December 10, 2018

Colette Pollard
Reports Management Officer
QDAM
Department of Housing and Urban Development
451 7th Street SW, Room 4176
Washington, DC 20410-0001

Re: 60-Day Notice of Proposed Information Collection: Public Housing 5-Year and Annual PHA Plan and MTW Supplement to the PHA Plan” [Docket No. FR-7006-N-12]

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments to the United States Department of Housing and Urban Development (HUD or the Department) in response to the notice titled “60-Day Notice of Proposed Information Collection: Public Housing 5-Year and Annual PHA Plan and MTW Supplement to the PHA Plan” published in the Federal Register on October 9, 2018.

NAHRO has the unique ability to represent public housing agencies, local redevelopment agencies, and other HUD grantees of all sizes and geography.

The Department is requesting feedback on the Five-Year Plan, the PHA Annual Plan and the MTW Supplement to the Annual PHA Plan. The MTW Supplement to the Annual Plan is specifically for PHAs that join the Expansion of the MTW Demonstration under the 2016 Appropriations Act. NAHRO’s comments are in two-sections. The first is a brief section on the PHA Annual Plan and Five-Year Plan, and the second focuses specifically on the MTW Supplement to the Annual Plan.

1. Annual Plan

HUD is proposing minor changes to the Annual Plan. HUD plans to:

- Revise the instructions provided on the Assessment of Fair Housing (AFH) ensuring that program participants continue to conduct the Analysis of Impediments (AI) to fair housing until they are required to submit an AFH.
• Create a new section on all certifications to give program participants the option to add an explanation when they cannot certify to being fully compliant with the stated regulations.
• Specify on related certifications that the signed acknowledgement of the ‘authorizing official’ must be of the PHA Executive Director (ED) and Board Chairperson.

NAHRO appreciates that revisions to the certifications attached to the Annual Plan allow for agencies to provide an explanation for when they cannot certify to being fully compliant with the stated regulations and add clarity regarding the ‘authorizing official’ required to sign the certification. NAHRO also appreciates HUD’s efforts to clarify what is expected of agencies to ensure they meet the statutory requirement to affirmatively further fair housing.

2. MTW Supplement

NAHRO appreciates HUD’s efforts to simplify and streamline the MTW Supplement to the Annual Plan that agencies participating in the Expansion of MTW Demonstration will submit to HUD. As half of all of the agencies entering the MTW Expansion will have 1,000 combined public housing units and Section 8 vouchers or less, it is critical that the Supplement is simple and streamlined. NAHRO believes HUD has done an admirable job in achieving this.

That said, NAHRO has two specific concerns it would like to address through this comment letter. The first relates to Operating Fund Grant Reporting and the second relates to Agency-Specific Waivers.

Public Housing Operating Subsidy Grant Reporting

Through the MTW Supplement to the Annual Plan, the Operations Notice for the Expansion of the MTW Demonstration imposes additional cash management requirements that non-MTW agencies do not have to adhere to, specifically as it relates the Public Housing Operating Subsidy Grant Reporting, or Section E.1. Applying cash management requirements to funding received through Operating formula grants would create incredible challenges for PHAs, HUD, and residents. PHAs rely on the Operating Fund as their core operating revenue and not simply as a supplement to tenant rent. Regular and timely receipt of the fund is vital to maintaining units, responding to emergency capital needs, and supporting the staff who ensure compliance with numerous HUD regulations and local laws.

It does not make sense to add additional reporting requirements to the operating subsidy for new MTW agencies when current non-MTW agencies do not have this requirement. Adding additional regulatory requirements to the MTW program cuts against the regulatory flexibility inherent in the program. Cash management would create incredible accounting challenges for agencies and has the potential to dissuade agencies from applying to the demonstration. As such, NAHRO recommends simplifying Section E.1 from the MTW Supplement so that reporting requirements are not broken down by the fiscal year funding is appropriated. PHAs would still be able to report operating subsidy expenditures to HUD however they would be able to do so without the added and impractical challenge that cash management for the operating subsidy would entail.

Although NAHRO does not believe HUD should move forward with their plan to implement cash management for the Public Housing program, if HUD decides to do so, a significant public comment and regulatory process would be required. Before this occurs, NAHRO believes HUD should not make mention of cash management as it relates to the Public Housing program in any form or fashion in the MTW Supplement.

Agency-Specific Waivers

Agencies participating in the MTW Expansion have the option to apply for Agency-Specific Waivers that are not included in the Appendix and/or that expand the safe harbor(s) of an activity included in the MTW Waivers. In order to utilize an Agency-Specific Waiver, the Operations Notice requires an MTW
agency to first include specifics and details of the proposed waiver in its MTW Supplement to the Annual Plan. It is at this point the agency must undergo a public comment and review period for the Agency-Specific Waiver. Once the agency’s Annual Plan and MTW Supplement are approved by HUD, the agency must then submit a letter to its local HUD Field Office requesting final approval of the Agency-Specific Waiver request. This letter is sent and reviewed outside of the Annual PHA Plan and MTW Supplement process.

NAHRO recommends that HUD approve an Agency-Specific Waiver at the time it is submitted to the Department via the MTW Supplement of the Annual Plan. At the time the agency submits the MTW Supplement, the proposed Agency-Specific Waiver would have received input and feedback from the agency’s Resident Advisory Board, community, and residents. As such, HUD should accept the proposed waiver, understanding that the community and impacted residents have had time to review and comment on the proposal. HUD should only reject an Agency-Specific Waiver if it violates any statute that falls outside of the 1937 Housing Act or regulations promulgated outside of the 1937 Act. The ability to create locally-specific waivers and policies is critical to the success of the MTW program. NAHRO believes the MTW Supplement should be modified to allow for this.

Streamlining this process would also increase the likelihood that a small PHA participating in the MTW Expansion opts to utilize an Agency-Specific Waiver. Many small agencies will benefit from a streamlined process that does not tax its staff capacity. This is significant as smaller agencies will constitute half of the agencies that join MTW through the expansion.

For more information, please see Attachment 1, NAHRO’s Comments on the Operations Notice for the Expansion of the Moving to Work Demonstration.

As always, NAHRO appreciates the opportunity to comment on these important documents. Please do not hesitate to contact us if we can provide additional information or clarification.

Thank you,

Eric Oberdorfer
Policy Advisor
Appendix 1:

November 26, 2018

Office of Public and Indian Housing
Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410-0001

Re: Operations Notice for the Expansion of the Moving to Work Demonstration Program; Republication and Extension of Comment Period [Docket No. FR-5994-N-04]

To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments to the United States Department of Housing and Urban Development (HUD or the Department) in response to the notice titled “Operations Notice for the Expansion of the Moving to Work Demonstration Program; Republication and Extension of Comment Period” published in the Federal Register on Thursday, October 11, 2018.

Formed in 1933, NAHRO represents over 20,000 housing and community development individuals and agencies. Collectively, our members manage over 970,000 public housing units, 1.7 million Housing Choice Vouchers (HCVs), and receive over $1.5 billion in Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Program funding to use in their communities. NAHRO has the unique ability to represent public housing agencies, local redevelopment agencies, and other HUD grantees of all sizes and geography. NAHRO also represents numerous Moving to Work (MTW) agencies and agencies interested in participating in the MTW expansion.

NAHRO has long called for meaningful expansion of the MTW Demonstration and is deeply supportive of Congress’s efforts to move the MTW expansion forward. PHAs that participate in the MTW Demonstration enjoy broad funding flexibility and may experiment with alternative program structures to better serve their residents. Through MTW, public housing agencies (PHAs) are able to fund innovative services and programs that increase housing choice and self-sufficiency for low-income Americans. A report by the Public and Affordable Housing Research Corporation (PAHRC) found that household earnings were more likely to increase at MTW agencies than comparison agencies and that MTW agencies were less likely to report increased unmet capital public housing needs over the last five years than non-MTW agencies, suggesting “MTWs may be positioned to better maintain their housing stock.”¹ These are just two examples of many that demonstrate the benefits the MTW demonstration has on both residents and agencies.

After a brief introductory section, this letter is divided into two sections. The first section provides a background and context on the MTW Expansion. The second section provides NAHRO’s suggestions for improving the Operations Notice for the MTW Expansion.

1. Background

The Operations Notice for the Expansion of the MTW demonstration program establishes the requirements for the implementation and continued operations of the MTW demonstration program pursuant to the 2016 MTW Expansion Statute which authorized HUD to expand the MTW

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¹ Testing Performance Measures for the MTW Program. PAHRC. https://www.housingcenter.com/mtw-resources/
demonstration program by adding an additional 100 high-performing PHAs over a period of seven years. The Act requires agencies to be added to the MTW demonstration by cohort and that HUD direct one specific policy change to be implemented per cohort to facilitate the evaluation of that policy. HUD released a previous draft of the MTW Operations Notice in January 2017.

The October 2018 Operations Notice contains numerous changes from the two previous publications. The primary changes are as follows:

- The term of participation has been set at 12 years from the year of designation, as opposed to terminating at the end of a PHA’s Fiscal Year 2028.
- HUD has removed the general and conditional waivers category and replaced them with an MTW Waivers category which MTW agencies may implement without approval from HUD. These waivers include safe harbors, which are additional requirements beyond those specified in the activity description that the agency must follow in implementing activities without HUD approval. The MTW Waivers also include specific guidance on impact analyses, hardship policies, and the applicability of waivers on elderly/disabled families.
- The Operations Notice also includes an agency-specific waiver category that allows agencies in the MTW expansion to apply for additional waivers that are not included in the MTW Waiver category, or expand an MTW Waiver outside of the listed safe harbor(s).
- The 90 percent voucher utilization requirement was removed. Rather, the MTW Housing Assistance Payment (HAP) Renewal Formula has been revised to use as a base. This includes all prior-year MTW-eligible HCV funding expenses paid from HAP, including HAP expenses plus non-HAP expenses.
- The notice clarifies that an agency must be either a high performer in the Public Housing Assessment System (PHAS) or the Section Eight Management Assessment Program (SEMAP) instead of being a high performer in both.
- Regionalization was removed from the MTW Operations Notice and will be implemented through a separate forthcoming notice.
- Agencies will formalize their MTW status with an amendment to their ACC.
- The requirement for MTW PHAs designated through the expansion to assist substantially the same number of families has been modified. Compliance will be determined using a baseline ratio of total public housing and HCV HAP funding to families served.

The Operations Notice further discusses the use of MTW expansion waivers, MTW funding flexibility, evaluation, program administration and oversight, and other topics.

NAHRO is pleased with many changes that HUD made to the Operations Notice. Previously, NAHRO had concerns that the Operations Notice was overly burdensome and did not reflect the spirit nor practice of the current MTW demonstration program. NAHRO thanks HUD for their hard work on the updated draft of the MTW Operations Notice and is pleased to see many of our recommended changes included. NAHRO acknowledges and appreciates HUD moving forward with the MTW expansion and continues to encourage HUD to implement the expansion as quickly as possible.

That said, NAHRO does continue to have certain, specific concerns with the MTW Operations Notice, which are detailed below. Included are recommendations for ways in which HUD can address these concerns and further streamline the MTW Operations Notice. NAHRO’s goal is to ensure the Operations Notice is as reflective of the current MTW program as possible and to increase the MTW Expansion’s attractiveness to potential applicants.

2. **Specific Recommendations**
Below, please find NAHRO’s specific recommendations for improvements to the Operations Notice for the Expansion of the Moving to Work Demonstration Program.

**MTW CACC Amendment**

An agency’s participation in the MTW Expansion will be formalized by an amendment to the PHA’s Consolidated Annual Contributions Contract (CACC) through the MTW CACC Amendment. Through the amendment, the PHA “agrees to abide by the program structure, flexibilities, and terms and conditions detailed in the Operations Notice for the term of the agency’s participation in [the] MTW demonstration.”

NAHRO is concerned that the agreement formalizing an agency’s participation in the MTW demonstration is an amendment to the Annual Contributions Contract (ACC). Although the ACC is the governing document to administer the Public Housing and Section 8 programs as dictated by the U.S. Housing Act of 1937, recent actions by HUD have left PHAs questioning whether HUD still views the ACC as a contract. In May 2018, HUD unilaterally modified the ACC without properly following the required notification and communication process with impacted agencies. HUD has reverted all PHAs back to their prior ACC since then, however it is clear that HUD intends to unilaterally modify the ACC again in the future. Although this is concerning for a multitude of reasons, it is especially concerning for agencies joining the MTW Expansion. NAHRO does not believe that HUD has the authority to unilaterally change the ACC or any amendments to the ACC, however, past actions by the Department prove HUD may believe otherwise. NAHRO fears HUD may unilaterally change the MTW CACC Amendment without MTW agency input. Agencies that agree to enter the current MTW Expansion have no guarantee that their funding formula will remain the same and have no guarantees that the flexibilities granted in this operations notice will remain. Currently, agencies agreeing to enter the program will have trouble making long term capital investments without having the certainty that their funding formula will remain the same.

In light of this, NAHRO recommends that HUD create a standalone standard contract between the MTW Expansion agencies that formalizes an agency’s participation in the MTW expansion and can only be modified during the 12 year term of participation if both parties agree to the modifications. Through this standalone agreement, PHAs will still “agree to abide by the program structure, flexibilities, and terms and conditions detailed in the [the specific, finalized] Operations Notice for the term of the agency’s participation in [the] MTW demonstration.” The standalone contract can reference the final Operations notice by incorporation. The new contract should incorporate this specific Operations Notice to ensure that any modifications to the Operations Notices are made with transparency and undergo the proper participatory process and receive stakeholder input.

NAHRO further recommends that HUD release any agreement that pertains to participation in the MTW Expansion as soon as possible. Many agencies that have expressed interest in applying for the MTW Expansion have noted their desire to see any agreement or contract before submitting their application.

**Cash Management**

NAHRO remains concerned about certain provisos in the MTW Operations Notice that would implement cash management for agencies participating in the MTW Expansion. Language in the Operations Notice notes that “requirements and procedures described in this notice may change as new financial management policies are implemented over time,” and that “HUD will update existing guidance and issue new reporting requirements, as appropriate, to ensure compliance … with respect to Federal financial management.”

Furthermore, the Operations Notice, through the MTW Supplement, imposes additional cash management requirements that non-MTW agencies do not have to adhere to, specifically as it relates the Public Housing Operating Subsidy Grant Reporting, or Section E.1.
Applying cash management to funding received through Operating formula grants would create incredible challenges for PHAs, HUD, and residents. PHAs rely on the Operating Fund as their core operating revenue and not simply as a supplement to tenant rent. Regular and timely receipt of the fund is vital to maintaining units, responding to emergency capital needs, and supporting the staff who ensure compliance with numerous HUD regulations and local laws. Furthermore, NAHRO questions HUD’s capacity to implement a cash management system for the more than 3,000 agencies that need real-time access to cash to meet payroll and pay vendors. HUD does not have the technology, nor the staff, to adequately institute a process that will keep up with the business of housing agencies. Last, but most important, is the detrimental impact on residents. Housing authorities are landlords. Losing immediate access to operating funds will impact their responsibility to ensure maintenance requests are addressed. This will create delays in responding to routine work orders, and will have a detrimental impact on their ability to respond to emergency repairs. Additionally, if HUD chooses to develop a system where rental income becomes “first in” funding, authorities may opt to step up their landlord enforcement actions against negligent, non-paying tenants.

Although NAHRO does not believe HUD should move forward with their plan to implement cash management for the Public Housing program, if HUD decides to do so, a significant public comment and regulatory process would be required. Before this occurs, NAHRO believes HUD should not make mention of cash management as it relates to the Public Housing program in any form or fashion. Furthermore, NAHRO does not believe agencies that enter the MTW demonstration should be used to test cash management and its implications.

NAHRO recommends that HUD remove any language alluding to cash management from the MTW Operations Notice.

**MTW Waiver Safe Harbors**

The Operations Notice includes an Appendix with available waivers and associated activities that MTW agencies may implement once they have entered the Demonstration. Some waivers include safe harbors that contain additional requirements the agency must satisfy before implementing a waiver activity without further HUD approval. Overall, NAHRO is pleased with HUD’s efforts to streamline the process through which agencies may apply for statutory and regulatory waivers while balancing resident protections.

NAHRO recommends that HUD ensure that the safe harbors included with the MTW Waivers provide as much flexibility as possible to the agencies that participate in the MTW expansion. HUD should not include any requirements in the safe harbor category besides an impact analysis and hardship policy, if required. For example, HUD should not require that term-limited assistance last at least 4 years, that MTW agencies only use up to 10 percent of its MTW budget for housing development programs and local, non-traditional activities, or set thresholds for minimum rents. These decisions should be left to local processes and designed with the full input of community stakeholders, resident leaders, and as contemplated and provided for in the MTW Supplement and Annual Plan process. It is critical that the Operations Notice provides PHAs all of the flexibilities necessary to meet the needs of their communities through local decision-making processes. To do so, it is imperative that the Operations Notice does not rely on top-down decisions made by HUD about the structure of the policy interventions PHAs may use at their agencies.

**Agency-Specific Waivers**

Agencies participating in the MTW Expansion have the option to apply for Agency-Specific Waivers that are not included in the Appendix and/or that expand the safe harbor(s) of an activity included in the MTW Waivers. In order to utilize an Agency-Specific Waiver, the Operations Notice requires an MTW agency to first include specifics and details of the proposed waiver in its MTW Supplement to the
Annual Plan. It is at this point the agency must undergo a public comment and review period for the Agency-Specific Waiver. Once the agency’s Annual Plan and MTW Supplement are approved by HUD, the agency must then submit a letter to its local HUD Field Office requesting final approval of the Agency-Specific Waiver request. This letter is sent and reviewed outside of the Annual PHA Plan and MTW Supplement process. HUD may request an associated hardship policy, impact analysis, and/or other information necessary to understand the waiver and its possible effects. Once HUD approves the Agency-Specific Waiver, the agency may implement the waiver, unless implementation of the waiver requires a “significant amendment” to the Annual PHA Plan, as defined by the agency.

As written in the MTW Operations Notice, the process to apply for and receive an Agency-Specific Waiver is far too cumbersome and time consuming. PHAs should not be required to undergo a two-step process, having HUD first approve the MTW Supplement and then later approve the Agency-Specific Waiver through a separately submitted letter. NAHRO recommends that the approval process for Agency-Specific Waivers outlined in the Operations Notice be significantly streamlined and better reflect the process that the current 39 MTW agencies undertake to receive statutory and regulatory waivers. This process already requires the agency’s Resident Advisory Board (RAB), community, and residents to provide input on any proposed waiver prior to its submission to HUD.

NAHRO is also concerned about HUD’s lack of transparency regarding the approval of an Agency-Specific Waiver and the process that PHAs must undertake to get the waiver approved. The Operations Notice provides HUD with significantly more discretion to dictate changes to proposed Agency-Specific Waivers than the Department has for existing MTW agencies.

NAHRO recommends that HUD approve an Agency-Specific Waiver at the time it is submitted to the Department via the MTW Supplement of the Annual Plan. At the time the agency submits the MTW Supplement, the proposed Agency-Specific Waiver would have received input and feedback from the agency’s Resident Advisory Board, community, and residents. As such, HUD should accept the proposed waiver, understanding that the community and impacted residents have had time to review and comment on the proposal. HUD should only reject an Agency-Specific Waiver if it violates any statute that falls outside of the 1937 Housing Act or regulations promulgated outside of the 1937 Act. The ability to create locally-specific waivers and policies is critical to the success of the MTW program.

MTW Expansion agencies should be able to provide any information about the Agency-Specific Waiver required by HUD within the MTW Supplement as opposed to a separate letter submitted to the Field Office. This information may include a good cause justification that relates to one or more of the three MTW statutory objectives; the statute, regulation, and/or MTW Waiver safer harbor which the MTW agency seeks to waive and its justification for doing so; a description of the initiative; and the implementation timeline.

NAHRO understands that HUD may have concerns regarding tenant safety and protections as it relates to certain policy interventions that an MTW agency may choose to enact. NAHRO shares these concerns, but believes that the public and resident input processes should alleviate potential negative impacts on residents. Agencies that enter the MTW Expansion should be required to maintain a public record of minutes from resident meetings, board meetings, and public hearings. PHAs should be able to certify to HUD that the agency informed and discussed any proposed Agency-Specific Waiver with residents and the public. If needed, HUD should be allowed to request a copy of an agency’s minutes of resident and board meetings and public hearings to ensure that the proper process was followed.

*Figure 1 – NAHRO’s Proposed Agency-Specific Waiver Approval Process*
Streamlining this process would also increase the likelihood that a small PHA participating in the MTW Expansion opts to utilize an Agency-Specific Waiver. Many small agencies will benefit from a streamlined process that does not tax its staff capacity. This is significant as smaller agencies will constitute half of the agencies that join MTW through the expansion.

The MTW demonstration allows agencies to increase administrative efficiencies at the local level. HUD’s proposed process though is itself administratively inefficient. NAHRO understands that HUD opted for this two-step process to ensure that a proper public comment and review period occur, however as the public participation process for the approval of the Agency-Specific Waiver occurs before the submission of the MTW Supplement, submitting an additional letter for approval after the approval of MTW Supplement and Annual Plan seems superfluous.

**Substantially the Same**

Appropriations language authorizing the MTW demonstration requires that PHAs in the Demonstration serve “substantially the same” number of households they would have served had they not joined the MTW demonstration. To address this statutory requirement, the Operations Notice notes that compliance will be determined using a baseline ratio of total public housing and HCV HAP funding to families served. That baseline calculation would yield how many families the agency houses per $100,000 of funding in both the Public Housing and HCV programs. This baseline funding would then be applied to the agency’s actual funding for that calendar year. NAHRO believes this proposed baseline calculation for substantially the same is a significant improvement on HUD’s proposed calculation from the 2017 version of the Operations Notice. NAHRO also acknowledges the importance of linking substantially the same to the proration a PHA receives, as statutory language authorizing the MTW Expansion requires that MTW agencies receive no more or less funding that they would have if they remained non-MTW agencies.

Although the new calculation is a vast improvement, NAHRO remains concerned that this calculation for substantially the same is still too limiting and does not allow for enough local flexibility which has led to groundbreaking work by existing MTW agencies in systems alignment – for instance, supportive services created by several MTW agencies in education, health care, and workforce development.

Although the Operations Notice notes that “[d]epending on the specific circumstances of the agency, a dip below the baseline year number would be allowed,” and that “[t]here would also be opportunities for
PHAs to request adjustments of the baseline ratio to account for changes in costs due to special circumstances,” this “dip” needs to be further defined. As written, HUD is requiring a top-down approach in which PHAs must request and receive approval from HUD if they experience a dip in their baseline. This provides too much uncertainty as to when a PHA would be permitted to dip below the allowable amount and when they would not.

NAHRO recommends that HUD create a defined baseline for how much variance PHAs can have in the number of families that they serve while still meeting the substantially the same requirement. NAHRO recommends that this baseline be set at serving at least 80 percent of the number of families served before entering the MTW demonstration. So long as a PHA is serving 80 percent of the number of families they served when they entered the MTW demonstration program, they should be considered to be serving substantially the same number of families. Of course, each agency’s baseline will be deliberated during the local planning process.

Without providing a variance in the baseline set for substantially the same, PHAs would struggle to utilize the funding flexibilities critical to the success of the MTW demonstration. These funding flexibilities are what allow MTW agencies to create innovative solutions and fund new programs that increase housing choice and self-sufficiency for their residents.

Serving a baseline of at least 80 percent of the number of families served before entering the MTW demonstration would allow PHAs to house residents in more costly neighborhoods that provide increased opportunities to residents. It would also allow agencies to use federal funds to help ensure their public housing properties are able to undergo much needed modernization and rehabilitation projects. This additional flexibility would also allow agencies to create programs that help their residents find access to jobs, increasing their self-sufficiency, and assist additional families on often lengthy waiting lists.

Setting the baseline at 80 percent allows for enough flexibility and variance that smaller PHAs in the Demonstration are able to use their funds flexibly as well. This is a critical as at least 50 percent of all agencies entering the MTW Expansion must have 1,000 or less combined units. Small agencies would have very little room for error in meeting the substantially the same requirements as currently proposed, as they have fewer units than larger agencies to buffer any unexpected vacancies. The success of MTW depends upon agencies being able to make decisions that make sense for their communities.

It is possible that there may be instances in which a PHA needs to dip below the 80 percent baseline for substantially the same. This is especially true for agencies that join the MTW Expansion specifically to use MTW funding flexibilities to provide critical upgrades and improvements to their Public Housing properties. In these instances, NAHRO recommends that HUD allow agencies to submit a plan as a part of their MTW Supplement explaining why they are serving below the 80 percent substantially the same baseline, noting how long the agency plans to serve less than 80 percent of their substantially the same baseline, and why serving less than 80 percent of their substantially the same baseline for a limited time is necessary to meet the goals of the agency.

As this substantially the same plan will be attached their MTW supplement, it will have received approval by their Board of Commissioners, approval by their Resident Advisory Board, and undergone the public review and comment period. As such, HUD should accept the plan with the MTW Supplement so long as the plan does not go against any other statute that falls outside of the 1937 Housing Act or regulations promulgated outside of the 1937 Act, including waivers to fair housing, nondiscrimination, labor standards, or environmental requirements.

*Comparable Mix of Families*

Appropriations language authorizing the MTW demonstration included language requiring PHAs participating in the demonstration to serve a comparable mix of families as they would have had they not
entered the MTW demonstration. To address this statutory requirement, HUD will use agency-reported data in HUD systems to establish baseline percentages, by family size, to which the agency is measured for the remainder of its participation in the MTW demonstration. The Operations Notice notes that “[t]he Department deems an acceptable level of variation to be no more than 5 percent of the baseline.”

Although NAHRO understands HUD must ensure agencies serve a comparable mix of families as required by the statue, there is concern that a variation of no more than 5 percent of the baseline may be too limiting. This concern is especially relevant considering half of all agencies entering the MTW demonstration must have 1,000 combined units or less. For small agencies, losing one family of a specific size as a tenant may result in a change in the mix of families that is greater than five percent. This will be challenging for the agency if they are unable to find a family of the appropriate size quickly enough to ensure they meet the requirement. Moreover, for communities experiencing significant demographic changes and families moving to other regions, this baseline will be challenging to maintain.

To address this concern, NAHRO recommends setting the acceptable level of variation at fifteen (15) percent of the baseline as opposed to five. NAHRO also suggests allowing PHAs to dip below that acceptable level if the agency has a reasonable justification for doing so. Potential justifications may include an inability to fill a vacancy with a family of a similar size or demographic changes occurring in the community that fall outside of the control of the PHA. A PHA may show evidence of the justification through a variety of means, including the composition of families that are currently on the agency waitlist, or American Community Survey data showing a change in community demographics.

**HCV HAP Renewal Funding**

Currently, the MTW Operations Notice calculates a participating agency’s HAP Renewal Funding as the lesser of the previous calendar year’s HAP expenses and non-HAP MTW expenses or the agency’s HAP Renewal Eligibility Cap. The HAP Renewal Eligibility Cap is calculated by multiplying the MTW PHA’s total number of MTW-eligible ACC units in the re-benchmark year (the calendar year immediately preceding the calendar year for which the PHA’s renewal eligibility is being calculated) by the PHA’s pre-MTW monthly per-unit cost inflated to the re-benchmark year.

As the HAP Renewal Eligibility Cap reflects the inflated monthly per-unit cost per MTW-eligible ACC unit, NAHRO recommends that HUD rely solely on that metric to determine renewal HCV HAP funding for MTW PHAs. Setting renewal funding at the HAP Renewal Eligibility Cap ensures that PHAs participating in the MTW Expansion continue to receive no more additional funding that they would have had they not participated in the MTW Expansion, and it provides an easier calculation for agencies to determine their renewal funding year-to-year.

However, if HUD decides to keep the HAP Renewal Eligibility as the lesser of the HAP Renewal Cap or HAP and non-HAP expenses, NAHRO recommends providing a clear definition of what constitutes a non-HAP MTW expense. NAHRO has heard from HUD staff that non-HAP MTW expenses include any funds spent on Section 9(d)1, Section 9(e)1, as well as any local and non-traditional housing activity being pursued by the agency, however this is not clearly defined in the Operations Notice. NAHRO is supportive of this definition, but recommends it being clearly defined as such in Section 4(c).

NAHRO understands that PHAs participating in the MTW Expansion are prohibited from receiving any more or less funding than they would had they not participated in the MTW demonstration. However, a part of the success of the current MTW demonstration is agency’s ability to use HAP funds for larger-scale, longer-term modernization and rehabilitation efforts. Currently, the Operations Notice uses funds expended over the span of one year to determine prior year HAP expenses to determine funding renewals. This may have the unintended impact of limiting PHAs ability to obligate current HAP funds to projects that may not be completed in the current fiscal year.
PHAs in the MTW demonstration may want to use HAP funds for larger-scale projects that may take years to complete due to the size and complexity of the redevelopment or modernization project. However, the Operations Notice currently acts as a disincentive to obligating HAP funds for larger projects that may not be expended until future years, as those obligated funds will not be included in their HAP Renewal Formula.

NAHRO recommends that HUD include HAP funds that are obligated in the HAP Renewal Formula, so long as those funds are expended as an eligible use in a reasonable amount of time. This would encourage PHAs participating in the MTW demonstration to promote innovative and cost-effective solutions that would increase their resident’s housing choice and promote resident self-sufficiency.

Reserves

The Operations Notice prohibits PHAs that enter the MTW demonstration from using any reserve funds accumulated prior to signing the MTW CACC Amendment (including public housing Operating and Capital Reserves, and HCV HAP and Administrative Fee Reserves) for anything that is not their originally appropriated purpose. As such, those reserve accounts may not be used flexibly.

NAHRO recommends that HUD waive this requirement and allow agencies participating in the MTW demonstration to use their reserve funds in the same manner as funds appropriated after signing the MTW CACC Amendment (or other contract binding the agency to the MTW Expansion). Participating agencies in the MTW Expansion would benefit from being able to use their reserve funds in a flexible manner. Using reserve funds flexibly would increase a participating PHA’s ability to ensure substantially the same number of families are served, as funding from reserve accounts could supplement funds appropriated once the agency enters the MTW demonstration. This would assist the agency in becoming more cost-effective and help them provide their residents with increased housing choice and opportunities to become self-sufficient.

MTW-Specific Assessment System(s)

The Operations Notice notes that HUD plans to develop an alternative, MTW-specific assessment system, which may be incorporated into PHAS or SEMAP (or the successor assessment system to PHAS or SEMAP). NAHRO requests that HUD provide ample time for comment and public feedback once the Department develops and releases this alternative, MTW-specific assessment system.

First Cohort Control Group

Although NAHRO understands that Notice PIH-2018-17 highlights the process of applying for the first cohort of the MTW Expansion and is not connected to the Operations Notice, we would like to take this opportunity to request that the Department provide additional clarification on what agencies entering the first cohort as a part of the control group should expect in regard to the evaluation component. Currently, NAHRO has spoken with many agencies with 1,000 combined units or less than are interested in participating in the MTW Expansion, especially in the first cohort, but are hesitant to apply before fulling understanding what would be expected of them if they were to be placed in the control group. It may behoove HUD to include this in an FAQ that sets expectations for PHAs placed in the control group, especially as it relates to the level of reporting and time those agency’s will have to expend.

NAHRO recommends that HUD’s Office of Public and Indian Housing (PIH) work with HUD’s Office of Policy Development and Research (PD&R) to ensure agencies considering applying the first cohort understand HUD’s expectations of them if they end up in the control group.

3. Conclusion

As always, NAHRO appreciates the opportunity to comment on this important Notice. NAHRO has long called for meaningful expansion of the MTW demonstration and is deeply supportive of Congress’s
efforts to authorize the expansion. NAHRO believes it is imperative that the Operations Notice does not limit the flexibility and fungibility of MTW agencies, as these components are what make the MTW demonstration so successful in creating administrative cost savings, increasing and preserving the affordable housing stock, and implementing innovative supportive services for families and seniors.

NAHRO appreciates HUD’s significant efforts in working toward a streamlined Operations Notice for the MTW Expansion.

We hope the suggestions and recommendations included in our comment letter are incorporated in the final draft of the Operations Notice. Please do not hesitate to contact us if we can provide additional information or clarification.

Thank you,

Eric Oberdorfer
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