

SUMMARY OF KEY PROVISIONS MOVING TO WORK (MTW) DEMONSTRATION OPERATIONS NOTICE

(Version starting with the five sets of waivers most harmful to residents)
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BACKGROUND

HUD's Office of Public and Indian Housing (PIH) posted the final "[Operations Notice for the Expansion of the Moving to Work \(MTW\) Demonstration Program](#)" in the *Federal Register* on August 28, 2020. (An easier to read version of the Operations Notice is at: <https://bit.ly/3hCrqZf>). The final version of the Operations Notice establishes requirements for implementing the MTW demonstration for public housing agencies (PHAs) applying for one of 100 new MTW slots. An initial Operations Notice was published for comment on January 23, 2017 and a second draft was published for comment on October 11, 2018. The final Notice is effective immediately. HUD writes that it might supplement the MTW Operations Notice with PIH Notices without public comment if more detailed guidance is needed. This NLIHC summary provides a detailed presentation with some analysis of the final Operations Notice, starting with the five sets of MTW Waivers that NLIHC is most concerned will harm residents. (NLIHC has a companion summary that presents the MTW Waivers in the order found in Appendix 1 of the Operations Notice.)

In 1996, Congress established MTW initially authorizing HUD to admit up to 30 PHAs into the demonstration. Congress later increased that limit to 39 by 2011. Under MTW, HUD can waive nearly all provisions of the "United States Housing Act of 1937" and the accompanying regulations. This includes most of the main rules and standards governing Housing Choice Vouchers (HCV) and public housing, with some exceptions such as civil rights, labor, and environmental laws. MTW agencies are also allowed to shift public housing Capital and Operating Funds and HCV assistance (including Administrative Fees as well as Housing Assistance Payment, HAP) to purposes other than those for which they were originally appropriated – referred to as "fungibility". No matter how funds are mixed, they will now be called "MTW Funding".

The "Consolidated Appropriations Act of 2016" authorized HUD to expand the MTW demonstration to an additional 100 high performing PHAs over a seven-year period ending in 2022. PHAs were to be added to the MTW demonstration in groups ("cohorts"), each of which was to be overseen by a research advisory committee to ensure the demonstration of each cohort was evaluated with rigorous research protocols, quantitative analysis, and comparisons to control groups. Each year's cohort of MTW sites would be directed by HUD to test one specific policy change. MTW agencies could use additional MTW Waivers as long as those waivers did not conflict or interfere with their cohort study.

For each cohort, separate PIH Notices were issued. [Notice PIH-2018-17](#) invited PHAs to apply for a slot in Cohort #1 “MTW Flexibilities on Small PHAs”. Cohort #1 is limited to PHAs with a combination of 1,000 or fewer public housing units and vouchers. [Notice PIH-2019-04](#) invited PHAs to apply for a slot in Cohort #2, “Rent Reform”. Cohort #2 is limited to PHAs with a combination of at least 1,000 non-elderly and non-disabled public housing residents and voucher households. In addition, [Notice PIH-2020-21](#) invited 36 PHAs that replied to Notice PIH-201904 to the second step for approval as MTW PHAs. [Notice PIH 2021-02](#) invited PHAs to apply for a slot in Cohort #3, “Work Requirements”. [Notice PIH 2021-03](#) invited PHAs to apply for a slot in Cohort #4, “Landlord Incentives” for participating in the voucher program. A fifth cohort, Cohort #5, was added later that will evaluate the overall impact of MTW flexibility on PHAs with fewer than 27,000 units.

PIH [announced](#) on January 14, 2021 it had selected 30 small PHAs for Cohort #1 (MTW flexibilities). The [list of the 30 small PHAs](#) selected to participate in Cohort #1 does not reveal specific MTW flexibilities those PHAs will use; the brief descriptions merely present platitudes and generalities.

There are three MTW statutory goals:

1. Reducing costs and increasing cost-effectiveness
2. Providing incentives for resident self-sufficiency
3. Increasing housing choices for low-income households

PHAs granted MTW status (“MTW agencies”) must meet five statutory requirements:

1. Ensure that 75% of the households they assist have income at or below 50% of area median income
2. Establish a reasonable rent policy
3. Assist substantially the same number of low-income households as a PHA would without MTW funding flexibility
4. Assist a mix of households by size comparable to the mix a PHA would have served if it were not in MTW
5. Ensure that assisted units meet housing quality standards

In practice, HUD’s enforcement of these requirements for the original 39 MTW agencies has been highly permissive.

SHORT OVERVIEW OF THE FINAL OPERATIONS NOTICE

Appendices

Appendix I, “MTW Waivers”, is a chart of “MTW activities” that MTW agencies may implement without HUD approval, as long as they are implemented with the “safe harbors” tied to the specific, allowed MTW activity.

Appendix II has instructions for any required written impact analyses and hardship policies. Impact analyses are required for certain activities, such as Work Requirements, Term-Limited Assistance, Stepped Rent (effectively time limits), and rent increase policies. Written financial and other hardship policies must be developed for most MTW activities.

Appendix III explains the method for calculating the requirement that MTW agencies house substantially the same number of families as they would have without MTW.

Other Key Features of the Operations Notice

MTW PHAs will submit an “[MTW Supplement](#)” (version open to public comment when this summary was prepared) to the Annual PHA Plan. The MTW Supplement must go through a public process along with the Annual PHA Plan, following all of the Annual PHA Plan public participation requirements. So-called “Qualified PHAs”, those with fewer than 550 public housing units and vouchers combined, will be required to submit an MTW Supplement each year.

An MTW PHA must implement at least one of the “reasonable rent policies” during the term of its MTW designation. PIH defines a reasonable rent policy as any change in the regulations on how rent is calculated for a household, such as any of the Tenant Rent Policies in Appendix I.

[A number of the so-called rent policies can harm residents. For example:

- Stepped rent is a form of time limit, and a household’s rent payment can start at 35% of adjusted income, growing each year.
- A minimum rent of \$130 can place a significant rent burden on households.
- Tenant rent as a modified percentage of income, causing households pay 35% of income imposes a cost burden. It shifts limited resources away from food, medicine, transportation to jobs, childcare, and other basics. Imposing cost burden does not address the statutory goals of the MTW demonstration and fails the statutory requirement of having a “reasonable” rent policy.
- Allowing a PHA to make households (including elderly and disabled households) who are first renting a home with a voucher to pay more than 60% of their income for rent causes households to be severely cost burdened. This, shifts limited household resources away from food, medicine, transportation to jobs, childcare, and other basics. Imposing cost burden does not address the statutory goals of the MTW demonstration and fails the statutory requirement of having a “reasonable” rent policy.]

MTW PHAs will maintain MTW designation for twenty years, with the MTW waivers expiring at the end of the 20-year term. The draft Operations Notice had a 12-year term.

[The MTW Operations Notice, without an opportunity for public comment, allows PHAs to participate in MTW 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.]

An MTW PHA’s MTW program applies to all of a MTW PHA’s public housing units, tenant-based HCV assistance, project-based HCV assistance (PBV), and homeownership units.

Each MTW Waiver has specific “Safer Harbors” that identify additional requirements an MTW PHA must follow in order to carry out MTW activities without needing HUD approval. Many of the Safe Harbors are ostensibly designed to address any adverse impacts on residents. Some Safe Harbors pertain to elderly people and people with disabilities. However, elderly and disabled households are not shielded from some other MTW Waivers. 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 further in this paper.

In addition to “MTW Waivers” the Operations Notice provides “Safe Harbor Waivers”, “Agency-Specific Waivers”, and “Cohort-Specific Waivers”, which are discussed at the end of the detailed discussion of all of the MTW Waivers on page 36.

Summary of Primary Waiver Concerns

All MTW Waivers are listed in Appendix I of the Operations Notice. In addition to the concerns about many of the “Tenant Rent Policies” mentioned above, this section presents a synopsis of other major MTW Waivers that are of great concern. These and others are discussed in detail starting on page 14.

Work Requirements

NLIHC strongly opposes a work requirement. 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.

Term-Limited Assistance

An MTW PHA may impose term limits that may not be shorter than four years. NLIHC strongly opposes term limits. They 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 them 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.

Voucher Payment Standards

Two MTW Waivers that allow a PHA to reduce the payment standards for Small Area FMRs (SAFMRs) and Fair Market Rents (FMRs) down to 80% from 90% of SAFMR or FMR will harm residents. 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".

Local, Non-Traditional Activities

An MTW agency may spend up to 10% of its HCV HAP funding on "local, non-traditional activities", as described in Appendix I, without prior HUD approval. Examples include providing: shallow rent subsidies, rent subsidies to supportive housing programs to help homeless households, services to low-income people who are not public housing or voucher tenants, and gap-financing to develop Low Income Housing Tax Credit (LIHTC) properties. An MTW agency may spend more than 10% by seeking PIH approval through a Safe Harbor Waiver.

Shallow subsidies provide less rent assistance than is needed, meaning an assisted household pays more than 30% of their income for rent and utilities. Shallow subsidies do not meet the statutory objectives of MTW. Services to people 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 divert scarce HAP funds from those who need HAP funds the most, those with income less than 30% of AMI. HAP funds should not be diverted this way unless there is no waiting list for vouchers.

Links

Notice PIH 2021-02 (Cohort #3) is at: <https://bit.ly/2KgEVm4>

NLIHC's Summary of PIH 2021-02 (Cohort #3) is at: <https://bit.ly/3sM95zg>

Notice PIH 2021-03 (Cohort #4) is at: <https://bit.ly/38MiS09>

NLIHC's Summary of PIH 2021-03 (Cohort #4) is at: <https://bit.ly/35YJR6Q>

Main MTW website is at: <https://www.hud.gov/mtw>

MTW Expansion webpage is at: <https://bit.ly/39PEXdF>

DETAILED PRESENTATION OF KEY PROVISIONS

Compliance with the Five Statutory Requirements

There are five statutory requirements:

1. At least 75% of the households assisted by a PHA must be very low-income households, have income less than 50% of the area median income (AMI).
2. A 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. A 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. A PHA must maintain a comparable mix of households (by household size) as would have been provided had the amounts not been used under MTW.
5. A PHA assures that housing assisted under MTW meets HUD housing quality standards.

NLIHC Concerns

1. 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 adequate rental assistance through a regular housing voucher. Households assisted with modest amounts of service assistance through local, non-traditional MTW funds should not be included in the calculation determining whether an MTW PHA is meeting this statutory requirement.

2. Must Have a 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 (described on page 16) that burden residents could hardly be considered "reasonable".

3. 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 STS for “Substantially the Same”. 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. Appendix III explains how HUD will monitor this requirement separately for public housing and vouchers.

For public housing, an MTW PHA must maintain a 96% occupancy rate. This rate will be determined by dividing the total number of occupied units by the total number of “standing” units.

For vouchers, an MTW PHA must house at least 90% of the households it would be able to house based on the Housing Choice Voucher (HCV) Housing Assistance Payment (HAP) dollars it receives each year. Appendix III details how HUD will determine an MTW PHA’s “Annual HCV Capacity”. In short, an MTW PHA will be considered compliant with the STS Requirement in the HCV program if it houses households through the HCV and local, non-traditional program at or above 90% of its Annual HCV Capacity. To determine the number of households housed in a local, non-traditional program, PIH will look at two types of housing MTW Waivers:

- The first type 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 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 HCV STS 90% requirement but reduce the number of households with adequate rental assistance. In general, the idea behind a local, non-traditional rent subsidy is to provide a “shallow” subsidy; that is, an amount of assistance less than a household would receive through the regular voucher program. Household’s will be rent-burdened. PHAs favoring shallow subsidies assert that more households can be served because the total amount of a PHA’s annual HAP amount will go further since households receive only a fraction of what is eligible under the regular voucher program – a PHA’s voucher pie is sliced into smaller pieces. Some also assert that a household will work harder because they have to pay more than 30% of their income for rent. HUD should not count a local, non-traditional rent subsidy program for determining an MTW PHA’s compliance with STS.]

4. **Comparable Household Mix**

HUD will accept a 10% variation from a baseline established when a PHA entered MTW. Justifications or explanations for fluctuations greater than 10% are required and subject to HUD review.

[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.]

5. **Housing Quality**

NLIHC does not have any concerns.

Impact Analysis (Appendix II)

An MTW PHA must complete a written analysis of the various impacts of an MTW activity. The analysis must be prepared:

- 1) Before implementing a MTW activity, if required as a safe harbor;
- 2) For certain activities (Work Requirements, Term-Limited Assistance, and Stepped Rent) on an annual basis during MTW implementation;

[2018 required annual analysis for every MTW activity.]

- 3) Before any Safe Harbor Waiver or Agency-Specific Waiver requests [*New*]; and
- 4) At the time the MTW activity is closed out, if an impact analysis was previously required.

The Impact Analysis must consider:

1. Impact on a PHA’s finances (e.g., how much the activity will cost, any change in a PHA’s per family contribution);
2. Impact on affordability for households (e.g., any change in how much households will pay for housing costs);

[Regarding affordability, there is 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 a rent MTW Waiver is a cost burden?]

3. Impact on a PHA's waitlist(s) (e.g., any change in the amount of time households are on the waitlist);

[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? 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?]

4. Impact on a PHA's household termination rate (e.g., any change in the rate at which households non-voluntarily lose assistance);

[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 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 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? 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?

5. Impact on a PHA's current occupancy level in public housing and on its HCV utilization rate;
6. Impact on meeting the MTW statutory goals of cost effectiveness, self-sufficiency, and/or housing choice; [*New*]
7. Impact on a PHA's ability to meet the MTW statutory requirements: *next page*

7. Impact on a PHA's ability to meet the MTW statutory requirements:

- a. Ensuring that 75% of the families assisted have income at or below 50% of area median income;
- b. Establishing a reasonable rent policy;
- c. Assisting substantially the same number of low-income families as they would without MTW funding flexibility;
- d. Assisting a mix of families by size comparable to the mix they would have served if they were not in MTW; and,
- e. Ensuring that assisted units meet housing quality standards (HQS for vouchers and UPCS for public housing).

8. Impact on the rate of hardship requests and the number granted and denied as a result of an activity; [*New*] and,

9. Across the other factors above, the impact on protected classes (and any associated disparate impact).

Comparison with 2018: The previous version also had, "Impact on the community" (change in the number households transitioning to self-sufficiency and any change in the employment rate after implementation of activities targeted to working households).

- An MTW PHA must have an initial Impact Analysis, which analyzes potential impacts of an MTW activity, attached to its MTW Supplement to the Annual PHA Plan during the applicable public review period before implementing an MTW activity.

[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 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 restates the PHA Plan resident and public review process. 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".]

continues

In addition, 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 also 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.

- For certain activities (Work Requirements, Term-Limited Assistance, and Stepped Rent), an updated impact analysis must be provided in each subsequent year.

[2018 version required every MTW activity to have an annual impact analysis.]

- An MTW PHA may combine MTW activities at the PHA level in order to create more comprehensive initiatives *[New]*.
 - For such comprehensive initiatives a PHA may submit a single impact analysis.
 - Should a larger MTW activity undergo a substantial change, such as adding an activity, a PHA must reevaluate its impact with a new impact analysis.
- This information must be retained by a PHA for the duration of its participation in the MTW demonstration and be available for public review and inspection at a PHA's principal office during normal business hours.

Hardship Policy

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.

- A PHA must include this Hardship Policy as an attachment to its MTW Supplement to the Annual PHA Plan. *[New]*
- A PHA may use a single Hardship Policy for multiple MTW Waivers, or develop different Hardship Policies for different MTW Waivers. *[New]*
- A PHA must review its Hardship Policy(s) with residents during its intake and recertification processes. *[New]*
- A PHA must consider whether a resident qualifies for a hardship exemption at the time of a potential termination of assistance that is due to an MTW activity. *[New]*

Comparison with 2018: The previous version required a PHA to notify residents about the Hardship Policy – which is more direct than the first and third dots above.

[All residents should be informed of a proposed Hardship Policy 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 public hearing. 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 notification at their door and/or in rent statements. The Hardship Policy 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.]

- When a resident requests a hardship exemption, a PHA must suspend the activity for the household beginning the next month after the request until the PHA determines that an exemption is warranted.

[Previous version required a PHA to “immediately provide an exemption. Why not make the suspension immediately?]

- A PHA must determine whether a financial or other hardship exists within a reasonable time after a household’s request.

[PIH should define “reasonable” as no more than seven days.]

- If a PHA determines that a financial or other hardship exists, the PHA must continue to provide an exemption from the MTW activity at a reasonable level and duration, according to the PHA’s written policy.
- If a PHA determines that the request did not meet its hardship standards, the PHA must resume the MTW activity and collect any retroactive rent through a reasonable repayment agreement. *[New]*

A PHA’s written policy(s) for determining what financial hardship is, must include the following:

- 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; and,

[These do not address the financial hardship due to an MTW activity such as rent burden due to tiered rent (income bands), stepped rents (basically a time limit), 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.]

- Other situations and factors determined by a PHA.

Hardship Policy *continues*

Hardship Policy *continued*

A PHA's written policies must include a grievance procedure that a household may request for second level review of denied hardship requests.

A PHA must keep records of all hardship requests received and the results of these requests, and supply them to HUD when requested. This information must be retained by a PHA for the duration of its participation in the MTW demonstration, and be available for public review and inspection at the PHA's principal office during normal business hours.

Evaluation

Program-Wide Evaluation

For MTW Waivers that are not part of a PHA's cohort, HUD will use "program-wide" evaluations. Instead of subjecting every major MTW Waiver, especially work requirements, stepped rents, term limits, 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 Notice states 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.

[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 (Cohort #2), the cohort that implements one or more of the MTW Waivers that raise rents on households. In addition, only 10 PHAs will be in the work requirements 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 or work requirements, yet not have those MTW Waivers subject to rigorous evaluation.

Cohort #4 will assess incentives for increasing landlord participation in the voucher program, which probably do not have impacts that are likely to harm residents. However, the Operations Notice states that an MTW PHA must implement one or more reasonable rent policies during the term of its MTW designation.]

COMPARISON OF KEY MTW WAIVERS

There are four basic categories of waivers: “MTW Waivers”, “Safe Harbor Waivers”, “Agency-Specific Waivers”, and “Cohort-Specific Waivers”. This section provides a thorough comparison of the MTW Waivers in Appendix I of the Final Operations Notice with the previous version that was open for comment until November 26, 2018. This presentation of the MTW Waivers starts with the five sets of MTW Waivers that NLIHC is most concerned will harm residents. (NLIHC has a companion summary that presents the MTW Waivers in the order found in Appendix 1 of the Operations Notice.)

MTW PHAs may conduct any activity/policy in Appendix I without PIH review and approval. However, each specific eligible activity/policy has specific “Safe Harbor” requirements/limitations that an MTW PHA must follow, for example requiring a Hardship Policy or not applying an activity/policy to elderly people. Before implementing MTW Waivers, they must be in an approved MTW Supplement (see pages 3 and 10) to the PHA Plan.

(Safe Harbors with an * cannot be waived.)

TERM-LIMITED ASSISTANCE

For public housing and vouchers, a PHA may impose term limits – limiting the duration of public housing or voucher assistance.

Safe Harbors

- The term may not be shorter than four years. *
- Services or referrals to services must be provided by a PHA or another entity to prepare a household for the end of housing assistance when the term is up.
- A PHA must conduct an **annual** Impact Analysis. *
- A PHA must exclude elderly and disabled households. *
- A PHA must have a Hardship Policy. *

[NOTE: NLIHC strongly opposes term limits. They 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 them 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. 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.]

Comparison with 2018: The previous version did not require an impact analysis to be done annually.

WORK REQUIREMENT

A PHA may require a specific segment of the residents to work or engage in an acceptable substitute in order to receive housing assistance.

- Elderly and disabled people are exempt.
- A resident must be at least 18 to be required to work.
- An Administrative Plan or ACOP *should* include a description of what is considered work, as well as what is considered an acceptable substitute for work.
[Why “should” and not “must”?]
- An Administrative Plan or ACOP must include a description of the circumstances in which a household will be exempt.
- A PHA may suspend the work requirement due to bad local economic conditions.

Safe Harbors

- The work requirement can apply to individuals or households. *
 - If the requirement applies to **individual** residents, then the maximum number of hours per week is 15.
[Previous version capped the number of hours worked at 30 hours per person.]
 - If the requirement applies to **households**, then the maximum number of hours per week is 30.
[Previous version did not have a household-specific option.]
- All residents must be given notice about the penalty for non-compliance six months before starting the work requirement. [New]
- People exempt from the Community Service Requirement are exempt from the work requirement. *
- People who are the primary caregiver for a child under 6, or who are pregnant are exempt. [New]
- Supportive services must be provided to help households find employment or an acceptable substitute. The service can be provided by another organization.
[Previous version also required services to prepare people for ending their housing assistance.]

- Work requirements cannot exclude admission into housing, or participation in supportive services by elderly or disabled people, or by households that include elderly or disabled people. *
[*Previous version did not include elderly people.*]
- A PHA must have an **annual** Impact Analysis. *
[*Previous version was not annual.*]
- A PHA must have a Hardship Policy, including a policy to address residents seeking a disability status. *
[*Previous version did not address residents seeking disability status.*]
- The Hardship Policy must apply to households actively trying to comply, but who are having difficulties finding work or an acceptable substitute. *
- The Administration Plan and ACOP must describe the consequences of failing to comply. *

[NLIHC strongly opposes a work requirement. 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.

A PHA can choose a work requirement using the 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.]

TENANT RENT POLICIES

a. Tiered Rent (Income Bands)

For public housing and vouchers, a PHA may create “income bands” to determine a household’s rent. This allows a PHA to establish fixed rents within different income ranges (bands). All households in the range of the band would pay the same fixed rent. A household’s rent would not change unless its income moved into a different tier.

Safe Harbors:

- A household’s rent (or Total Tenant Payment, TTP in the voucher program) must be set using the lowest income in each band.
- The Notice gives an example: If a PHA has an income band between \$2,500 and \$5,000, then the rent a household with an income between \$2,500 and \$5,000 must be set using \$2,500.

[Notice PIH-2020-21](#), which is specifically about Rent Reform (Cohort #2), sets tiers in \$2,500 increments. That is, the lowest tier includes households with **gross income** between \$0 and \$2,499; the next tier includes households with gross income between \$2,500 and \$4,999; and so on. The number of tiers would vary by PHA, with the maximum tier going up to a PHA's area median income.

While the Operations Notice is not clear about how to determine what the actual rent will be within a tier, Notice PIH-2020-21 clarifies that the rent is set at the midpoint of a tier. Households in the lowest tier (with gross income less than or equal to \$2,499) will pay a minimum rent of \$50. For all other tiers, the rent is equal to the midpoint of the tier divided by 12 times 30%. All households in a tier have the same, fixed rent. Any income increase within a tier in between three-year income recertifications (as provided in Notice PIH-2020-21) does not affect a household's rent.

A table in Notice PIH-2020-21 is a good example:

Table 1 presents the minimum and maximum gross income for each tier up to \$32,499.

Tier	Tier Income minimum	Tier Income maximum	Tiered rent
1	\$0	\$2,499	\$50
2	\$2,500	\$4,999	\$94
3	\$5,000	\$7,499	\$156
4	\$7,500	\$9,999	\$219
5	\$10,000	\$12,499	\$281
6	\$12,500	\$14,999	\$344
7	\$15,000	\$17,499	\$406
8	\$17,500	\$19,999	\$469
9	\$20,000	\$22,499	\$531
10	\$22,500	\$24,999	\$594
11	\$25,000	\$27,499	\$656
12	\$27,500	\$29,999	\$719
13	\$30,000	\$32,499	\$781

According to Notice PIH-2020-21, when a household begins participating in a tiered rent, they will be assigned to a tier based on their total annual gross income from the prior year. This means a household with an annual gross income in year one of \$10,500 will pay \$18 more per month than if the rent was not fixed at \$281 (\$10,500 divided by 12 months times 30% equals \$263), while a household with annual gross income of \$12,000 will pay \$19 less (\$12,000 divided by 12 months times 30% equals \$300).

Comparison with 2018 version: Number of bedrooms in the unit was factored in; rent could not exceed 35% of gross income; and flat rent was not required. So, it might be possible in the final version for a household's rent to be more than 35% of household income if they "go over the cliff" and move from one tier to another.

b. Stepped Rent

For public housing and vouchers, a PHA may create stepped rents, a scheme that increases a household's rent on a fixed schedule in both frequency and amount.

[Note: This is basically a scheme to march toward a time limit because the rent increases until there is no more HUD assistance.]

Safe Harbors:

- Initial rents cannot be set at more than 35% of adjusted income or 32% of gross income [*New*].
[NLIHC notes, however, that [Notice PIH-2020-21](#) for Cohort #2 Rent Reform sets rents at 30% of gross income if a PHA selects MTW Test Rent #2. Perhaps the Operations Notice's option can apply to MTW Test Rent #3 PHA Alternative.]
- Rents can only increase once per year.
- The rent increase cannot be more than 4% of the Fair Market Rent, FMR, [*New*].
- Services must be available to prepare a household for termination of assistance when it approaches the end of assistance.
[NLIHC notes that Notice PIH-2020-21 does not mention this requirement.]
- Cannot be used with elderly and disabled households. *
- PHA must conduct an annual Impact Analysis. *
- PHA must have a Hardship Policy. *

Comparison with 2018 version: Does not offer voucher household with a six-month grace period before transitioning off of the HCV program once calculation results in zero HAP payment.

c. Minimum Rent

For public housing and vouchers, a PHA may set a minimum rent greater than \$50.

Safe Harbors:

- The minimum rent cannot be more than \$130 per month.
- Cannot be used with elderly and disabled households.
- PHA must conduct an Impact Analysis. *
- PHA must have a Hardship Policy. *

Comparison with 2018: Was \$250 for non-elderly/non-disabled and \$100 for elderly/disabled.

While the final is better, it still can place a significant rent burden on households.

d. Tenant Rent as Modified Percentage of Income

For public housing and vouchers, instead of determining a household's rent based on 30% of their adjusted income (or 10% of gross income), a PHA can use a different percentage.

Safe Harbors:

- Rent cannot be more than 35% of income for non-elderly/non-disabled if a PHA is not using the waivers listed below. The Notice does not make clear whether income is based on adjusted or gross income.
- Rent cannot be more than 32% of income for non-elderly/non-disabled if a PHA uses other waivers: eliminating one or more deductions, replacing existing deductions with a single new standard deduction, or creating a policy that includes or excludes certain forms of income when conducting income review and rent calculation (see page 26). The Notice does not make clear whether income is based on adjusted or gross income.
- Cannot be used with elderly and disabled households.
- PHA must conduct an Impact Analysis. *
- PHA must have a Hardship Policy. *

Comparison with 2018: Was based on gross income, 35% for non-elderly/non-disabled and 30% for elderly/disabled.

While the final is better, it still can place a rent burden on households.

e. Fixed Rents/Subsidies

For public housing and vouchers, a PHA can set fixed public housing rents/voucher subsidies based on bedroom size.

Safe Harbor:

- The household must not pay more than 30% of "income". The Notice does not indicate whether it is adjusted or gross rent.

[Note, this can apply to elderly/disabled.]

Comparison with 2018: Was 35% of gross rent for non-elderly/non-disabled and 30% of gross rent for elderly/disabled.

Final is an improvement.

f. Initial Rent Burden for Voucher Program

For vouchers, a PHA may waive the current rule that when first renting a home with a voucher a household must not pay more than 40% of their income for rent.

Safe Harbors:

- The initial rent burden cannot be more than 60% of income.
- PHA must conduct an Impact Analysis. *

[Note: A Hardship Policy is not required...paying 60% of income for rent is already a severe cost burden. Note also that this can apply to elderly and disabled households.]

Comparison with 2018: Previous version required a Hardship Policy and did not state a maximum rent burden.

g. Imputed Income

For public housing and vouchers, a PHA can base rent on an assumed number of hours worked per week.

Safe Harbors;

- Rent must be based on assuming no more than 15 hours worked per **person** per week at the federal minimum wage.
- Rent must be based on assuming no more than 30 hours worked per **household** per week at the federal minimum wage.
- Cannot be used with elderly and disabled households. *
- PHA must conduct an Impact Analysis. *
- PHA must have a Hardship Policy. *

Comparison with 2018: Capped the number of assumed hours at 30 hours per non-elderly/non-disabled adult in the household, using either local, state, or federal minimum wage.

The final version is worse because a PHA can choose the 15 hours per person per week option, and 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. Also, the federal minimum wage is lower than some local and state minimum wages.

h. Elimination of Deduction(s)

For public housing and vouchers, a PHA may eliminate one, some, or all deductions from income.

Safe Harbors:

- Cannot be used with elderly and disabled households. *
- PHA must conduct an Impact Analysis. *
- PHA must have a Hardship Policy. *

Household rent could increase.

Comparison with 2018: Previous version had no Safe Harbors.

i. Standard Deductions

For public housing and vouchers, a PHA may replace existing deduction(s) with a single standard deduction.

Safe Harbors:

- PHA must conduct an Impact Analysis. *
- PHA must have a Hardship Policy. *

[Note that elderly and disabled are not exempt. For all households rent could increase.]

Comparison with 2018: Previous version had no Safe Harbors.

j. Alternative Income Inclusions/Exclusions

For public housing and vouchers, a PHA may create alternative policies that include or exclude certain forms of income when conducting income reviews and rent calculations.

Safe Harbor: Cannot be used with elderly and disabled households.

[Note: Does not require Hardship Policy or Impact Analysis.

The final version could benefit a household if certain forms of income are excluded, but MTW seems to be mainly oriented to raising household rents. Therefore, by allowing some forms of income to be included this waiver is more likely to raise a household's rent.]

Comparison with 2018: Previous version required Impact Analysis and Hardship Policy.

k. Alternative Utility Allowance

For public housing, a PHA may create an alternative utility allowance schedule(s) for all units. For vouchers a PHA **may** (see Safe Harbor) create an alternative utility schedule for all units based on bedroom size, location of a unit, and/or the types of utilities paid by the household. For Project-Based Vouchers (PBVs) a PHA may create a site-based utility allowance.

Safe Harbors:

- A utility allowance schedule **must** be based on the number of bedrooms, property location, and/or the types of utilities paid by a household.
- A PHA must review the schedule of utility allowances each year and revise it for a utility category if the cost has changed by 10% or more from the prior year.
- A utility schedule cannot include items excluded by regulations. *

Comparison with 2018: Does not require Impact Analysis.

l. Utility Reimbursements

For public housing and vouchers, a PHA may eliminate utility reimbursement payments when the utility allowance is greater than the Total Tenant Payment.

Comparison with 2018: Does not required Impact Analysis and Hardship Policy.

PAYMENT STANDARDS and RENT REASONABLENESS

a. Small Area Fair Market Rents (SAFMRs)

PHAs may implement any “reasonable” voucher payment standards based on Small Area FMRs (SAFMRs). Instead of using a unique payment standard for each ZIP code, a PHA may group several ZIP code areas into one payment standard area.

Safe Harbors

- The payment standard must be between 80% and 150% of the SAFMR.
- The payment standard for each grouped ZIP code area must be within the “basic range” of the SAFMR for each ZIP code area in the group. *
(Usually the basic range is 90%-110% of the FMR/SAFMR. While it is not directly stated, advocates think PIH means the payment standard for a group of zip codes has to be between 80% and 150% SAFMR for every zip code in the group.)
- PHA must conduct an Impact Analysis. *
- PHA must have a Hardship Policy. *

See Note, *next page*

b. Small Area Fair Market Rents (SAFMRs), *continued*

[Note: Reducing the payment standard down to 80% of the SAFMR will harm residents. A payment standard floor at 80% of 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 areas with access to better schools, full-service groceries, better environmental conditions, and job opportunities.]

Comparison with 2018 version: The use of SAFMRs is new.

c. Fair Market Rents

PHAs may implement any "reasonable" voucher payment standards based on Fair Market Rents (FMRs).

Safe Harbors

- The payment standard must be between 80% and 120% of FMR (instead of the usual 90% and 110%).
- PHA must conduct an Impact Analysis. *
- PHA must have a Hardship Policy. *

[Note: Reducing the payment standard down to 80% of the FMR will harm residents. A payment standard floor at 80% of 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 areas with access to better schools, full-service groceries, better environmental conditions, and job opportunities.]

Comparison with 2018 version: Previous version allowed the upper range to go to 150% (good) but didn't establish a floor (not good). It allowed multiple standards based on local market conditions.

d. Rent Reasonableness Process

PHAs may develop a local process to determine rent reasonableness that is different from current regulations.

[Note: In general, "rent reasonableness" means that the rent charged by the owner is comparable to rents charged for similar, unassisted units in the market area.]

Safe Harbors

- A PHA's Administrative Plan must explain the method used to determine rent reasonableness.
- If HUD requests, a PHA must use a third-party entity to determine rent reasonableness of any PHA-owned units. *

Comparison with 2018: Requiring the method to be in the Administrative Plan is new. The previous version required PHAs to use a third-party entity to determine rent reasonableness of any PHA-owned units.

e. Rent Reasonableness Process – Third Party Requirements

A PHA may perform rent reasonableness on Project-Based Voucher (PBV) units that it owns.

Safe Harbors

- A PHA must establish and make available a quality assurance method to ensure impartiality. *
- A PHA must make available the method used to determine that rents charged by owners are reasonable compared to unassisted units in the market area. *
- If HUD requests, a PHA must use a third-party entity to determine rent reasonableness of any PHA-owned units. *

[Note: The second Safe Harbor does not explicitly state that the method must be explained in the Administrative Plan, which is available to residents and advocates. Therefore, what does HUD mean by “make available”? To whom?]

Comparison with 2018: This is new.

LOCAL, NON-TRADITIONAL ACTIVITIES

The opening statement defines a “local, non-traditional activity” as one not listed as an eligible activity under the public housing Capital Fund, public housing Operating Fund, or Housing Choice Voucher program. Also:

- Households served must have income at or less than 80% AMI.
- Activities must meet one of the three MTW statutory objectives:
 - Increase efficiency of federal expenditures
 - Incentivize household’s self-sufficiency or
 - Increase housing choice
- Local, non-traditional activities must be in one of three categories:

1. Rental Subsidy Programs

A PHA may use MTW funds to provide a rent subsidy to a third-party entity (but not a landlord or tenant) that manages intake and administration of a subsidy program that implements activities such as:

- Supportive Housing programs and services to help homeless people reach independence
- Supportive living
- Shallow subsidies
- Homeless/transitional housing programs or
- Programs that address special needs populations

Safe Harbors, *next page*

1. Rental Subsidy Programs, *continued*

Safe Harbors

- A PHA must not spend more than 10% of its HAP budget on local, non-traditional activities.
- Households must meet the definition of low-income (80% AMI). * [New]
- A PHA is subject to [Notice PIH 2011-45](#) (Parameters for Local, Non-Traditional Activities under the Moving to Work Demonstration Program). *
- Any MTW funds awarded to a third-party provider must be competitively bid. * [New]

Comparison with 2018: This version adds “shallow subsidies”.

[Note how “shallow subsidies” is snuck in among other worthwhile activities. Shallow subsidies provide less rent assistance than is needed, meaning an assisted household pays more than 30% of their income for rent and utilities. Shallow subsidies might meet the first statutory objective, but at the cost of the other two.

Proponents of shallow subsidies claim that more people are helped because a PHA’s fixed amount of 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 or three jobs.]

2. Providing Services

A PHA may provide HUD-approved self-sufficiency or supportive services using MTW funds that are not otherwise permitted under the public housing or HCV programs.

Eligible activities include:

- 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
- Services and/or incentives to attract people to apply to live in a PHA’s development that is difficult to market [New]
- Supportive services

Safe Harbors

- A PHA must not spend more than 10% of its HAP budget on local, non-traditional activities.
- An incentive cannot be a deduction to a household’s rent contribution. * [New]
- An incentive cannot be greater than one month’s rent. * [New]
- Households must meet the definition of low-income (80% AMI). * [New]
- A PHA is subject to [Notice PIH 2011-45](#) (Parameters for Local, Non-Traditional Activities under the Moving to Work Demonstration Program). *
- Any MTW funds awarded to a third-party provider must be competitively bid. * [New]

continues

3. Providing Services, *continued*

[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.]

4. Housing Development Program

A PHA may 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, development of PBV units [*New*], or Low Income Housing Tax Credit (LIHTC) partnerships.

Safe Harbors

- A PHA must not spend more than 10% of its HAP budget on local, non-traditional activities.
- Households must meet the definition of low-income (80% AMI). * [*New*]
- A PHA is subject to [Notice PIH 2011-45](#) (Parameters for Local, Non-Traditional Activities under the Moving to Work Demonstration Program). *
- Any MTW funds awarded to a third-party provider must be competitively bid. * [*New*]

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

INCREASE IN THE ELDERLY AGE

For public housing and vouchers, a PHA may increase the definition of an elderly person to 65 (up from 62).

Safe Harbors

- This only applies to new admissions. *
- A PHA must not set a minimum age greater than 65. *
- A PHA must still exclude persons 62 and older from allowable “activities” (MTW flexibilities) for which the activity description or Safe Harbor exempts them from the Community Service Requirements, such as any work requirements or mandatory Family Self-Sufficiency (FSS). *
- A PHA must conduct an initial age discrimination analysis and make it available during the public review period before implementing the MTW activity. The analysis must be updated annually. *
- A PHA must keep records available to HUD that cover the MTW activity, tenant consultation and public comment, results of the age discrimination analysis, and specific policies and procedures to implement the MTW activity. *

Comparison with 2018: The third Safe Harbor is new.

INCOME REEXAMINATIONS

a. Alternative Income Reexamination Schedule

For public housing and vouchers, a PHA may establish an alternative income reexamination schedule.

Safe Harbors

- Income reexaminations must occur at least every three years.
- A PHA must allow at least one interim rent adjustment per year if a household requests one when the household's gross income has decreased by 10%.
- PHA must conduct an Impact Analysis. *
- PHA must have a Hardship Policy. *

Comparison with 2018: Adds the Safe Harbor requiring an Impact Analysis.

b. Self-Certification of Assets

For public housing and vouchers, at an income reexamination a PHA may allow a household to self-certify the amount of assets held by a household.

Safe Harbor

- A PHA may allow self-certification of assets of up to \$50,000

Comparison with 2018: Previous version cap was \$10,000.

HOUSING QUALITY STANDARDS (HQS)

a. Pre-Qualifying Unit Inspections

A PHA may allow pre-qualifying unit inspections (also known as pre-inspections).

Safe Harbors

- A pre-inspection must have been done within 90 days of a household occupying a unit.
- A household must be able to request an interim inspection. *
- HQS inspection standards must not be altered. *

Comparison with 2018: This is new.

b. Reasonable Penalty Payments for Landlords

A PHA may have a reasonable penalty for a landlord failing HQS. Examples include a fee for failed initial, annual, or re-inspections, or for submitting a Request for Tenancy Approval on a unit that has failed its most recent inspection (within a reasonable timeframe).

Safe Harbors

- A PHA must include its penalty process in its Administrative Plan. *
- HQS inspection standards must not be altered. *
- All fees collected must be used for eligible MTW Activities. *

Comparison with 2018: This is new.

c. Third Party Requirements

A PHA may perform HQS inspections on Project-Based Voucher (PBV) units that it owns, manages, or controls.

Safe Harbors

- A PHA must have and make available, a quality assurance method to ensure objective analysis. *
- A household must be able to request an interim inspection. *
- HQS inspection standards must not be altered. *
- If HUD requests, a PHA must use a third-party entity to determine if PHA-owned units pass HQS. *

Comparison with 2018: This is new.

[Note: The quality assurance method should have been required to be in the PHA's Administrative Plan so that it would be available residents and advocates.]

d. Alternative Inspection Schedule

A PHA may have an alternative inspection schedule for all or a portion of its HCV units.

Safe Harbors

- HCV units must be inspected at least once every three years.
- A household must be able to request an interim inspection. *
- HQS inspection standards must not be altered. *
- HUD must be able to inspect (or direct a PHA to inspect) units at any time for health and safety as well as accessibility purposes. *

Comparison with 2018: This is new.

LANDLORD LEASING INCENTIVES

All three of these MTW flexibilities are intended to provide an incentive(s) to landlords to accept vouchers. A PHA may use one, two, or all three incentives.

a. Vacancy Loss

A PHA may make vacancy loss payments to landlords as an incentive for a landlord's continued participation in the voucher program.

Safe Harbors

- The maximum vacancy loss incentive cannot be more than one month's rent.
- The payment must be made when the next Housing Assistance Payment (HAP) contract is completed between an owner and a PHA. *
- A PHA's Administrative Plan must be updated to include a vacancy loss policy.*

Comparison with 2018: The last two Safe Harbors are new.

b. Damage Claims

A PHA may compensate landlords for damages.

Safe Harbor

- The amount paid for tenant-caused damages cannot be greater than the cost of repairs or two months of contract rent – whichever is less.
- A tenant's security deposit must be used first. Therefore, the amount of damage paid may be equal to two months of contract rent minus the security deposit.
- The payment must be made when the next Housing Assistance Payment (HAP) contract is completed between an owner and a PHA. *
- A PHA's Administrative Plan must be updated to include a vacancy loss policy.*

Comparison with 2018: The first two Safe Harbors add clarity. The last two Safe Harbors are new.

c. Other Landlord Incentives

A PHA may target incentive payments to new landlords in high opportunity neighborhoods or in areas where vouchers are difficult to use as defined in a PHA's Administrative Plan.

Safe Harbors

- An incentive payment cannot be greater than one month of contract rent.
- The payment must be made when the Housing Assistance Payment (HAP) contract is completed between an owner and a PHA. *

Comparison with 2018: The previous version also allowed incentive payments to landlords already in the voucher program to encourage them to continue to rent to voucher households. Both Safe Harbors are new.

SHORT-TERM ASSISTANCE with SUPPORTIVE SERVICES

For public housing and vouchers, a PHA may have short-term housing assistance programs with supportive services for specific populations, such as people who are hard to house, or at risk of homelessness, etc.

Safe Harbors

- The term of the assistance must not be shorter than three months.
- The term of the assistance must not be longer than three years.
- The assistance must include supportive services which can be in collaboration with community-based organizations or government agencies.
- Successful participants must have the option of transferring into the associated public housing or voucher program.
- Participants must not be required to participate in supportive services that are targeted to persons with disabilities in general or targeted to persons with any specific disability. *
- A PHA must not require participation in supportive services as a condition for a housing subsidy for elderly or disabled households. *
- If a PHA requires participation in supportive services as a condition for housing subsidy, the PHA must have an Impact Analysis and a Hardship Policy. *
- The short-term assistance cannot be extended to the entire public housing or HCV program. It must only serve specific populations. *

Comparison with 2018: The previous version prohibited conditioning admission on a diagnosis or specific disability. All of the Safe Harbors except the first and last are new.

FAMILY SELF-SUFFICIENCY (FSS) PROGRAM with MTW FLEXIBILITIES

a. Waive Operating a Required FSS Program

If a PHA is required by statute to operate a FSS program, it may waive this requirement.

b. Alternative Structure for Establishing Program Coordinating Committee

A PHA may have an alternative structure for securing local resources to support its Self-Sufficiency Program.

c. Alternative Family Selection Procedures

A PHA may develop its own recruitment and selection procedures. It could also make participation in FSS mandatory, except for elderly or non-disabled people.

FAMILY SELF-SUFFICIENCY (FSS) PROGRAM with MTW FLEXIBILITIES, continues

FAMILY SELF-SUFFICIENCY (FSS) PROGRAM with MTW FLEXIBILITIES, *continued*

d. Modify or Eliminate the Contract for Participation

A PHA may modify the terms of the FSS Contract of Participation, or the PHA may replace it with a form created by the PHA.

e. Policies for Addressing Increases in Family Income

A PHA may have its own policies for addressing increases in household income for purposes of increasing rent or changing the amount of funds moved to a household's FSS savings/escrow.

Safe Harbors

- A PHA must review FSS Guidance. *
- A PHA must execute a Contract of Participation or a local agreement that covers at least five years but not more than ten years.
- A PHA cannot require participation by elderly or disabled people in order to receive housing assistance. *
- A PHA cannot require participation by people exempt from the Community Service Requirement. *
- If a PHA requires participation in order to receive housing assistance, the PHA must have an impact analysis and hardship policy. *
- If a PHA terminates a household's housing assistance for allegedly violating mandatory participation, the household is entitled to a hearing under the PHA's Grievance Procedure. *
- A PHA may not use income increases to change a household's eligibility status or for continued housing assistance. *

Comparison with 2018: No change, except some of the Safe Harbors were previously in the text describing the waiver activity.

MTW SELF-SUFFICIENCY PROGRAM

A PHA may operate any of its existing self-sufficiency and training programs exempt from certain HUD program requirements.

1. Alternative Family Selection Procedures

For public housing and vouchers, a PHA may develop its own recruitment and selection features for its Self-Sufficiency Program(s).

- A PHA may require participation for people who are non-elderly or non-disabled.
- Any supportive services must be offered to elderly and disabled people.

2. Policies for Addressing Increases in Family Income

For public housing and vouchers, a PHA may set its own policies for addressing increases in household income. A PHA may set policies for whether income increases are considered for increasing rent or changing the amount of funds moved to escrow/savings.

Safe Harbors

- A PHA cannot require participation by elderly or disabled people in order to receive housing assistance. *
- A PHA cannot require participation by people exempt from the Community Service Requirement. *
- If a PHA requires participation in order to receive housing assistance, the PHA must have an Impact Analysis and Hardship Policy. *

A PHA may not use income increases to change a household's eligibility status or for continued housing assistance.

PUBLIC HOUSING as INCENTIVE for ECONOMIC PROGRESS – New

A PHA may extend the period a household can be over-income as an incentive to continue economic progress and eventual self-sufficiency.

Safe Harbors

- The over-income limit is 120% AMI.
- The over-income grace period cannot be for less than two years or more than three years.
- A PHA must inform a household of its over-income status no less than one year before the end of the grace period. *
- A PHA must terminate an over-income household's tenancy within one year of the end of the grace period or charge the household a monthly rent that is the greater of:
 - The Fair Market Rent (FMR), or
 - The amount of the monthly subsidy for the unit (Operating and Capital fund components). *

The only real change from the current rule is that the grace period could be up to three years.

MOVING ON POLICY – New

The opening statement indicates that Moving On provides mainstream housing options such as public housing or HCV as well as resources needed to maintain housing stability for people who are able to and want to move on from permanent supportive housing (PSH). Three “activities” (waivers) are offered:

- For people who will continue renting their current PSH unit, a PHA may accept the most recent HQS inspection from a partner agency (instead of a PHA carrying out an “initial” HQS inspection).
- A PHA may accept income calculations from partner agencies.
- A PHA may set tenant rent and/or make adjustments to the Total Tenant Payment to ensure that people referred from a partner agency do not experience a rent or utility increase when transferring from PSH to public housing or HCV.

Safe Harbors

- Initial income must be determined according to the annual income provisions of 24 CFR 5.609. *
- A PHA must allow a household to request an interim HQS inspection.
- Any income calculations accepted from a partner agency must have been calculated within the past year.
- People must still be screened to determine whether they have lifetime sex offender status or a conviction for manufacturing or producing methamphetamine on the premises of federally assisted housing. *

DECONCENTRATION OF POVERTY in PUBLIC HOUSING – New

A PHA may create an alternative policy to deconcentrating poverty in public housing.

Safe Harbors

- All Fair Housing Act requirements continue to apply. *
- If requested, a PHA must provide to HUD all justifications about the policy. *

(Deconcentration means income mixing within all of a PHA’s property and within each development. The statute and rule still require that at least 40% of new admissions be households with income at or less than 30% AML.)

ACQUISITION of PUBLIC HOUSING SITES WITHOUT PRIOR HUD APPROVAL – New

A PHA may purchase a site (vacant land) to develop new public housing without prior HUD approval. A PHA must still have all of the submission materials in place as if HUD was approving the acquisition, and provide the materials to HUD within 30 days of acquisition. If HUD ultimately does not approve the purchase, a PHA must repay the cost using non-federal funds.

Safe Harbors

- A PHA must document compliance with local zoning. *
- A PHA must have an independent appraisal. *
- A PHA must conduct an environmental assessment before acquisition.
- A PHA must provide all required documentation to HUD within 30 days of acquisition.

PROJECT-BASED VOUCHER (PBV) FLEXIBILITIES

a. Increase the PBV Program Cap

A PHA may increase the number of authorized Housing Choice Vouchers that it project bases.

(Current regulations place a limit of 20% of a PHA's authorized HCV units. It allows an additional 10% for "exception categories": units that house homeless people, provide supportive services to people with disabilities or to elderly people, or to veterans, or for units located in areas with a poverty rate less than 20%.)

Safe Harbor

- A PHA must not project base more than 50% of either its total number of authorized units *or* annual HCV budget authority, whichever is less.

Comparison with 2018: The previous version had a 30% cap. It also raised the "exception" cap from 10% to 20%. Depending on who lived in the units, the same 50% cap might be realized. The previous version did not consider 50% of the annual HCV budget authority.

b. Increase the PBV Project Cap, *next page*

b. Increase the PBV Project Cap

A PHA may increase the cap on the number of PBV-assisted units in one project all the way up to 100% of the units.

(The regulations have a cap of 25% or 25 units, whichever is greater. However, if a project is located in a census tract with a poverty rate of less than 20%, up to 40% of the units could be project-based. In addition, regular regulations do not limit the number of PBV-assisted units if they are occupied by elderly people or non-elderly people eligible for supportive services that are made available to the assisted tenants in the project. People are not required to use the services.)

Safe Harbor

- Only one technical one. *

Comparison with 2018: The waiver is the same. The Safe Harbors included a PHA seeking to: transition a LIHTC property that is approaching the end of its affordability period, or to convert an existing PHA-owned, non-public housing development or exception projects under HOTMA.

c. Eliminate the PBV Selection Process for PHA-Owned Projects Without Improvement, Development, or Replacement

A PHA may eliminate the selection process when awarding PBVs to properties owned by the PHA that are not public housing; the PHA doesn't have to improve, develop, or replace a public housing property or site.

Safe Harbors: There are five technical Safe Harbors that most residents will not be interested in. All are *

Comparison with 2018: The same.

d. Alternative PBV Selection Process

A PHA may have an alternative competitive process when awarding PBVs to properties owned by nonprofits, for-profits, or by the PHA that are not public housing.

Safe Harbor

- If a PHA owns the selected project, a Housing Quality Standards (HQS) inspection must be performed by an independent entity. *

Comparison with 2018: The same.

e. Alternative PBV Unit Types (Shared Housing and Manufactured Housing)

A PHA may attach and pay PBV assistance for shared housing units and/or manufactured housing.

(In general, PBVs cannot be attached to shared housing or manufactured housing.)

Safe Harbors

- PBV units must comply with HQS. *
- PBV units must comply with de-concentration and desegregation requirements. *
- Shared housing units may not be owner-occupied. *

Comparison with 2018: The same.

f. Increase PBV HAP Contract Length

A PHA may increase the length of the term of the PBV Housing Assistance Payment (HAP) Contract.

(Normally, the maximum term of an initial HAP contract is 20 years and can be extended for another 20 years.)

Safe Harbors

- A PBV HAP Contract cannot be shortened.
- A PBV HAP Contract cannot be greater than 50 years, including any extensions.
- A PBV HAP Contract is subject to available Congressional appropriations and the ending of a PHA's MTW authorization. *

Comparison with 2018: This is a new provision.

g. Increase PBV Rent to Owner

A PHA may have its own process to determine the initial rent to owner and to re-determine the rent to the owner.

Safe Harbor

- Any policy must comply with rent reasonableness unless modified by MTW waivers 2.c and/or 2.d (alternate "rent reasonable process"/PHA can apply rent reasonableness for PBV units it owns, manages, or controls). *

Comparison with 2018: The previous version required an Impact Analysis and Hardship Policy.

h. Limit Portability for PBV Units

A PHA may waive the requirement to provide a tenant-based voucher when a resident requests one after living in the PBV unit for 12 months.

Safe Harbors

- Twenty-four months is the maximum period a household can be denied a tenant-based voucher to move.
- A PHA must have a clear and uniform policy to address how move requests are received and how they will be approved or denied. *
- Households must still have the ability to request a tenant-based voucher for a reasonable accommodation. *

Comparison with 2018: This is new.

“SAFE HARBOR WAIVERS,” “AGENCY-SPECIFIC WAIVERS,” AND “COHORT-SPECIFIC WAIVERS”

In addition to “MTW Waivers” the Operations Notice provides “Safe Harbor Waivers,” “Agency-Specific Waivers,” and “Cohort-Specific Waivers.”

Safe Harbor Waivers

MTW PHAs may request PIH approval to expand an MTW Waiver activity/policy in Appendix I in a way inconsistent with the safe harbors for that specific MTW Waiver activity/policy. PIH has not yet provide instructions on how PHAs may justify such requests. However, when submitting a Safe Harbor Waiver, an MTW PHA must hold a public meeting to specifically discuss the Safe Harbor Waivers. This meeting is in addition to following the PHA Plan public participation process requirements. The MTW PHA must consider, in consultation with the Resident Advisory Board (RAB) and any tenant associations, all of the comments received at the public hearing. The comments received by the public, RABs, and tenant associations must be submitted by the MTW agency, along with the MTW PHA’s description of how the comments were considered, as a required attachment to the MTW Supplement (see below).

Agency-Specific Waivers

MTW PHAs may seek PIH approval for an Agency-Specific Waiver in order to implement additional activities not among those in the Appendix I. The request must have an analysis of the potential impact on residents as well as a hardship policy. A PHA must follow the same public participation process described above for Safe Harbor Waivers.

Cohort-Specific Waivers

MTW PHAs may be provided Cohort-Specific Waivers if additional waivers not included in Appendix I are necessary to allow implementation of the required cohort study. Cohort-Specific Waivers will be detailed in the applicable Selection Notice for that cohort study.