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Regulations Division  
Office of General Counsel  
451 7th Street SW, Room 10276  
Department of Housing and Urban Development  
Washington, DC 20410-0500  
*Submitted electronically through [www.regulations.gov](http://www.regulations.gov)*

Re: Docket No. FR 5994-N-02: "Operations Notice for the Expansion of the Moving to Work Demonstration Program Solicitation of Comment; Waiver Revision and Reopening of Comment Period"

Dear Regulations Division, Office of General Counsel, HUD:

The following comments are submitted on behalf of the National Housing Law Project (NHLP) and the Housing Justice Network (HJN) regarding the notice in the federal register published on Thursday, May 4, 2017, "Operations Notice for the Expansion of the Moving to Work Demonstration Program Solicitation of Comment; Waiver Revision and Reopening of Comment Period"<sup>1</sup> which updated and extended the comment period for HUD's proposed notice and solicitation of comment on January 23, 2017, "Operations Notice for the Expansion of the Moving to Work Demonstration Program Solicitation of Comment."<sup>2</sup>

NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income tenants and homeowners; and increasing housing opportunities for protected classes. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. In addition, NHLP hosts the national Housing Justice Network, a vast field network of over 1,000 community-level housing advocates and tenant leaders. HJN member organizations are committed to protecting affordable housing and housing rights for low-income families nationwide. Meaningful tenant involvement is fundamental to all supported and public housing decisions, and the following comments draw on NHLP and HJN's extensive experience working for decades with advocates, residents, and Public Housing Authorities (PHAs).

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<sup>1</sup> Operations Notice for the Expansion of the Moving to Work Demonstration Program Solicitation of Comment; Waiver Revision and Reopening of Comment Period, 82 Fed. Reg. 20,912 (May 4, 2017).

<sup>2</sup> Operations Notice for the Expansion of the Moving to Work Demonstration Program Solicitation of Comment, 82 Fed. Reg. 8,056 (Jan. 23, 2017) (hereinafter "Operations Notice")

Our comments focus on five areas of the Operations Notice that will have the greatest impact on tenants: waivers, resident participation, funding, regionalization, and evaluation.

## WAIVERS

### **HUD should prohibit general and conditional waivers that could cause the most harm to tenants**

Waivers that have the potential to cause the most harm to tenants should be available to MTW PHAs only as part of cohort-specific evaluations. Work requirements, time limits on assistance and policies that result in higher rent burdens for tenants run the greatest risk of negatively impacting participant families and could lead to termination of assistance, evictions, displacement, and even homelessness. They also represent major departures from the fundamental character of HUD's housing programs: they prioritize the economic well-being of PHAs over the housing stability and support of residents. Therefore, HUD should carefully track and monitor these policies only as part of a cohort-specific waiver.

#### *Work Requirements*

To date, there has only been one rigorous empirical study evaluating the effects of a work requirement on public housing residents' employment outcomes.<sup>3</sup> The study evaluated outcomes at the Charlotte Housing Authority (CHA), one of eight current MTW agencies that has a work requirement. Even though the authors conclude that the CHA's work requirement results in a higher employment rate among public housing residents, they "caution against drawing more general conclusions and believe it premature to implement work requirements across the public housing program."<sup>4</sup> They argue that a number of factors had confounding effects on the efficacy of the requirement in increasing employment, including (1) the CHA's intensive case management program (implemented two years prior to the enforcement of the work requirement), (2) the decision to hold off instituting the requirement until the local economy had rebounded from the effects of the Great Recession, and (3) a set of measures to ameliorate the harshness of the requirement (such as reviewing residents' disability status to determine whether they qualified for an exemption). Furthermore, the authors found no actual increase in hours worked among the employed, indicating that residents who could find work often ended up in part-time jobs that didn't further their path to self-sufficiency. As the authors of the study conclude, more research is necessary to determine whether work requirements, in isolation, are an effective tool for helping subsidized residents find work.

Furthermore, previous studies of work requirements in the Temporary Assistance to Needy Families program (TANF) indicate that they fail to support positive outcomes for low-income families. One study found that non-compliance with TANF work requirements was more closely linked to employment barriers such as lack of child care or not having a car, than a desire to avoid finding work or specific resistance to the work requirement policy.<sup>5</sup> Further, TANF recipients who

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<sup>3</sup> Rohe et al. 2016. "Work Requirements in Public Housing: Impacts on Tenant Employment and Evictions," *Housing Policy Debate* Vol. 26, No. 6: 909-927.

<sup>4</sup> Id. at 923.

<sup>5</sup> Hasenfeld et al. 2004. "The Logic of Sanctioning Welfare Recipients: An Empirical Assessment," *Social Services Review*, Vol. 78, No. 2: 304-319.

were sanctioned for not complying with a work requirement were found to have significantly lower earnings growth than a matched set of non-sanctioned recipients.<sup>6</sup>

Evidence suggests that work requirements might harm tenants without helping them move towards self-sufficiency. HUD should only allow waivers for work requirements in the broader MTW PHA pool after the policy has been rigorously evaluated amidst a small cohort of MTW agencies.

### *Time Limits*

Waivers for establishing time limits must also be withheld until more rigorous research is undertaken to ascertain the effects of time limits on the social and economic well-being of public housing and voucher participants. The only study that has attempted to evaluate the effect of time limits on public housing resident outcomes was stymied by failures in evaluation design and a lack of data from comparison groups and on key outcomes.<sup>7</sup> The authors write, “Unfortunately, a lack of follow-up with those who have timed out of housing assistance, and the absence of comparative data on time-limited and non-time-limited households, means that there is only limited information with which to evaluate outcomes or establish cause-and-effect relationships between agencies’ policies and recipients’ experiences.”<sup>8</sup> With these limitations in mind, the authors find decidedly mixed results: some residents experience time limits as a spur to work, while others are pushed deeper into poverty.

Findings from evaluations of TANF time limits suggest that uneven outcomes are the norm.<sup>9</sup> While some residents experience positive outcomes in employment and health, others fall quickly back into poverty. In short, time limits alone, absent job and mobility counseling support, put tenants’ housing stability at risk. HUD should rigorously evaluate the impact of time limits via cohort-specific waivers before allowing all MTW PHAs the ability to implement them.

### *Rent Reform*

Finally, conditional waivers for the proposed rent reform policies are untested and risk harming tenants. HUD is currently undertaking efforts to evaluate rent reforms at four MTW agencies<sup>10</sup> and therefore making these policies available through conditional waivers is premature. Furthermore, HUD has ostensibly followed the MTW Research Advisory Committees’ recommendation that a rigorous, cohort-specific evaluation be undertaken before the reforms are adopted on a broader scale. After these evaluations are available, residents, advocates, and policymakers will be able to fully assess the viability of these reforms for wide-scale adoption. In the interim, allowing minimum rents up to \$250, increasing the share of income from which rent can be derived from 40% to 50%, and other proposed policies risk significantly burdening subsidized residents without offering any empirically demonstrated benefits.

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<sup>6</sup> Fording et al. 2013. “Do Welfare Sanctions Help or Hurt the Poor? Estimating the Causal Effect of Sanctioning on Client Earnings,” *Social Services Review*, Vol. 87, No. 4: 641-676.

<sup>7</sup> Miller et al. 2007. “The Experiences of Public Housing Agencies that Established Time Limits Policies Under the MTW Demonstration,” submission to the Dept. of Housing and Urban Development, Office of Policy and Development Research.

<sup>8</sup> Id. at ix.

<sup>9</sup> Wood, et al. 2008. “Two Steps Forward, One Step Back: The Uneven Economic Progress of TANF Recipients.” *Social Service Review* Vol. 82, No. 1: 3-28.

<sup>10</sup> MDRC, July 2014. “FAQs About HUD’s Rent Reform Demonstration,” available at:

<http://www.mdrc.org/news/announcement/faqs-about-hud-s-rent-reform-demonstration> [accessed May 24, 2017]

## **More transparency is needed in the waiver approval process**

HUD approval is required for conditional waivers because conditional waivers are “expected to have a greater and more direct impact on assisted households.”<sup>11</sup> HUD states it will require additional material from a PHA requesting a conditional waiver including information to ensure that there are adequate protections in place for both participant families and PHAs.<sup>12</sup> HUD’s Operations Notice, however, fails to include any details about what information HUD will require and the criteria it will use to evaluate whether to grant or deny a conditional waiver. HUD should publish the criteria and make it available for public comment. In addition, HUD should require that PHAs make each application for a conditional waiver and HUD’s response public by posting it on their website and including it in the MTW Supplement to the Annual Plan (the latter is proposed in the Operations Notice).

Without knowing the standards by which a conditional waiver will be granted, it is difficult to comment on the waivers themselves. Importantly, HUD states in the Operations Notice,

“If HUD determines that an activity(s) derived from either a general waiver or a conditional waiver would impact or conflict with the specific policy(s) to be studied in the MTW agency’s cohort group, the MTW agency will not be able to conduct that Activity(s) until the evaluation of the specific policy change has concluded.”<sup>13</sup>

HUD recognizes that general and conditional waivers run the risk of interfering with a cohort-specific waiver, and intends to analyze conditional waivers at least on these grounds. HUD should be more explicit about how it will evaluate waiver conflicts and should define conflicts broadly in order to come up with reliable research outcomes.

## RESIDENT PARTICIPATION

### **An MTW application and MTW-related updates to the PHA’s Administrative Plan and ACOP should be considered substantial amendments to the PHA Plan.**

First, HUD should explicitly define a PHA’s intent to apply for the MTW program as a significant amendment to the PHA Plan. Doing so would trigger a robust public participation process and require input from residents about the impact of proposed policy changes. In addition, changes to the local Administrative Plan or ACOP related to MTW activities should be considered a significant amendment to the PHA plan, also triggering the public participation process. An application for a conditional waiver or implementation of it, for example, has the potential to drastically impact participants. Public notice and resident participation should be required prior to making such changes to the voucher and public housing programs.

### **HUD should require multiple meetings with residents prior to submitting an MTW application**

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<sup>11</sup> Operations Notice at 8059.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

HUD should require at least 2 meetings with public housing and voucher residents prior to a public hearing related to an MTW application. HUD's PIH Notice 2017-1 (requesting PHAs to apply to participate in the MTW expansion but later rescinded) included a requirement that PHAs notify residents of their intention to apply for MTW, host two meetings with residents, and hold a public hearing. The Operations Notice should include these important protections for public housing and voucher families. HUD should also be sure to include in its Operations Notice accessibility requirements for people with a range of disabilities in order to allow full access to the public participation process.

## FUNDING

### **HUD should use the proposed funding formula that accounts for voucher utilization**

We support HUD's proposal to base voucher renewal funding on an agency's previous year's HAP expenses because (1) it provides an incentive for PHAs to utilize all of their authorized vouchers and (2) there is more PHA accountability to HUD using the proposed formula (versus a block grant structure). We also support maintaining the formula at a minimum of 90% and would support a higher percentage because scarce housing resources should be used for rental housing and not other "local, non-traditional" housing services.

One valuable lesson learned from the MTW program is that with little HUD oversight, PHAs serve significantly less families than before participation in the program. In fact, the five MTW agencies responsible for the largest percentage of funds transferred away from the voucher program provided housing for 3,600 families with the money that could have been used to provide vouchers to 32,000 families.<sup>14</sup> Moreover, the average voucher utilization rate for a traditional PHA is 96% on average and the average voucher utilization rate for MTW agencies is only 81%.<sup>15</sup> Some MTW PHAs have utilization rates as low as 71%.<sup>16</sup> Voucher applicants are left on increasingly long waitlists while PHAs fail to use their share of authorized vouchers. Tying the MTW voucher funding formula to the number of households served will provide an incentive for PHAs to use their vouchers because the following year's funding will be based on prior utilization.

In addition, a block grant formula is more likely to result in funds being diverted from housing assistance all together due to the lack of accountability and oversight. In Chicago, for example, the PHA used its MTW authority to stockpile unused federal dollars. There, the PHA diverted an average of \$107 million per year from its voucher program from FY 2008-2012 and during that time built up a cash reserve of \$432 million.<sup>17</sup> Last, there are examples of huge increases in executive compensation for MTW agency employees.<sup>18</sup>

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<sup>14</sup> Will Fischer, *HUD Seeks Significant Improvements to "Moving to Work" Demonstration, But Additional Changes Needed*, Center on Budget and Policy Priorities (January 21, 2015).

<sup>15</sup> Will Fisher, *Senate Expansion of "Moving to Work" Block Grants Would Sharply Cut Number of Families with Housing Vouchers*, Center on Budget and Policy Priorities (July 29, 2015).

<sup>16</sup> Center on Budget and Policy Priorities, *Housing Choice Voucher Utilization Data*, <http://www.cbpp.org/research/housing/national-and-state-housing-fact-sheets-data>

<sup>17</sup> Center for Tax and Budget Accountability, *A Fiscal Review of the Chicago Housing Authority* (July 2014).

<sup>18</sup> WABE News, *Atlanta Housing Authority CEO Compensation At Center of HUD New Policy* (June 7, 2012), <http://news.wabe.org/post/atlanta-housing-authority-ceo-compensation-center-hud-new-policy>. The Housing Authority's Chief office, Renee Glover, was cited as the highest paid housing authority executive in the country at over \$600,000.

HUD's proposed voucher renewal funding formula for MTW agencies is a major improvement to the MTW program. It allows PHAs sufficient flexibility while maximizing the impact of the voucher program to help families move to areas of high opportunity.

## REGIONALIZATION

### **HUD should require regional agencies to have a formal partnership**

In anticipation of HUD's guidance on designating a regional MTW agency, we suggest that HUD require PHAs to create a formal partnership in order to qualify for regional MTW status. First, without this limitation, MTW agencies could extend their flexibility to any number of non-MTW agencies, which is clearly not Congress' intent in expanding the program.<sup>19</sup> In addition, the expansion is limited in order to study the outcomes of targeted policy changes. By adding non-MTW agencies into the research pool, it will be difficult to measure specific outcomes related to an agency's MTW status.

We urge HUD to revise its proposed consortia rule to explicitly allow MTW PHAs to enter into partial consortia.<sup>20</sup> Partial consortia will allow an MTW PHA to regionalize without an unauthorized expansion of the MTW program. Participating MTW agencies will retain their MTW status, although the vouchers administered by the partial consortium will be subject to the standard voucher rules and the consortium's policies as set forth in the consortium's Administrative and Annual Plans. MTW agencies that participate in partial consortia also have the potential to eliminate portability barriers for voucher participants and improve opportunities for tenant mobility and housing choice.

## EVALUATION

### **HUD should revise Form 50900 prior to developing performance metrics**

HUD proposes a program-wide evaluation that seeks to "assess whether or not, and to what extent, MTW agencies use Federal dollars more efficiently, help residents find employment and become self-sufficient, and increase housing choices for low-income families."<sup>21</sup> HUD states in the Operations Notice and publicly at its recent listening sessions<sup>22</sup> that HUD intends to develop performance metrics based on information already collected by HUD through its current systems. However, HUD's main data collection tool for MTW PHAs, Form 50900, is flawed and should not be relied upon to accurately capture the metrics that the program-wide evaluation seeks to collect.

For example, HUD proposed as one of the potential performance metrics "changes in number of families served."<sup>23</sup> If HUD plans to use, even in part, the data available in Form 50900 to measure the number of families served, it could lead to misleading results because MTW PHAs can report serving families that only receive a minimal amount of housing assistance from the PHA. As we have noted in previous comments to HUD, only families that receive substantial, ongoing MTW-funded

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<sup>19</sup> 2016 Consolidated Appropriations Act, Section 239, limits the expansion to 100 public housing agencies.

<sup>20</sup> Streamlining Requirements Applicable to Formation of Consortia by Public Housing Agencies, 79 Fed. Reg. 40,019 (July 11, 2014).

<sup>21</sup> Operations Notice at 8064.

<sup>22</sup> HUD Listening Session, Washington D.C. April 28, 2017.

<sup>23</sup> Operations Notice at 8064.

housing assistance should be counted. Given the lack of clarity about how MTW PHAs define the number of families served (assisted households), HUD should revise Form 50900 before it develops metrics based on its data.

Form 50900 is the primary source of data that HUD receives to evaluate a PHA's participation in MTW, and will continue to be for the expansion. Substituting for the PHA's Annual Plan, it is also the only way that tenants, advocates, and other stakeholders can provide input into and monitor MTW agency activities. We urge HUD to review our comments submitted on April 22, 2016 in response to a notice of information collection regarding Form 50900.

Thank you for your consideration of our comments and recommendations. We look forward to working with HUD and are happy to further discuss our suggestions. Please contact Deborah Thrope ([dthrope@nhlp.org](mailto:dthrope@nhlp.org)) should you wish to talk with NHLP and/or HJN members to clarify our position on these important issues.

Sincerely,



Deborah Thrope, National Housing Law Project

On behalf of HJN:

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