non-Traditional MTW unit was built on a former public housing site, etc.

- Tenant based
- Project-based
 - General (family) occupancy
 - Elderly only
 - Disabled only
 - Mixed Elderly/Disabled
 - Other (please specify)

The PHA should also provide information on other federal project-based housing assistance administered or owned by the PHA, such as Section 8 moderate rehab units, Section 236, etc.

In addition, as a technical matter, the same categories and descriptive language should be used in each section or if it is not, then an explanation for the difference should be provided. For

¹⁸ See Cambridge Housing Authority Annual Plan 15 (FY 2009).

example, use the term “non-traditional” throughout, if relevant. The term “non-traditional” is missing from page 9.

9. Households Served by Local Non-Traditional Services Only Should Not Count Toward the Number of Units Occupied

Current Location: Plan § II.2 B., Leasing Information at 9; Report § II.5, B., Leasing Information, at 13.

The title of the first block is “Anticipated [or Actual] Number of Units to be [that were] Occupied/Leased at the End of the Fiscal Year (Households Served).” Two separate concepts are confused in this section. One is the number of households served and the other is the number of households that received housing assistance. The most important number is the number of households that received housing assistance. The total number of units occupied or households receiving housing assistance should not include those served through local non-traditional services only. The number of households served through local non-traditional services only should be in a separate category/box to avoid confusion. Alternatively, at the very minimum there should be a subtotal of those who received housing, i.e. the number of units occupied or leased at the end of the fiscal year and a total of all households served which could include those who only received services.

In addition, the information provided under families served only through services should also be broken down into extremely low income, very low income and low income categories. As noted above, a PHA should not be allowed to include families that received services only in the calculation of the 75% obligation to serve very low income families.

10. Self-Sufficiency Data and Definition Should Be Required, Not Optional

Current Location: Plan § II.2 B., Leasing Information at 9; Report § II.5, B., Leasing Information, at 13.

One of the three purposes of the MTW program is “give incentives to families . . . to obtain employment and become economically self-sufficient.”¹⁹ PHAs should be required to report on their efforts and the results in assisting families to become self sufficient. The proposed version of the form allows MTW PHAs the option of planning for and reporting on families transitioning to self-sufficiency. This section should not be optional. Moreover, if PHAs report on families transitioned to self-sufficiency, the agency definition of self-sufficiency should be required, not optional.

11. Collect Data about Characteristics of Households on the Waitlist and Other Waitlist Issues

¹⁹ § 204 at (a).

Current Location: Plan § II.3, C., Wait List Information at 10; Report § II.6, C., Wait List Information, at 14.

Waitlist data should also include metrics describing the income levels and protected-class status of households on each waitlist and the cumulative total for the waitlists of the housing authority and any affiliates receiving MTW capital or operating assistance. The data should include applicants' ethnicity, race, income brackets, and for each of the programs the bedroom sizes applicants need. . .

Where there are site-based waitlists maintained by a PHA, it should include these demographics by site. For non-MTW housing authorities, 24 CFR § 903(b)(2)(v) requires those with site-based waitlists to assess changes in demographics of the housing by race, ethnicity, and disability based on MTCS occupancy data. It also requires the use of testers every three years and requires PHAs to correct problems that arise in the review. MTW sites ought to conduct similar reviews and report similar information as HUD does not have authority under MTW to waive civil rights related statutes, regulations or program requirements.

This section lists "Wait List Types," but does not sufficiently define them so that residents and the public can understand what is meant. Under "Select Wait List Types," it would be helpful if each waitlist type was better defined or described. For example, it could read as follows.

Select Wait List Types: Community-Wide, Site-Based, Merged (combined public housing or voucher waiting list or if not describe), Program Specific (limited by HUD or local PHA rules to certain categories of families, which are described), None (if program is new waitlist may not exist), or Other (please describe).

Nationwide there is a severe shortage of affordable housing. Those families most in need, including homeless individuals, those who are disabled and individuals with limited English proficiency (LEP) are often the last to know that affordable housing is or might be available. It is very important that the public, including potential applicants and their advocates, have as much advance notice as possible as to whether a waitlist will be open. Thus, we urge that the Plan include whether the waitlist will open in the coming year.

12. Collect More Information about Planned Demolition and Disposition

Current Location: Plan § II.1, A., Planned New Public Housing Units to be Removed during Fiscal Year, at 7; Report § II.4, A, Housing Stock Information, at 11.

PHAs must include authorized demolition or disposition of public housing units in their annual plans.²⁰ Therefore, the MTW Plan must include a section detailing authorized demolitions and dispositions. The information that is currently requested is insufficient. The PHA should be required to provide the name of the development (the Asset Management Project (AMP) Name

²⁰ 42 U.S.C. § 1437p(a)(3).

may not be sufficient as PHAs often include more than one development within an AMP),²¹ unit sizes, and accessibility features of the units planned for removal, a timetable for the removal and a statement of the plans for replacement and relocation. The form should also specify that Section 18 continues to apply and that the PHA must seek separate HUD approval to remove units. A cross reference to the Special Applications Center (SAC) website would also be helpful

13. Report on Project-Based Voucher Units Lost in Prior Year or Expected to Not Be Renewed

Current Location: Plan § II.1, A., New Housing Choice Vouchers to be Project-Based During Fiscal Year, at 8; Report § II.4, A., New Housing Choice Vouchers that were Project-Based by Fiscal Year End at 12.

In this section, there should be a place for PHAs to report any anticipated reduction in the number of Project-Based Voucher (PBV) units. Also, this section should track this information over time. A voucher participant, tenant or PHA Board member should not have to refer to prior Plans and Reports to view the trend in the number of available and occupied PBV units.

As a point of clarification, the term “in use” should be changed to “leased up.” If the term leased up is not used, then the term “in use” should be defined to explain if it means under contract, leased up or something else.

If a provision is not added to the form to permit reporting on the number of PBV units that might be lost, the instructions for the section entitled “Other Changes to the Housing Stock Anticipated During the Fiscal Year” and the equivalent section in the Report, should state that any anticipated or actual loss or conversion of PBV units should be described in this section.

14. Collect Data for Rent Reform Impact Analysis

Current Location: Plan § III, L., Impact Analysis, at 16.
Proposed Location: Report § IV.

The proposed form requires a prospective impact analysis for any change in the regulations on how rent is calculated for a household (rent reform) in the Annual Plan.²² It also requires that an MTW agency provide an overview as to how it will reevaluate rent reform activities on a yearly basis and revise as necessary to mitigate the negative impacts, such as excessive rent burdens.²³ Unfortunately, it does not require tracking and documentation of changes in rent in the implementation and impacts section of the Annual Report. This information should be collected and tracked year-to-year. An MTW agency engaged in Rent Reform initiatives should have to

²¹ Also, to the extent feasible acronyms such as AMP should be avoided or defined so that residents and the public understand the information presented.

²² Form HUD 50900 § III, L., at 16-17 (revision proposed May 16, 2011).

²³ *Id.*

report the impact that its initiatives have had on tenant rent burdens and include a copy of the Annual Reevaluation of Rent Reform Initiative as part of its Annual Report.

The proposed form states that for additional information on these issues, MTW agencies may wish to reference the Draft Guidance for Moving to Work Agencies: Impact Analysis and Hardship Policies for Rent Reform Initiatives and provides a link to where this document may be found. To our knowledge, HUD did not consult with tenants or their advocates in preparing the draft guidance. This is a major oversight. HUD should distribute this draft guidance to tenants and their advocates, give them an opportunity to provide comments, and consider these comments before finalizing this guidance. This request is consistent with the HUD obligation, noted above, to consult with residents and their representatives in making an assessment of the MTW demonstration.²⁴

15. Collect Data about Implementation of Hardship Case Policies

Current Location: Plan § III, L., Hardship Case Criteria, at 16.

Where rent rules are changed, MTW PHAs are required to establish hardship policies to define the circumstances under which households may be exempted or temporarily waived from new rent determination rules. See Section III (page 5) of the Amended and Restated MTW Agreement template. While these policies are to be described in the Annual Plan, the MTW PHAs are not required to report on their usage or success. To evaluate how these policies are implemented, the PHA should be required to report how they communicate hardship policies to tenants; how many tenants have requested hardship exemptions or waivers; what the tenants asked for; and whether they were approved or denied and why.

16. Familial Status Should Be Added to the List of Protected Classes

Current Location: Plan § III, L., Description of Annual Reevaluation of Rent Reform Initiative, at 17.

Add “familial status” to the list of protected classes to be included in impact analysis related to rent reform initiatives.²⁵

17. Baselines Should Account for Funding Increases

Proposed Location: Plan § IV, A., Implemented Activities, at 18; Report § IV, A., Implemented Activities, at 18.

One purpose of the MTW demonstration is to give PHAs and HUD the flexibility to design and test various approaches for providing and administering housing assistance to determine which

²⁴ § 204 at (h)(1).

²⁵ 42 U.S.C. 3604 (2011); 24 C.F.R. § 100.65 (2011).

are most effective.²⁶ It is impossible to do so without measuring progress against an accurate baseline.

In addition, the MTW demonstration provides that the PHA “continue to assist substantially the same total number of eligible low-income families as would have been served had the amounts not been combined.”

To fulfill this obligation the PHA should analyze how many families it would serve if it used its voucher funds for voucher assistance and its public housing operating and capital funds within its public housing program and compare that to how many families it actually serves. Thus if the PHA currently receives sufficient funding to cover 13,000 vouchers and has 8,000 public housing units that would be the baseline for analysis regarding the number of households that would have been served had funds not been combined (with adjustments for voucher utilization and public housing occupancy rates consistent with the performance standards applied to non-MTW agencies). Additional adjustments could be permitted under certain circumstances, for example when an agency can show that fewer public housing units would have been occupied had it not shifted current year voucher funds to repair vacant units, but such adjustments should be narrowly defined and require clear supporting evidence. The PHA should then compare that with the number of families actually assisted (excluding families served by local non-traditional services only and not housing assistance as discussed above in Section 9) to determine whether it served substantially the same number of families. HUD should also establish a quantitative standard for substantially the same (for example, a difference of less than five percent) so that agencies can make their certifications in a consistent manner.

In conducting this analysis, it is important that the data collected by HUD does not inadvertently result in a PHA showing an increase in the number of families served which is the result of other factors unrelated to the PHA’s MTW status, such as an increase in vouchers to the jurisdiction because of incremental vouchers or enhanced vouchers.

18. PHAs Should Cite Statutory or Regulatory Provisions Waived for Each MTW Activity

Proposed Location: Plan § IV, A., Implemented Activities, at 18; Report § IV, A., Implemented Activities, at 18.

The version of form HUD 50900 that the proposed form seeks to replace included a Report provision asking MTW PHAs to cite the specific Act or regulation that is waived under MTW and that authorized the PHA to make the change, and to briefly describe how the waived section was necessary to achieve the MTW activity (§ VI, G). This language was eliminated in the revision, but should be retained in the new version of the form. It is critical to include such language because MTW PHAs have extraordinary flexibility to design their own programs outside of the federal regulatory scheme. At the local level, tenants, applicants and their

²⁶ § 204 at (a).

advocates need to know which rules the PHA is seeking to waive. Without this knowledge, it is difficult to understand the full impact of what is being proposed and to know what rules the PHA will no longer follow or enforce. Requiring such statements and descriptions will also increase transparency.

19. Require PHAs to Provide Metrics Showing How Activities Relate to Statutory Objectives

Proposed Location: Report § IV, A., Implemented Activities, at 18.

The three statutory objectives of the MTW demonstration are to reduce cost, increase self-sufficiency and increase housing choices.²⁷ The proposed form requires MTW PHAs to describe how each proposed activity will achieve one or more of the three statutory objectives in the Annual Plan (§ III, B, at 15), but does not require PHAs to report on whether those objectives were actually achieved in the Annual Report. The part of the Annual Report requiring PHAs to provide information about impacts, baselines and benchmarks is not sufficient (§ IV, A, at 18). Each activity should be described and evaluated relative to specific statutory objectives, and such evaluations should be based on quantitative metrics supporting the PHA's claims.

Among other things, this would require PHAs to report how many families served include a head of household who is working, seeking work, or preparing for work and the location of the housing that receives federal housing assistance.

20. Approved Activities Not Yet Implemented or on Hold Should Be Re-Approved Before Implementation if Not Described With Sufficient Detail or if Significant Changes Have Been Made

Proposed Location: Plan § IV, B., Not Yet Implemented at 19; Plan § IV, C., On Hold, at 19.

All planned MTW activities described in an Annual Plan should be described in detail sufficient to solicit meaningful public comment. However, we recognize that at times it may not be possible for a MTW PHA to provide sufficient detail of a proposed initiative, particularly where the PHA staff has not fully developed its thinking on a given policy initiative and, therefore, includes vague language as a "placeholder." For example, in FY 2008 and FY 2009, the Cambridge Housing Authority described a proposed "Opportunity Voucher Program" but provided very few details about the eligibility or operation of this proposed new subsidy program in its Annual Plan.²⁸ Some of the information omitted included the scope of self-sufficiency requirements, grounds for termination, the time limit on the subsidy, how the subsidy would be determined, and whether participants could exit back to the "regular" housing choice voucher program. Under circumstances such as these, it would be impossible to provide meaningful

²⁷ § 204.

²⁸ Cambridge Housing Authority Annual Plan 8 (FY 2009); Cambridge Housing Authority Annual Plan 35 (FY 2008).

feedback on the proposed MTW activity. Accordingly, we urge that (in the box at the bottom of page 4 of Attachment B) HUD also require MTW PHAs to amend their Annual Plan to re-propose activities (with details) that were not sufficiently described in its most recent Annual Plan; hold a new public process for residents and the community to provide feedback prior to implementation; and after the public process, submit the revised Annual Plan to HUD for review and approval.

21. Collect More Data about Planned and Actual Uses of MTW Funds

Current Location: Plan § V.1, A., Planned Uses of MTW Funds, at 21; Report § V.2, A., Actual Sources and Uses of MTW Funds, at 24.

Several items under Planned Uses of MTW Funds in the Annual Plan and under Actual Uses of MTW Funds in the Annual Report require more specificity. Money budgeted or expended on Agency Managed Housing Operations, Utility Payments, Resident Services, Protected Services and Local Housing Program Expenses should each be broken into subsections to require reporting on costs attributable to the central office, and those attributable to each specific development. The form should also require the PHA to state where more detailed financial information can be obtained and when it is available. Thus, residents and the public should be told in accordance with 24 C.F.R. § 990.280 that the project-based budget is available for each development and/or Asset Management Project (AMP).

22. Require PHAs to Report How Much Money Was Used for Other Purposes Pursuant to Single Fund Flexibility

Current Location: Plan § V.1, A., Planned Uses of MTW Funds, at 21; Report § V.2, A., Actual Sources and Uses of MTW Funds, at 24; Plan § V.1, D., Describe the Planned Use of Single-Fund Flexibility, at 23; Report § V.2, D., Describe the Planned vs. Actual Uses of MTW Single-Fund Flexibility, at 26.

The Plan's Sources and Uses of Funding should require MTW PHAs to describe the amount of funds used for purposes other than they were originally intended pursuant to single fund flexibility afforded by MTW. The form should also require PHAs to specifically describe where the funds were moved from and what they were used for to reflect how the PHA shifted money and for what particular projects or purposes. For example, X dollars of voucher funds were used to rehabilitate 100 units of vacant public housing at Y development, or X dollars of public housing capital funds were used to cover Y dollars in shortfalls in the HCV program.

23. Require PHAs to Provide Metrics Supporting Certification They Meet Statutory Requirements

Current Location: Report § VI, C., at 27.

MTW PHAs should be required to provide numerical data showing they meet the three statutory requirements of: 1) assuring that at least 75 percent of the families assisted by the Agency are very low-income families; 2) continuing to assist substantially the same total number of eligible low-income families as would have been served had the amounts not been combined; and 3) maintaining a comparable mix of families (by family size) are served, as would have been provided had the amounts not been used under the demonstration.²⁹

24. Add a Section 3 Reporting Requirement

Proposed Location: Report § VI, at 27.

One of the statutory goals of MTW is to promote economic self-sufficiency.³⁰ PHAs could go a long way toward achieving this goal by fulfilling their Section 3 obligations.³¹ The form should include a section for reporting on compliance with Section 3. Alternatively, the Annual Report should include a reference to relevant forms HUD 60002 with a copy attached, so that residents and the public will know the outcomes of complying with Section 3. Cross referencing to the form HUD 60002 would also facilitate HUD's enforcement of Section 3.

25. Include Compliance with Limited English Proficiency Regulations in Certification of Compliance

Current Location: § VI, Certifications of Compliance with Regulation, at 28.

The certifications should be amended to include the limited English proficiency requirements by referencing "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" ("HUD Final LEP Guidance") 72 Federal Register 2732."

If you have any questions regarding these comments, please contact any of the individuals listed below or contact Catherine Bishop, cbishop@nhlp.org, 415-546-7000, ext. 3105.

Sincerely,

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²⁹ § 204.

³⁰ § 204 at (a).

³¹ Section 3 of the Housing and Urban Development Act of 1968, as amended, codified at 12 U.S.C. § 1701u.

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