



NATIONAL LOW INCOME HOUSING COALITION

Initial Assessment of Revised MTW Operations Notice

October 25, 2018

HUD published a revised Moving to Work (MTW) Demonstration Program Operations Notice in the *Federal Register* on October 11. The Operations Notice establishes requirements for implementing the MTW demonstration for public housing agencies (PHAs) applying for one of the 100 new MTW slots authorized in 2016. Comments are due by November 26.

The “Consolidated Appropriations Act of 2016” authorized HUD to expand the MTW Demonstration Program to an additional 100 high performing PHAs over a seven-year period. PHAs will be added to the MTW demonstration in annual cohorts (groups), each of which will be overseen by a research advisory committee to ensure the demonstrations are evaluated with rigorous research protocols, quantitative analysis, and comparisons to control groups. Each year’s cohort of MTW sites will be directed by HUD to test one specific policy change.

NLIHC submitted comments regarding a draft Operations Notice for Expansion of the MTW Demonstration Program published in the *Federal Register* on January 23, 2017. Among other comments, NLIHC conveyed strong opposition to the inclusion of work requirements, time limits, and major changes to rent policies among possible “Conditional Waivers”. Even though a PHA would have had to receive HUD approval to use a Conditional Waiver, NLIHC objected because of the potential harm work requirements, time limits, and burdensome rent increases could impose on residents. Such waivers should be subject to the rigorous evaluation process of cohorts as required by the statute.

The revised Operations Notice removed the draft Notice’s “Conditional Waivers” and “General Waivers”. In their place HUD will have “MTW Waivers” that a PHA could impose without receiving HUD approval. Thirty-nine “MTW Waivers” are described in an Appendix to the revised Notice.

In addition to requiring each cohort of PHAs granted MTW status to carry out one specific policy change assigned by HUD, the 2016 Act that authorized the expansion also allows PHAs to implement additional policy changes **if approved by HUD**. In addition, the Act states that “**all agencies designated under this section shall be evaluated through rigorous research**”. However, the revised Operations Notice allows a PHA to impose a potentially harmful work requirement, time limit, or burdensome rent MTW Waiver without securing HUD approval and without the rigorous evaluation called for by the statute.

Safe Harbors

In addition to the 39 available “MTW Waivers” and associated activities, the Appendix includes “safe harbors” that identify additional requirements a PHA must follow in order to carry out MTW activities without needing HUD approval.

Most of the MTW Waivers have these so-called “safe harbors”, ostensibly to address any adverse impacts on residents. In most situations, the safe harbor merely requires a PHA to implement a “hardship policy” and conduct an “impact analysis”. There are serious limitations to the direction HUD provides to PHAs regarding hardship policies and impact analyses. The limitations are described later in this assessment.

Another safe harbor pertains to elderly people and people with disabilities. Elderly and disabled people are explicitly exempt from: term limits; work requirements; income bands (also referred to as tiered rents) that apply flat rents within income ranges; stepped rents (essentially time limits because rents are increased on a fixed schedule until there is no HUD assistance); imputed rents (rents based on an assumed number of hours worked per week up to 30 hours); and, alternative income exclusions or inclusions.

Elderly and disabled households are not shielded from some other MTW Waivers. For example, PHAs are allowed to impose a rent burden greater than 40% of adjusted income for an elderly or disabled household when they initially occupy a home using a voucher. Elderly and disabled people are also not exempt from a waiver that would eliminate deductions from income or establish standard deductions that might be less than current available deductions. PHAs may impose fees that could add cost burdens for elderly and disabled households.

Another potential MTW Waiver is the imposition of minimum rents. The safe harbors for minimum rents are a maximum of \$250 per month for non-elderly and non-disabled people and \$100 per month for elderly and disabled households. Current minimum rents are \$50 per month.

Three MTW Waivers cap the percentage of income that a household could be charged for rent. Technically a safe harbor applies to only one of them: a PHA could charge rent based on a household’s gross income (not adjusted income as is the current practice). The safe harbor cap is 35% of gross income for non-elderly/non-disabled households and 30% of gross income for elderly/disabled households. While not safe harbors, the other two MTW Waivers have caps built into the waiver activity: Fixed rents (flat rents) are capped at 35% of gross income for non-elderly/non-disabled households and 30% of gross income for elderly/disabled households; and income bands (35% of gross income for non-elderly and non-disabled households).

Three MTW Waivers have safe harbors that require PHAs to provide services to prepare households for losing their public housing or voucher as a result of the MTW Waiver: term limits, stepped rents (effectively term limits), and work requirements. The work requirement waiver also requires a PHA to provide, or have another entity provide, services to help households obtain employment or an acceptable substitute.

Hardship Policies

HUD provides only minimal guidance regarding the content of a Hardship Policy at the end of the Operations Notice Appendix. A PHA's Hardship Policy is only required to include changes to a resident's circumstances, such as decreased income due to a reduction in employment or increased expenses such as medical costs. The Hardship Policy does not have to address harmful impacts to residents that occur as a result of an MTW Waiver such as rent burdens due to using: income bands, rent based on 35% of gross income, rent based on imputed income, fixed rent, or minimum rent of \$250 per month.

Impact Analyses

Early in the Operations Notice, HUD writes, "agencies will ensure assisted families are made aware of the impacts the activities may have to their tenancy." However, the Notice does not provide any direction to a PHA regarding such notice to residents. Under HUD's Rental Assistance Demonstration (RAD), until recently HUD did not provide adequate guidance to PHAs regarding minimum content of a similar notice to residents about the potential impact on them of converting from public housing to RAD project-based rental assistance. Consequently, residents did not have sufficient information about what RAD entailed and how they would be affected.

Regarding the Impact Analysis described at the end of the Operations Notice Appendix, HUD requires a PHA to have an initial Impact Analysis to estimate potential impacts. The Impact Analysis must be available to the public before an MTW activity is carried out. After the initial year, a PHA must have a publicly available annual Impact Analysis that assess actual impact.

NLIHC is concerned that the Impact Analysis will not be fully reviewed or be subject to comment by residents or the general public. The Appendix merely states that the Impact Analysis is to be "available during the applicable public review period prior to implementation of the MTW activity". The Notice refers to the standard PHA Plan resident and public review process. Unless a PHA is directed by HUD to emphasize 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".

HUD's guidance regarding the content of the Impact Analysis is inadequate. HUD requires an impact analysis to "consider" eight factors:

1. Impact on the PHA's finances.
2. Impact on rent affordability.
3. Impact on the waitlist(s).
4. Impact on the termination rate.
5. Impact on public housing occupancy level and voucher utilization.
6. Impact on PHA's ability to meet the statutory requirements.*
7. Impact on the community in terms of the number of households transitioning to self-sufficiency and any change in the employment rate.
8. Impact on protected classes, including disparate impact.

Regarding affordability, there is no guidance regarding assessing how many households were affected and the consequences to a 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 their full share of rent on time because the rent MTW Waiver is a cost burden?

Regarding 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 because the subsidy is insufficient? 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 the adverse impact of an MTW waiver?

Regarding termination rate, what happens to households after they are forced to leave public housing or the voucher program? What is the vacancy rate for units an extremely low or very low income household can afford in the community and in the metro area (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 a greater poverty and/or minority concentration?

For a work requirement MTW waiver, what are the current labor market conditions? Are there jobs available for individuals with low levels of schooling? Are available jobs accessible by reliable public transportation? 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? Wouldn't the provision of support services without the threat of loss of assistance due to the work requirement be as effective and less intimidating? Why haven't the local and state public employment services 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?

Regarding impact on the community – self-sufficiency (a statutory goal), how does increasing rent burden lead to self-sufficiency? How do stepped rents or other forms of term limits lead to self-sufficiency?

* There are five statutory requirements:

1. At least 75% of the households assisted by the PHA must be very low-income households.
2. The PHA must establish a reasonable rent policy, which must be designed to encourage employment and self-sufficiency, rent policies such as excluding some or all of a household's earned income for purposes of determining rent.
3. The PHA must continue to assist substantially the same total number of eligible low income households as would have been served had the amounts (public housing capital and operating fund and voucher funding) not been combined.
4. The PHA maintains a comparable mix of households (by household size) as would have been provided had the amounts not been used under MTW.
5. The PHA assures that housing assisted under MTW meets HUD housing quality standards.

Program Wide Evaluations

Instead of subjecting every major MTW Waiver (work requirements, term limits, 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 will create and develop an evaluation system that will document and consider the MTW demonstration through the lens of the three statutory objectives relating to cost effectiveness, self-sufficiency, and housing choice”. For MTW Waivers that are not part of a PHA’s cohort, HUD will use “program-wide” evaluations.

The Notice states, “Program-wide evaluation would seek 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/or increase housing choices for low-income families. HUD intends to develop a method for program-wide evaluation that is based, to the extent possible, on information already being collected through existing HUD administrative data systems. HUD may determine and require that additional reporting is necessary to effectively evaluate MTW.”

Limiting the 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, the cohort that implements one or more of the MTW Waivers that raise rents on households. HUD is likely to limit the types of MTW Waivers a PHA in this cohort could add in order to prevent the anticipated rigorous analysis from being clouded. Although HUD has not hinted at how many PHAs will be in the cohort implementing work requirements, it might be safe to estimate that only ten PHAs will be in that cohort, and that HUD will limit the types of MTW Waivers those PHAs could add.

As a result, 80 PHAs will be in the other two cohorts. The first cohort will rigorously assess the impact of MTW flexibilities on 30 small PHAs. The fourth cohort will assess incentives for increasing landlord participation in the voucher program. PHAs in these two cohorts could be using MTW Waivers that are most threatening to residents, such as term limits or work requirements, yet not have those MTW Waivers subject to rigorous evaluation. The Operations Notice requires all MTW PHAs to implement at least one of the 12 rent-related MTW Waivers.

Concerns about Three of the Five Statutory Requirements

The Operations Notice open for comment states that the final Operation Notice will provide more detail regarding how HUD will monitor and enforce the five statutory requirements. However, some information is provided.

Substantially the Same

The statute requires an MTW PHA to continue to assist substantially the same total number of eligible low income households as would have been served had the amounts of public housing capital and operating fund and voucher funding not been combined. To do this, HUD will

establish a base line that considers the number of households a PHA served through public housing and vouchers and the amount of public housing capital and operating funds and voucher funds the PHA received the year before entering into MTW. A ratio based on the total number of households served per \$100,000 in funding will be a baseline to determining in future years whether the PHA is meeting the statute's "substantially the same" requirement.

However, if a PHA chooses the Short-Term Assistance MTW Waiver (for example three months of housing) or uses one of the Local Non-Traditional Activities MTW Waivers that provide a shallow rent subsidy or supportive services, the substantially same number of households assisted would be inflated because small amounts of money would be provided to assist those households.

Comparable Mix of Households

The statute requires an MTW PHA to continue to assist a comparable mix of households (by household size) as would have been provided had the amounts of public housing and voucher funds not been used under MTW. The Operations Notice echoes the statute. However, HUD should refine the "comparable mix" standard to look not only at household size but the mix of disabled households, elderly households, and single-head of households.

75% of Assisted Households Must Be Very Low Income

HUD will consider a weighted mix of new very low income households served in a PHA's public housing, voucher, and any local non-traditional activities. NLIHC is concerned that households served by the local non-traditional activities (such as merely providing less costly shallow rent subsidies, short-term rental assistance, or supportive services) might enable a PHA to meet the 75% standard while not truly meeting the statute's intent.

Concern about MTW PHA Plan Supplement

HUD published in the *Federal Register* on October 9, an MTW PHA Plan Supplement for a 60-day Paperwork Reduction Act comment period. The MTW PHA Plan Supplement will take the place of the MTW Plan/Report (Form 50900) for MTW Expansion PHAs and will be submitted once per year as part of the standard PHA Plan process. MTW Expansion PHAs will indicate the MTW activities they intend to implement from the long list of MTW Waivers provided in the Appendix to the Operations Notice. Comments are due by December 10.

The Supplement lists all of the MTW Waivers that a PHA can use without obtaining HUD approval, and has a series of check boxes and some opportunities for narrative responses.

NLIHC is concerned that the MTW PHA Plan Supplement emphasizes only one of the three statutory objectives – reducing cost – while remaining silent regarding the other two – self-sufficiency incentives and increasing housing choice.

On the first page HUD asks the PHA to provide a narrative description of how the PHA seeks to address the three statutory objectives during the coming year. NLIHC observes that for each MTW Waiver listed, the Supplement asks whether the MTW Waiver will have any cost implications and to estimate the amount of the any cost implications. There are not similar questions regarding the two other statutory objectives that affect residents, economic self-

sufficiency and housing choice. Informally, HUD explains that the cost question was in response to a HUD Inspector General report, and that HUD would consider adding similar questions about self-sufficiency and housing choice.

Elimination of Requirement to Use 90% of Authorized Voucher Budget for Vouchers

The draft Operations Notice from 2017 had a provision requiring an MTW PHA to spend at least 90% of its annual voucher budget authority on eligible housing assistance payment (HAP) expenses each year. The 2018 Operations Notice has eliminated the 90% rule. That means less affordable housing assistance for households that desperately need it and that waiting lists will become even longer.