



## NATIONAL LOW INCOME HOUSING COALITION

To: Jenn Jones, Peggy Bailey, Dominique Blom,  
Todd Richardson, Marianne Nazarro, HUD  
Jessica Lee, OMB  
Erika Poethig, DPC

From: Ed Gramlich, NLIHC

Re: Request to Pause the MTW Expansion

Date: February 23, 2021

The National Low Income Housing Coalition (NLIHC) is an organization whose members include state and local affordable housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, faith-based organizations, public housing agencies, private developers and property owners, local and state government agencies, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we work on behalf of and with low-income people who receive and those who are in need of federal housing assistance, especially extremely low-income people and people who are homeless.

NLIHC writes to convey our concerns regarding the final Moving to Work (MTW) Demonstration Program Operations Notice published on August 28, 2020. NLIHC urges HUD to pause implementation of the MTW Demonstration expansion and consider the concerns raised in this letter as well as those in letters from the Center on Budget and Policy Priorities and the National Housing Law Project. We urge HUD to make changes to the Operations Notice based on our concerns in order to prevent harm to residents. Several of the MTW Waivers, whether assigned to a specific evaluation cohort or to any MTW expansion PHA, can cause harm to residents, leading to housing instability in the form of rent burden, termination of assistance, eviction, and potentially homelessness – outcomes always dire but potential deadly in the midst of a pandemic which might continue for many more months.

## Summary of NLIHC's Fourteen Recommendations

In short, HUD should:

1. Eliminate the harmful work requirements cohort and either eliminate the “rent reform” (burden) cohort or modify it to exclude use of six rent policies that cause residents to be rent-burdened. HUD should also establish a new MTW Research Advisory Committee to propose alternative MTW policies that will not harm residents and that will be subject to statutorily required rigorous evaluation.
2. Eliminate the harmful waivers that any MTW PHA could use without HUD approval, in particular work requirements, time limits, rent policies that cause rent burden, and stepped rents (which both cause rent burdens and are effectively time limits). Such policies do not address the three MTW statutory goals of increasing housing choices for residents, providing residents self-sufficiency incentives, and reducing PHA costs or increasing PHA cost-effectiveness. In addition, allowing any MTW Waivers without HUD approval would also cloud the meaningful evaluation called for by the expansion statute.
3. Revise the requirement that an MTW PHA use one of twelve “rent policies” by eliminating the six rent burden causing rent policies described later in this letter.
4. Reduce an MTW designation from 20 years to 12 years as previous draft Operations Notices proposed. This significantly expanded period was inserted without an opportunity for public comment. It allows PHAs to implement MTW Waivers for 20 years, far beyond the four- or five-year evaluation periods for cohort-specific waivers, as well as for non-cohort-specific waivers that will only be subject to superficial “program-wide” evaluation. on “local, activities” not otherwise allowed under the HCV or public housing programs without prior HUD approval, including providing: shallow rent subsidies, services to households with income as high as 80% of AMI who are not public housing or voucher tenants, and gap-financing to develop Low Income Housing Tax Credit (LIHTC) properties. However, shallow subsidies provide less rent assistance than is needed, meaning an assisted household pays more than 30% of their income for rent and utilities. In addition, services to people with income as high as 80% of AMI who are not public housing or voucher tenants, as well as gap-financing to develop Low Income Housing Tax Credit (LIHTC) properties, divert scarce HAP funds.
5. Modify two and eliminate one of the options available under “Local, Non-Traditional Activities” MTW Waivers. An MTW agency may spend up to 10% of its HCV HAP funding on “local, activities” not otherwise allowed under the HCV or public housing programs without prior HUD approval, including providing: shallow rent subsidies, services to households with income as high as 80% of AMI who are not public housing or voucher tenants, and gap-financing to develop Low Income Housing Tax Credit (LIHTC) properties. However, shallow subsidies provide less rent assistance than is needed, meaning an assisted household pays more than 30% of their income for rent and utilities. In addition, services to people with income as high as 80% of AMI who are not public housing or voucher tenants, as well as gap-financing to develop Low Income Housing Tax Credit (LIHTC) properties, divert scarce HAP funds.

6. Address one of the five statutory requirements, serving “substantially the same” (STS) number of households. The Operations Notice allows an MTW PHA to reduce the number of voucher households served to 90%. NLIHC urges HUD to raise this to 95% given the pressing need to provide vouchers to those on the waiting list.
7. Redefine “to assist” in the context of “substantially the same.” To determine the number of households that count toward the STS requirement in the HCV program each year, HUD will consider households housed through both the HCV program and any local, non-traditional program. By counting a local, non-traditional rent subsidy program that is a shallow subsidy, an MTW PHA will meet the STS 90% requirement but reduce the number of households with adequate rental assistance.
8. Address NLIHC’s concerns regarding the Impact Analysis required for many of the MTW Waivers.
9. Address NLIHC’s concerns regarding the Hardship Policy required for many of the MTW Waivers.
10. Augment the resident and general public notice and participation shortcomings NLIHC identifies regarding the Impact Analysis and Hardship Policy guidance.
11. Address the shortcomings in the Operations Notice NLIHC identifies for three of the five statutory requirements.
12. Revisit the Operations Notice’s very limited “program-wide” evaluation of all MTW Waivers implemented by MTW PHAs outside of cohort-specific waivers. Because HUD is limiting the program-wide evaluation to the three statutory objectives, negative effects on residents will not be adequately addressed. In addition, using HUD’s existing administrative data systems, as stated in the Operations Notice, will not enable evaluators to assess the impacts on the three statutory objectives let alone other adverse consequences for residents.
13. Restrict regionalization. HUD should establish safeguards to ensure regionalization is not simply used to expand MTW flexibilities beyond the intended 100 agencies without any targeted research goals as intended by Congress. In addition, there must be genuine opportunities for residents and the general public to be informed, consulted, and engaged when an MTW PHA seeks to create a regional MTW incorporating neighboring PHAs that did not seek MTW designation.
14. Pause the admission of Cohorts #3 and #4 pending HUD review of the Operations Notice and the PIH Notices inviting PHAs to apply. HUD should also pause publication of a PIH Notice inviting PHAs to apply for Cohort #5, as well as pause the selection of PHAs that have already applied for Cohort #2. Regarding the PHAs recently selected to participate in Cohort #1, HUD should notify them that HUD is pausing to conduct a thorough review of the Operations Notice and that substantial changes are likely.

## **The Final Operations Notice Does Not Comply with the Statute**

Basic provisions of the Operations Notice do not comply with the letter and spirit of the “Consolidated Appropriations Act of 2016” that authorized HUD to expand the MTW Demonstration Program to an additional 100 high-performing PHAs over a seven-year period. The Act states that “all agencies designated under this section shall be evaluated through rigorous research.” However, the final Operations Notice does not comport with the statute because it requires all expansion MTW PHAs to use one of twelve “rent policies,” six of which could impose a rent burden. HUD contends that the original 1996 statute requires this. However, the statute merely states that an MTW PHA must have a plan that “establishes a reasonable rent policy, which shall be designed to encourage employment and self-sufficiency...such as excluding some or all of a family’s earned income for purposes of determining rent.”

Allowing a PHA to charge rents that render a household “cost-burdened” by paying 35% of adjusted income for rent and utilities, paying a minimum rent of \$130, by paying an imputed rent, or by having an initial HCV rent burden of 60% of AMI do not constitute a “reasonable rent policy” and would not encourage employment or self-sufficiency. This letter elaborates on these cost burden MTW Waivers later.

Another way in which the Operations Notice can cause the MTW expansion to operate in a manner contrary to the Act is that it allows any MTW expansion PHAs to adopt multiple MTW Waivers, most without HUD approval. This can cloud the ability of evaluators to discern the effect of a sole cohort-specific MTW Waiver. If the effect of a potentially harmful MTW Waiver such as time limits, stepped rents (essentially time limits), work requirements, and rent burdens are to be meaningfully determined, a PHA must only be allowed to implement additional MTW Waivers that HUD determines will not interfere with rigorous evaluation of a PHA’s cohort-specific waiver.

### **Concerns Regarding Work Requirements**

NLIHC strongly opposes a work requirement and urges HUD to eliminate the work requirement Cohort #3 and the work requirement MTW Waiver in the final Operations Notice that allows any MTW PHA to implement a work requirement. A work requirement MTW Waiver does not address the three MTW statutory goals of increasing housing choices for residents, providing residents self-sufficiency incentives, and reducing PHA costs or increasing PHA cost-effectiveness.

Work requirements are ineffective; they do not create the jobs with decent pay and opportunities needed to lift people out of poverty. Moreover, most recipients of housing assistance who could be expected to work already do. Imposing such requirements could cut struggling families off from the very housing stability and services that make it possible for them to find and maintain work.

Also, an Operations Notice “Safe Harbor” is inadequate protection because allows a PHA to choose a work requirement using the per person per week option of 15 hours per person per week at the federal minimum wage (instead of the household option of 30 hours). If there are three people in a household age 18 or older, the work requirement per person for the entire household would be greater than if capped at 30 hours per household.

## **Concerns Regarding Term-Limited Assistance**

NLIHC strongly opposes term limits and urges HUD to withdraw the term limit MTW Waiver from an amended Operations Notice. Term limits are arbitrary and do not reflect the reality of low-wage jobs. Term limits can lead to housing instability. They will cut people off from the very housing benefits that make it possible for households to find and maintain jobs. Term limits are especially harmful in high-cost areas where rents are well above what a low-income worker can afford and where there is a severe shortage of affordable homes. Term limits do not address the three MTW statutory goals of increasing housing choices for residents, providing residents self-sufficiency incentives, and reducing PHA costs or increasing PHA cost-effectiveness.

## **Concerns Regarding Six Rent Policies**

Of the twelve “Tenant Rent Policy” MTW Waivers, NLIHC has strong concerns about six and urges HUD to withdraw them from an amended Operations Notice.

Stepped Rents NLIHC strongly opposes stepped rents and urges HUD to withdraw this MTW Waiver from an amended Operations Notice because stepped rents are a form of time limit, and because a “Safe Harbor” would allow a household’s rent payment to start at 35% of adjusted income (a cost burden) and growing each year. Stepped rents fail the statutory requirement of having a “reasonable” rent policy and do not address the three MTW statutory goals of increasing housing choices for residents, providing residents self-sufficiency incentives, and reducing PHA costs or increasing PHA cost-effectiveness.

Minimum Rent of \$130 NLIHC strongly opposes a minimum rent greater than currently allowed and urges HUD to withdraw this MTW Waiver from an amended Operations Notice because a minimum rent greater than currently allowed can place a significant rent burden on households, especially given PHAs’ history of lax practices of informing residents about hardship policies and inadequate hardship policies. High minimum rents fail the statutory requirement of having a “reasonable” rent policy and do not address the three MTW statutory goals of increasing housing choices for residents, providing residents self-sufficiency incentives, and reducing PHA costs or increasing PHA cost-effectiveness.

Tenant Rent as Modified Percentage of Income NLIHC strongly opposes a this MTW Waiver and urges HUD to withdraw it from an amended Operations Notice because making households pay 35% of their income causes households to be cost burdened, shifting limited resources away from food, medicine, transportation to jobs, childcare, and other basics. An MTW Waiver allowing a household to pay 35% of income for rent fails the statutory requirement of having a “reasonable” rent policy and does not address the three MTW statutory goals of increasing housing choices for residents, providing residents self-sufficiency incentives, and reducing PHA costs or increasing PHA cost-effectiveness.

Initial Rent Burden for Voucher Program This MTW Waiver allows a PHA to waive the current HCV rule that limits the amount of rent a household pays when first renting a home with a voucher to no more than 40% of their income for rent. A Safe Harbor limits the initial rent burden to 60% of income. The Operations Notice does not require an MTW PHA to have a hardship policy even though a rent amounting to 60% of a household’s income for rent already meets HUD’s definition of “severe cost burden.” There is also no Safe Harbor excluding elderly or disabled households. This MTW Waiver shifts limited household resources away from food,

medicine, transportation to jobs, childcare, and other basics. A high initial voucher rent fails the statutory requirement of having a “reasonable” rent policy and does not address the three MTW statutory goals of increasing housing choices for residents, providing residents self-sufficiency incentives, and reducing PHA costs or increasing PHA cost-effectiveness. Therefore, NLIHC strongly opposes this MTW Waiver and urges HUD to withdraw it from an amended Operations Notice.

Imputed Income This MTW Waiver allows a PHA to choose to use an imputed rent using the per person per week option of 15 hours per person per week at the federal minimum wage (instead of the household option of 30 hours). If there are three people in a household age 18 or older, the household rent would be greater than if capped at 30 hours per household. NLIHC opposes this MTW Waiver and urges HUD to withdraw it from an amended Operations Notice because it can fail the statutory requirement of having a “reasonable” rent policy and does not address the three MTW statutory goals of increasing housing choices for residents, providing residents self-sufficiency incentives, and reducing PHA costs or increasing PHA cost-effectiveness.

Alternative Income Inclusions/Exclusions This MTW Waiver allows a PHA to create alternative policies that include or exclude certain forms of income when conducting income reviews and rent calculations. While this could benefit a household if certain forms of income are excluded, the MTW Operation Notice in general seems to be mainly oriented to raising household rents. Therefore, by allowing some forms of income to be included, this MTW Waiver is more likely to raise a household’s rent. Including other forms of income would fail the statutory requirement of having a “reasonable” rent policy and does not address the three MTW statutory goals of increasing housing choices for residents, providing residents self-sufficiency incentives, and reducing PHA costs or increasing PHA cost-effectiveness. Therefore NLIHC urges HUD to modify this MTW Waiver, removing the option of including certain forms of income when conducting income reviews and rent calculations.

### **Concerns Regarding the Payment Standard MTW Waivers**

The final Operations Notice allows an MTW PHA to use a payment standard within a Small Area Fair Market Rent (SAFMR) “grouped” ZIP code area that is between 80% and 150% of the SAFMR, with the payment standard for each grouped ZIP code area within the “basic range” for each ZIP code in the group. Likewise, an MTW PHA may use a payment standard between 80% and 120% of the regular FMR.

A payment standard floor at 80% of SAFMR or FMR means tenants might have to pay more for their rent and could discourage landlords from participating in the voucher program. It can also limit a household’s ability to use a voucher in “high-opportunity areas.” These MTW Waivers allowing a payment standard floor of 80% of SAFMR or FMR fail the statutory requirement of having a “reasonable” rent policy and do not address the three MTW statutory goals of increasing housing choices for residents, providing residents self-sufficiency incentives, and reducing PHA costs or increasing PHA cost-effectiveness. Therefore, NLIHC urges HUD to reconsider payment standard floors of 80% of SAFMR or FMR. Rather than restoring the floor to 90%, NLIHC urges HUD to set the floor at 100% in order to facilitate households’ ability to secure a lease, especially in areas with low poverty rates and low concentrations of racial and ethnic minorities.

## **Concerns Regarding Local, Non-Traditional Activities**

The final Operations Notice allows an MTW agency to spend up to 10% of its HCV HAP funding on “local, activities” that are not otherwise eligible under the HCV or public housing programs without prior HUD approval. Of most concern are: shallow rent subsidies, services to households with income as high as 80% of AMI who are not public housing or voucher tenants, and gap-financing to develop Low Income Housing Tax Credit (LIHTC) properties.

NLIHC urges HUD to modify two and eliminate one of the options available under “Local, Non-Traditional Activities” MTW Waivers. To do otherwise would not address the three MTW statutory goals of increasing housing choices for residents, providing residents self-sufficiency incentives, and reducing PHA costs or increasing PHA cost-effectiveness.

### Rental Subsidy Programs

The Operations Notice describes five potential rental subsidy programs, one of which is “shallow subsidies.” Shallow subsidies provide less rent assistance than is needed, meaning an assisted household pays more than 30% of their income for rent and utilities.

Proponents of shallow subsidies claim that more people are helped because a PHA’s fixed amount of HAP funds get spread out to more people; however, those people are not adequately helped. Proponents also speculate that providing only part of what is needed to pay rent and utilities is an incentive for people to do more to increase their income – but, without support services to increase earning potential or without recognition of limited employment opportunities for earning a living wage without working two jobs.

NLIHC urges HUD to modify this option by eliminating shallow subsidies.

### Service Provision

The Operations Notice list four eligible activities, two of which are problematic:

- Services for households living in other affordable housing owned or managed by the PHA that is not public housing or voucher-assisted
- Services for low-income people who are not assisted by public housing or HCV

A Safe Harbor allows services to be provided to people with income as high as 80% of AMI.

Scarce HAP funds should not be diverted for households that are not either HCV or public housing residents – or are residents of a PHA’s other housing stock – unless there is no waiting list for vouchers. Other federal, state, local and charitable funds should be used to provide services.

NLIHC urges HUD to modify this option by eliminating these two eligible activities.

### Housing Development Programs *next page*

## Housing Development Programs

The Operations Notice allows an MTW PHA to use MTW funds to acquire, renovate, or build affordable non-public housing units for low-income people. Eligible activities include: gap financing to develop non-PHA affordable housing, and development of PBV units or units in Low Income Housing Tax Credit (LIHTC) properties.

Scarce HAP funds should not be diverted to assist households with income greater than 30% of AMI when the need is far greater than for any other category, especially at 80% AMI or even at LIHTC income levels.

NLIHC urges HUD to eliminate Housing Development Programs as a Local, Non-Traditional Activity.

### **Concerns Regarding the Impact Analysis Guidance**

NLIHC urges HUD to improve Appendix II's guidance regarding Impact Analyses . An MTW PHA must complete a written analysis of the various impacts of an MTW activity. Of the nine potential impacts an Impact Analysis must consider, NLIHC has concerns about three of them and urges HUD to address the following concerns by providing more comprehensive guidance.

#### Affordability

An MTW PHA must consider the impact of an MTW Waiver on affordability for households (e.g., any change in how much households will pay for housing costs).

The Operations Notice provides no guidance regarding assessing how many households will be or were affected the previous year and the consequences to the household as a result of having less disposable income for basics such as food, medicine, medical and dental visits, child care, transportation, etc. Do landlords evict voucher households for failing to pay full rent on time because the rent MTW Waiver is a cost burden?

#### Waitlists

An MTW PHA must consider the impact of an MTW Waiver on its waitlist(s) (e.g., any change in the amount of time households are on the waitlist).

While waitlist times might be improved if a PHA institutes a shallow subsidy voucher policy, what happens to a household with a shallow subsidy if it cannot continue to meet the contract rent? In the context of other MTW waivers, what happens to previous households who were forced to leave public housing or the voucher program due to an MTW waiver, do they go to the back of the waitlist?

#### Household Termination Rate *next page*



## Household Termination Rate

An MTW PHA must consider the impact of an MTW Waiver on its household termination rate (e.g., any change in the rate at which households non-voluntarily lose assistance).

What happens to households after they are forced to leave public housing or the voucher program? What is the vacancy rate for units in the community and in the metro area that an extremely low- or very low-income household can afford (how hard will it be to find a replacement unit)? How many households subsequently experienced homelessness or had to double up, etc? What is the impact on children moving to a different school? Do households move to a neighborhood with greater concentrations of poverty and minority concentration?

For a work requirement MTW Waiver, what are the current labor market conditions (are jobs available for people with low levels of schooling)? Do employers provide consistent, reliable number of work hours? Is the local minimum wage adequate to cover increased costs of child care, transportation, work clothes, etc? Will increased earnings be consumed by increased rents?

Also for work requirements, how will a PHA distinguish outcomes due to the imposition of work requirements independent from the introduction of support services or an increase in support services? Would not the provision of support services without the threat of loss of assistance due to the work requirement be as effective and less intimidating? Why have local and state public employment services not provided this assistance before? If MTW fungibility is used to pay for services, to what extent does the cost reduce the capacity to house residents?

## **Concerns Regarding Resident and Public Involvement with the Impact Analysis**

Early in the Operations Notice, HUD writes, “Agencies must ensure assisted families are made aware of the impacts the activities may have to their tenancy.” However, NLIHC is concerned that the initial Impact Analysis will not be fully reviewed or be subject to comment by residents or the general public. Appendix II states that the Impact Analysis is to be “attached to the MTW PHA Plan Supplement during the applicable public review period prior to implementation of the MTW activity.” Merely requiring the Impact Analysis to be “attached to the MTW Supplement” is insufficient; this is likely to result in residents easily overlooking it. **The initial Impact Analysis must be highlighted and provided separately.**

The Operations Notice says that the MTW Supplement must go through a public process along with the Annual PHA Plan and the Notice restates the statutory and regulatory PHA Plan resident and public review process. **However, unless a PHA is directed by HUD to emphasize to residents and the general public that the PHA is seeking MTW Waivers, residents and the public will not know about the dramatic changes that are about to take place.** At many PHAs, residents have “given up” on the PHA Plan process due to inadequate notice, insufficient information, cursory treatment by PHA staff, and a general sense that the PHA is just “going through the motions.”

Because applying for MTW status presents such significant and potentially harmful changes, relying on the resident and public engagement requirements in each cohort notice as well as PHA Plan process is not sufficient. The cohort requirements do not specify a minimum amount of time before the two required resident meetings. **NLIHC recommends that 60 days prior to applying for MTW status, a PHA notify all residents of the intent to apply. In addition, the cohort requirements should explicitly instruct PHAs to explain at the meetings, the MTW Waivers the PHA intends to use and the potential impact on residents.**

## Concerns Regarding the Hardship Policy Guidance

An MTW PHA must adopt a written policy for determining when a requirement or provision of an MTW activity would be a financial or other hardship for a household. An MTW PHA must include this policy as an attachment to its MTW Supplement to the Annual PHA Plan. In addition, a PHA must review its hardship policy(s) with residents during intake and recertification.

NLIHC urges HUD to improve Appendix II's guidance regarding hardship policies. All residents should be informed of an MTW PHA's proposed hardship policies at the two meetings with residents required by each cohort notice prior to applying for MTW status, as well as during the annual PHA Plan notice and public hearing process. To ensure residents are aware of the hardship policy, HUD should specify that where Resident Councils exist, they will be informed and actively engaged. In addition, the PHA must ensure that each household will receive an easy-to-read copy at their door and/or in rent statements. Hardship policies should also be posted in common areas and included in newsletters – all well in advance of the PHA seeking MTW status. Once the MTW demonstration commences, all residents should receive a copy of the initial hardship policy and any annual update(s).

The Operation Notice requires a PHA's written policy(s) for determining what financial hardship is to include:

- A household has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance.
- A household has experienced an increase in expenses because of changed circumstances for medical costs, childcare, transportation, education, or similar items.

These do not address the financial hardship due to an MTW activity such as rent burden due to stepped rents, short-term assistance, \$130 minimum rent, rent set at 35% of adjusted income, rent based on imputed income, MTW four-year term limit that leads to homelessness because adequate affordable housing is not available, or an MTW work requirement that displaces a household because the labor market cannot absorb low skilled residents. NLIHC urges HUD to improve Appendix II's guidance regarding hardship policies by also citing hardships caused by MTW Waivers.

## Concerns Regarding Compliance with the Five Statutory Requirements

NLIHC has concerns regarding how the Operations Notice meets three of the five statutory requirements.

### 75% of Households Must Be Very Low-Income

An MTW PHA's portfolio will be weighted based on the number of households being served by each program type (public housing, voucher, and local, non-traditional activity). The local, non-traditional MTW Waiver activities can be used by a PHA to spend relatively little MTW money on local, non-traditional activities yet still count as meeting this statutory requirement. The benefit of a local, non-traditional activity to households might be considerably less than providing them adequate rental assistance through a regular housing voucher. Although a household receiving a very modest amount of service assistance might be very low-income, households assisted with local, non-traditional MTW funds should not be included in the calculation to determine whether an MTW PHA is meeting this statutory requirement.

### Reasonable Rent Policy

The Operations Notice states that an MTW PHA must implement one or more "reasonable" rent policies during the term of its MTW designation. It defines rent reform as any change in the regulations on how rent is calculated for a household. It also says that all activities falling under any of the activities in the Tenant Rent Policies waivers or the Alternate Reexamination Schedule waivers in Appendix I meet the definition of a "reasonable" rent policy. Many of the so-called Tenant Rent Policy MTW Waivers (as discussed previously) that burden residents could hardly be considered "reasonable." As written earlier in this letter, NLIHC urges HUD to address the problems discussed regarding six of the problematic tenant rent policies.

### Serving Substantially the Same Total Number of Households

The statute requires an MTW PHA to continue to assist substantially the same total number of eligible low-income households as would have been housed had the amounts of public housing Capital and Operating fund and voucher funding not been combined. HUD uses the acronym for "Substantially the Same" (STS).

For vouchers, the Operations Notice requires an MTW PHA to house at least 90% of the households it would be able to house based on the HCV HAP dollars it receives each year.

To determine the number of households that count toward the STS requirement in the HCV program each year, HUD will consider households housed through both the HCV program **and any local, non-traditional program**. The calculation for determining total households housed in a local, non-traditional housing program includes two types of housing provided in the local, non-traditional activities waivers of Appendix I:

- The first type of housing is a local, non-traditional **rental subsidy program**. The total unit months of housing provided over the calendar year will be used and divided by twelve. (Households receiving services only will not be included.)

- The second type of housing is a local, non-traditional **housing development program**. HUD will divide the total investment of MTW funds used to develop these units by the applicable HUD-published Total Development Cost (TDC). The resulting number of units will count as households housed each year from the time a certificate of occupancy is issued through the term of the affordability restrictions. (Households receiving services only will not be included.)

By counting a local, non-traditional rent subsidy program, an MTW PHA will meet the STS 90% requirement but reduce the number of households with adequate rental assistance. As NLIHC stated previously, this is because, given the many MTW Waivers that allow rent burden, it is likely that an MTW PHA will choose to provide a shallow subsidy; that is, an amount of assistance less than a household would receive through the regular voucher program. Therefore, NLIHC urges HUD to remove a local, non-traditional rent subsidy program from the calculation for determining an MTW PHA's compliance with STS.

### **Concerns Regarding Program-Wide Evaluations**

For MTW Waivers that are not part of an MTW PHA's cohort, HUD will use "program-wide" evaluations. Instead of subjecting every major MTW Waiver, especially work requirements, term limits, stepped rents, and rent burdens, to the "rigorous" evaluation called for by the statute, the Operations Notice will merely use "program-wide evaluations" for MTW Waivers that are not part of a PHA's cohort requirement.

The Operations Notice states, "HUD intends to develop a method for program-wide evaluation that is based, to the extent possible, on information already collected through existing HUD administrative data systems, although additional reporting may be necessary to effectively evaluate MTW."

The Operations Notice states that the program-wide evaluation "would seek to assess whether or not, and to what extent, MTW agencies achieve the statutory objectives of the MTW demonstration by using federal dollars more efficiently, helping residents find employment and become self-sufficient, and/or increasing housing choices for low-income families." Program-wide evaluation would also seek to determine any effects, positive or negative, of MTW waivers and funding flexibilities on residents.

NLIHC is concerned because limiting program-wide evaluation to the three statutory objectives will not adequately address negative effects on residents. In addition, HUD's existing administrative data systems are not able to assess the impacts on the three statutory objectives let alone other adverse consequences for residents.

HUD has indicated that only ten PHAs will be in the so-called "rent reform" cohort (Cohort #2), the cohort that implements one or more of the MTW Waivers that raise rents on households. In addition, only ten PHAs will be in the work requirement cohort (Cohort #3). HUD will limit the types of MTW Waivers a PHA in these cohorts could add in order to prevent the anticipated rigorous analysis from being clouded.

Cohorts #1 and Cohort #5, allowing 30 PHAs with fewer than 1,000 units, and 30 PHAs with fewer than 27,000 units, respectively, will evaluate the effects of these MTW PHAs using any one or more MTW Waivers. Therefore PHAs in these two cohorts covering 60 MTW PHAs

could be using MTW Waivers that are most threatening to residents, such as term limits, work requirements, or rent burdens yet not have those MTW Waivers subject to meaningful evaluation.

NLIHC urges HUD to reconsider using “program-wide” evaluation for Cohorts #1 and #5 so that they are subject to more substantive evaluation.

## **Conclusion**

The 2016 Act allowing an expansion to 100 additional PHAs was framed to ensure that statutory and regulatory waivers are subject to rigorous evaluation. Such rigorous evaluation is critical because the 2016 Act anticipates applying policy changes that prove successful to all PHAs.

The final MTW Operations Notice fails to comply with the 2016 Act. As explained in this letter, the final Operations Notice does not comport with the statute because it requires all expansion MTW PHAs to use one of twelve “rent policies,” six of which could impose a rent burden. Those six fail the statutory requirement of having a “reasonable” rent policy. Those six along with the work requirement and term limit waivers do not address the three MTW statutory goals of increasing housing choices for residents, providing residents self-sufficiency incentives, and reducing PHA costs or increasing PHA cost-effectiveness. All of them, as well as others discussed above will harm residents. Two of the local, non-traditional waiver options will divert scarce HAP funds from providing vouchers, despite long waitlists. The guidance pertaining to Impact Analyses and Hardship Policies do not provide sufficient guidance, which can result in PHAs implementing Impact Analyses and Hardship policies that do not provide adequate protections for residents. As written the Operations Notice has shortcomings in three of the five statutory requirements designed to ensure that MTW agencies serve substantially the same number of households, 75% of the households are very low-income, and that rents are reasonable.

NLIHC urges HUD to pause implementation of the MTW Demonstration expansion, consider the concerns raised in this letter, and make changes to the Operations Notice in order to prevent harm to residents. The types of harms that can be inflicted on residents as a result of many of the Operations Notice waivers can lead to housing instability in the form of rent burden, termination of assistance, eviction, and potentially homelessness – outcomes particularly now in the midst of a pandemic which might continue for many more months.

Thank you for considering NLIHC’s recommendations. We look forward to working with HUD and as always are happy to discuss our suggestions. Please contact Ed Gramlich, [ed@nlihc.org](mailto:ed@nlihc.org) to clarify or ask question.

Sincerely,

Ed Gramlich  
Senior Advisor  
National Low Income Housing Coalition