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Regulations Division
Office of the General Counsel
Department of Housing and Urban Development
451 Seventh Street SW, Room 10276
Washington, DC 20410-0500
Via regulations.gov

RE: Docket No. FR-5994-N-04

"Operations Notice for the Expansion of the Moving to Work Demonstration Program; Republication and Extension of Comment Period"

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.

The Operations Notice Flouts the "Consolidated Appropriations Act of 2016"

NLIHC writes to convey fundamental opposition to the latest version of the Moving to Work (MTW) Demonstration Program Operations Notice published for comment on October 11, 2018. As drafted, 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 public housing agencies (PHAs) over a seven-year period.

Because the original 39 MTW PHAs were not subject to meaningful evaluation, Congress cautiously allowed the expansion, predicated on rigorous research to discern the impact of MTW statutory and regulatory waivers to be granted to the expansion PHAs. 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 does not comport with the statute because it would allow a PHA to impose a potentially harmful work requirement, time limit, and burdensome rent MTW Waiver without securing HUD approval and without the rigorous evaluation called for by the statute.

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.” HUD considered such waivers “conditional” and would have required PHAs to receive HUD approval because as HUD admitted, waivers pertaining to work requirements, time limits, and rent burdens were “expected to have a greater and more direct impact on assisted households.” For that very reason, NLIHC objected to Conditional Waivers because of the potential harm work requirements, time limits, and burdensome rent increases could impose on residents. NLIHC argued that such waivers should only be available as cohort-specific waivers subject to the rigorous evaluation process required by the statute.

The October 2018 revised Operations Notice removed the January 2017 draft Notice’s “Conditional Waivers” and “General Waivers.” However, in their place HUD proposes “MTW Waivers” that a PHA could impose without receiving HUD approval. Thirty-nine “MTW Waivers” are described in an Appendix to the revised Notice.

Allowing expansion MTW PHAs to impose work requirements, time limits, and rent burdens without HUD approval and without rigorous research to determine impacts on residents would be contrary to the letter and spirit of the “Consolidated Appropriations Act of 2016.” Such waivers should only be allowed as part of a rigorous cohort evaluation.

Another way in which the October 2018 proposed Operations Notice would cause the MTW expansion to operate in a manner contrary to the Act is that it would allow expansion PHAs to adopt multiple MTW Waivers. This would cloud the ability of evaluators to discern the effect of the sole cohort-specific MTW Waiver. If the effect of a potentially harmful MTW Waiver such as time limits, work requirements, and rent burdens are to be meaningfully determined, a PHA must only be allowed to implement a cohort-specific MTW Waiver.

The October 2018 Operations Notice also proposes to require each of the 100 expansion PHAs to use one of twelve “rent policies,” any one of which would 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 have minimum rents of \$250 or to use imputed rents, for example, does not constitute a “reasonable rent policy” and would not encourage employment or self-sufficiency.

Safe Harbors Are Inadequate

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 “safe harbors,” ostensibly to mitigate or preclude 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 comment letter.

Safe Harbors for Elderly and Disabled People

In addition to hardship policies and impact analyses, another set of safe harbors pertain specifically to elderly people and people with disabilities. Elderly and disabled people, appropriately, are explicitly exempt from: term limits, work requirements, income bands, stepped rents, imputed rents, and alternative income exclusions or inclusions.

However, elderly and disabled households are not shielded from some other harmful MTW Waivers. For example:

- PHAs should not be 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.
- PHAs should not be allowed to eliminate deductions from income for elderly or disabled people, or establish standard deductions that might be less than current available deductions.
- PHAs should not be allowed to impose fees that could create cost burdens for elderly and disabled households.
- PHAs should not be allowed to cause elderly or disabled households to shoulder rent burdens by charging them \$100 minimum rents.
- PHAs should not be allowed to cause elderly or disabled households to endure rent burdens by establishing total tenant payments or fixed/flat rents at 30% of gross income, instead of 30% of adjusted income.

Because MTW was intended as a demonstration program, Congress sought to determine how granting PHAs statutory and regulatory flexibilities might reduce costs, foster family self-sufficiency, and increase residents’ housing choice – the three statutory objects. Imposing cost burdens on elderly and disabled households will only cause elderly and disabled households to divert their limited income from meeting their critical daily needs, such as nutritious food, medicines, medical attention, transportation to healthcare providers, or in the case of disabled people transportation to jobs. Imposing rent cost burdens does nothing to foster self-sufficiency or augment housing choice for elderly or disabled people.

Safe Harbors for Non-Elderly and Non-Disabled People

For non-elderly, non-disabled people there are only two safe harbors in terms of rent policies, and both are inadequate because they would create rent burdens by: imposing \$250 minimum rents, or imposing total tenant payments of 35% of gross income, instead of 30% of adjusted income.

Other MTW Waivers in the October 2018 Operations Notice would also allow PHAs to impose rent burdens for non-elderly and non-disabled households by:

- Establishing fixed/flat rents at 35% of gross income, instead of 30% of adjusted income.
- Establishing income bands that would set a household's rent at a fixed amount within an income band at 35% of gross income, instead of 30% of adjusted income.
- Basing rents on imputed income that hypothesizes that each adult in a household is working up to 30 hours per week.
- Allowing a voucher household to pay more than 40% of adjusted income when the household initially occupies a home using a voucher.
- Eliminating one, some, or all income deductions.

It is difficult to comprehend how causing extremely low income or very low income households to spend more than 30% of their income for rent will achieve any of the three statutory objectives. Family self-sufficiency is more likely to be hindered if more of a family's very modest amount of disposable income is diverted to rent rather than to be used for basic needs such as food, medicine, transportation, child care, and job and/or school clothing. Rent cost burdens cannot increase housing choice. Nor will the minimal rent revenues these provisions might provide an MTW PHA help a PHA reduce its costs.

Three MTW Waivers - four-year term limits, stepped rents (which are effectively term limits), and work requirements - require PHAs to provide services to prepare households for losing their public housing or voucher as a result of the MTW Waiver. The Operations Notice euphemistically calls these "safe harbors." Forcing households to leave public housing or the voucher program could lead to homelessness, not housing choice. Without a stable, affordable home it becomes even more difficult to gain self-sufficiency. The statutory objective of reducing PHA costs is undermined by these waivers because PHAs will be obliged to provide termination services and incur extra administrative and unit turnover costs. Voucher landlords might be inclined to leave the program if they too have to incur tenant turnover costs.

Inadequate Guidance Regarding Content of Hardship Policies

HUD provides only minimal guidance regarding the content of a Hardship Policy. 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. As proposed, a Hardship Policy does not have to respond to harmful impacts residents are likely to experience as a result of: an MTW Waiver rent burden; an 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.

HUD must provide specific Hardship Policy direction that anticipates the consequences of MTW Waiver implementation. For example, if a PHA implements a work requirement, its Hardship Policy should clearly state the protections residents will have if they encounter temporary layoffs through no fault of their own.

Often residents are not aware of existing hardship policies. HUD must provide explicit direction to MTW PHAs regarding informing residents about an MTW Hardship Policy. Prior to a PHA applying for MTW status, it should inform all residents that a draft Hardship Policy exists and invite and consider comments. Subsequently, PHAs should provide a copy of the Hardship Policy to residents during income reexaminations, and to prospective residents during intake. If a termination is anticipated, a PHA should again provide a resident with a copy of the Hardship Policy and not hinder a resident's attempt to seek a hardship exemption.

Inadequate Guidance Regarding Resident Notification

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. HUD must develop very specific minimum MTW notification requirements regarding the content of such notification, as well as specific minimum requirements about the means of notification.

The minimum content of such notification should explain the MTW Waivers a PHA intends to use and sample rent increases based on resident characteristics at each AMP. For PHAs intending to use MTW Waiver term limits, the notice should clearly indicate what will happen at the end of a four-year term, any substantial assistance that the PHA might provide upon termination, and any appeal process. For PHAs that intend to use MTW Waiver work requirements, the notice must be clear about the consequences of a resident's inability to obtain stable employment that provides adequate wages to secure affordable housing in the nearby market; it must also clearly indicate acceptable substitutes for employment, such as job preparation and training.

To ensure residents receive the notification, 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 notification at their door and/or in rent statements. Notification should also be posted in common areas and included in newsletters – all well in advance of the PHA seeking MTW status.

Inadequate Guidance Regarding the Impact Analyses

More Guidance Regarding Resident Input and Public Accountability Is Needed

NLIHC is concerned that the Impact Analysis will not be fully reviewed or be subject to comment by residents or the general public. The Operations Notice 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 body of the Notice refers to the standard PHA Plan resident and public review process; it does not mention the Impact Analysis as part of the anticipated MTW PHA Plan Supplement. If it is HUD’s intention to have the Impact Analysis available during the applicable (PHA Plan?) public review period, then the body of the Notice and the Appendix should make this explicit.

Furthermore, unless a PHA is directed by HUD to emphasize in the PHA Plan Resident Advisory Board (RAB) engagement requirement and the public notice requirement that the PHA is seeking MTW Waivers, residents and the public will not necessarily know about the dramatic changes that the PHA intends to make. 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 PHA Plan process is not sufficient. Additional resident involvement is called for. NLIHC recommends that 60 days prior to applying for MTW status, a PHA notify all residents of the intent to apply and hold a minimum of two resident meetings to explain the MTW Waivers the PHA intends to use and the potential impact on residents. A PHA should solicit and consider resident feedback, include a summary of resident comments and the PHA’s response along with the application for MTW status. This latter recommendation goes beyond the Appendix’s passive requirement that a PHA merely be prepared to submit an Impact Analysis at HUD’s request.

In subsequent years as MTW Waivers are carried out, the Impact Analysis must be included as an attachment to the MTW PHA Plan Supplement and also be provided directly to HUD.

More Guidance Regarding Content of Impact Analysis Is Needed

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. Prior to implementing an MTW Waiver, the PHA should be required to conduct and publish a housing market analysis to determine whether there is an adequate supply of housing in the community that would be affordable to the residents of the PHA. 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)? Will residents be able to secure affordable market-rate housing if they will no longer be able to afford their HUD-assisted home due to MTW rent policies, if they lose their HUD assistance after a four-year term limit, or if they cannot find employment?

HUD should provide specific guidance regarding assessing how many households are likely to be affected (prior to implementing an MTW Waiver) or who have been affected (three to five years after implementing an MTW Waiver) and the consequences to a household as a result of an MTW Waiver. For example, what is the consequence to a household of having less disposable income for basics such as food, medicine, medical and dental visits, child care, transportation, etc.? Have landlords evicted 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. The obverse of improved waitlist times is the potential harmful impact on households forced out of HUD-assisted housing. As previously stated, the Impact Analysis must address, both before and after implementation of an MTW Waiver, the impact on households forced to leave public housing or the voucher program due to the adverse impact of an MTW waiver. Another consideration to address would be the effect on a household of an MTW shallow voucher subsidy policy if the household can no longer meet the contract rent because the subsidy is insufficient.

Regarding termination rate. HUD must require the Impact Analysis to anticipate and subsequently report on the impact on households after they are forced to leave public housing or the voucher program due to an MTW Waiver. For households terminated as a result of term limits, stepped rents, or work requirements, will the PHA pay for moving expenses, utility hookups, security deposits, and first and last months' rent? Are displaced households enduring severe housing cost burden? Are displaced households living in conditions that would not meet HQS? How often do displaced households have to move? How many households subsequently had to double up or experienced homelessness? 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, HUD Impact Analysis guidance should require a PHA to assess current and near-term labor market conditions. Are there jobs available for individuals 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.? Are available jobs accessible by reliable public transportation? 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 of providing the services reduce the capacity to house residents?

Regarding impact on the community in terms of self-sufficiency. As previously stated, it is difficult to comprehend how imposing rent burdens, term limits, or work requirements lead to self-sufficiency.

Program Wide Evaluations

Instead of subjecting every major MTW Waiver (work requirements, term limits, stepped rents, rent burdens) to the “rigorous” evaluation called for by the statute, the Operations Notice intends to 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, which by far will be most MTW Waivers, 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.

Concerns about Two 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, in advance of the final Notice, some information is provided in the draft Notice.

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 housed 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 housed 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 housed 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 housed would be inflated because small amounts of money would be provided to assist those households. For purposes of establishing the baseline, short-term assistance and shallow subsidies should not be counted. For the baseline, only a full housing subsidy should be counted, and only for households who have rent burdens at or less than 40% of their income. (As noted earlier, the MTW statute calls for “reasonable rent policies,” and any rent burden greater than 40% – as modeled by Congress when it established that threshold for initial occupancy with a voucher – would be unreasonable.)

The Operations Notice would allow a PHA to “dip below” the baseline, depending on specific circumstances. With the exception of certain natural disasters, HUD should limit the depth of such a dip to 5% and establish extra monitoring provisions for a PHA that frequently encounters dips. For a PHA that has a dip greater than 5% should incur a proportionate reduction in voucher administrative fees and public housing operating fund the following year.

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.

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 could mean less affordable housing assistance for households that desperately need it and that waiting lists will become even longer. The final Operations Notice must restore the 90% rule.

Conclusion

The original 39 MTW agencies were not subject to evaluation procedures that would enable Congress to determine the extent to which the statutory and regulatory flexibilities provided to them were meeting the statute’s three objectives or the extent to which they harmed residents. 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 October 2018 proposed version of the MTW Operations Notice fails to comply with the 2016 Act. Most of the 39 MTW Waivers that an expansion PHA could implement without HUD approval would do nothing to foster greater resident self-sufficiency or augment housing choice; instead the rent burden, time limit, and work requirement MTW Waivers would harm residents.

HUD must go back to the drawing board and draft an Operations Notice that comports with the 2016 Act and only allows an expansion PHA to implement time limits, work requirements, and rent policies that create rent burdens as part of a cohort that will rigorously evaluate the impact of such MTW Waivers.

Sincerely,

A handwritten signature in cursive script that reads "Diane Yentel".

Diane Yentel
President and CEO