June 5, 2017

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
Solicitation of Comment; Waiver Revision and Reopening of Comment Period
[Docket No. FR-5994-N-01]

To Whom It May Concern,

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I am pleased to offer the following comments in response to the U.S. Department of Housing and Urban Development’s “Operations Notice for the Expansion of the Moving To Work Demonstration Program Solicitation of Comment” [Docket No. FR-5994-N-01] first published in the Federal Register on January 23, 2017 and then republished for additional comments on May 4, 2017. NAHRO submitted comments on March 24, 2017, but would like to take this opportunity to add additional suggestions that may benefit the MTW Expansion Operations Notice based on our current understanding of the Operations Notice and our conversations with staff at the U.S. Department of Housing and Urban Development (HUD or the Department). We have attached our initial comments for your reference as Appendix A.

Formed in 1933, NAHRO represents over 20,000 individual and agency members. Collectively, our membership manages over 970,000 public housing units, or approximately 83 percent of the entire public housing inventory, as well as 1.7 million Housing Choice Vouchers. NAHRO is unique in our ability to represent Moving to Work agencies of all sizes and geography. Many of NAHRO’s members are also involved in the administration of federal funding through Community Planning and Development programs. NAHRO works to support policies that promote regulatory relief and provide local discretion and flexibility to housing authorities so that they may best meet the need of their communities.

Stephen W. Merritt, PHM, President; Carl S. Richie, Jr., NCC, NAHRO Fellow, Senior Vice President; Julie Brewen, Vice President-International Research and Global Exchange; Donna Brown-Rego, Vice President-Member Services; Donovan Duncan, Vice President-Community Revitalization and Development; Duane Hopkins, Vice President-Professional Development; Richard Leco, PHM, Vice President-Commissioners; Regina Mitchell, SPHM, PHM, Vice President-Housing; Adrianne Todman, Chief Executive Officer.

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NAHRO is disappointed in HUD’s draft Operations Notice due its significant deviation from the 1996 MTW Demonstration authorizing language included in the 1996 Appropriations Act (the 1996 Act), the 2016 MTW Expansion authorizing language, and the current MTW Standard Agreement. NAHRO also believes that as drafted, the Operations Notice greatly reduces the ability of PHAs participating in the expansion to meet the statutory objectives of the MTW Demonstration. The statutory objectives include cost-efficiency, self-sufficiency, and housing choice.

Although NAHRO acknowledges HUD’s requirement to evaluate specific policy interventions, this Operations Notice is entirely too restrictive for PHAs to reap the benefits of the flexibilities inherent in the current MTW Demonstration. NAHRO fears that this will prevent many PHAs from applying to the expansion. The draft Operations Notice contains far too many conditional waivers without providing any transparency in the approval process. Furthermore, there are significantly fewer waivers available in the Operations Notice than waivers available for current MTW agencies. As the background section in the Operations Notice states, “MTW agencies use the opportunities presented by MTW to better address local housing needs.” HUD’s top-down approach alongside the restrictions, limitations, and conditions contained in this draft Operations Notice will make it extremely difficult for PHAs to make decisions at the local level to address local housing needs and meet the statutory objectives of the MTW Demonstration.

This comment letter makes several suggestions over the course of three main sections. The first section responds to HUD’s specific request for comments on revisions to the Operations Notice included in the revised Notice, while the second section highlights some of NAHRO’s general recommendations to improve the Operations Notice. The third section, “Attachment 1,” contains NAHRO’s previously submitted comments to HUD regarding the MTW Expansion Operations Notice.

1. HUD’s Specific Request for Comment

Revised Waiver Provisions

HUD included revisions to three waiver provisions when they reopened the comment period for the MTW Expansion Operations Notice. Revisions included one General Waiver in Appendix 1 and two Conditional Waivers in Appendix 2.

The General Waiver that is revised focuses on the Family Self-Sufficiency (FSS) program. The updated waiver allows housing agencies to require participation in an FSS program, however if an agency makes FSS participation mandatory, the agency must also have and apply exceptions and hardship provisions. NAHRO supports this revision.

The two Conditional Waivers that are revised focus on Work Requirements for Public Housing (PH), and Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) residents. The first waiver is for “PH — Work Requirements” and the second is for “HCV & PBV — Work Requirements” but the revision is the same – the housing agency may implement work requirements for PH, HCV, and PBV residents between the ages of 18 and 61. The previous versions of these waiver listed 54 as the maximum age. NAHRO also supports this revision.
2. NAHRO’s General Comments

Provide Safe Harbors that PHAs Can Utilize for “Conditional Waivers”

In keeping with the 2016 Act statutory language that authorizes the expansion, and keeping with the MTW Standard Agreement, NAHRO recommends that HUD make all conditional waivers general waivers, except for those that limit portability, as prohibited by the 2016 Act. NAHRO understands HUD’s concerns regarding potential impacts to residents resulting from changes to rent policies and leasing, and that structuring waivers for policies that may impact resident leases and rents as conditional upon approval is one way to ensure tenant protections exist. However, many current MTW agencies already have policies that impact rent and leasing in place. These existing MTW policies have tenant protections which have been vetted and approved by HUD to ensure tenants are not negatively impacted. NAHRO recommends allowing MTW Expansion agencies to use these pre-approved tenant protections established from existing MTW agency policies as “safe harbors” in order to implement policies that are currently considered “conditional” under this draft of the Operations Notice.

If the MTW Expansion agency can ensure that these safe harbors are included in their policies and plans, HUD should allow the MTW Expansion agencies to implement the policy that would otherwise require a conditional waiver as they would a general waiver. This would allow MTW Expansion agencies to implement these policies using tenant protections already approved by HUD, allowing them to bypass a lengthy back-and-forth approval process with the Department. This addresses capacity issues at both smaller agencies entering the Expansion, and capacity issues at the Department itself as the MTW demonstration grows from 39 to 139 agencies.

HUD can determine which current MTW policies and tenant protections could act as safe harbors by examining existing MTW agreements. Allowing MTW Expansion agencies to use these safe harbors will greatly limit the uncertainty MTW Expansion agencies would otherwise have in applying for conditional waivers, and greatly reduce administrative and economic burden. This will have a significant impact on smaller agencies applying and participating in the MTW Expansion.

As drafted, the current Operations Notice does not provide enough clarity on what PHAs will need in order for HUD to approve the use of a conditional waiver. Using safe harbors based upon policies and tenant protections implemented by current MTW agencies and approved by HUD will increase the ease that MTW Expansion agencies have when utilizing activities currently listed under the “conditional waiver” heading.

Clarification on General Purpose of Operations Notice

NAHRO requests additional clarity on whether the Operations Notice will act as a contract for PHAs entering the MTW Expansion or if MTW Expansion agencies will be required to sign an additional contract upon acceptance to the Expansion. Currently, waivers that existing MTW agencies use are listed within their Standard Agreement, which acts as the contract between HUD and the MTW agency. The Operations Notice lists the waivers available to MTW Expansion agencies, however it is not clear as to whether this will act as the contract, in the way the Standard Agreement does, or rather if this just lists allowable activities and their parameters to MTW Expansion agencies.
If HUD is not already planning to do so, NAHRO strongly encourages HUD to have specific individual contracts for agencies entering the MTW Expansion outside of this Operations Notice. Currently, HUD’s terminology within the Operations Notice is somewhat confusing. It may be helpful for the Operations Notice to list the activities that MTW Expansion agencies can utilize, and if an MTW Expansion agency opts to participate in those activities, as listed within the Operations Notice with safe harbors as discussed above, then HUD can grant them a waiver that would go into their contract. This contract would then be the document that amends the agency’s ACC.

Additional Clarity on Waivers Not Included in the Operations Notice

NAHRO recommends that HUD include a section in the Operations Notice with additional clarity on the use of waivers that are not included within the Operations Notice, and the process for MTW Expansion agencies to apply for and receive these additional waivers. As NAHRO understands it, agencies that join the MTW Expansion would be able to receive additional waivers not currently listed within the Operations Notice so long as they go through the proper approval process with HUD. NAHRO recommends that HUD include additional language making it explicitly clear that HUD will grant waivers to MTW Expansion agencies that are not included within the Operations Notice if approved by the Department. Like existing MTW agencies, PHAs should be able to implement these waivers, upon approval, through their Annual Plans.

Specific Changes to Waivers (General and Conditional) Included in Operations Notice

Homeownership Program:
The Agency is authorized to use the Section 8 Homeownership Program as the basis for providing homeownership opportunities to families who are low-income, including public housing residents, HCV or PBV tenants, or other low-income families.

NAHRO recommends allowing an agency authorized to permit current public housing residents who are on a merged waiting list to obtain a Section 8 homeownership voucher, as the Standard Agreement allows.

PH Leases:
The Agency is authorized to develop and adopt a new form of local lease and establish community rules and reasonable tenant fees based on proven private management models (subject to State and local laws), provided that no-cause evictions are not permitted and the Agency allows for grievance procedures.

NAHRO recommends allowing MTW Expansion PHAs to establish a new form of grievance procedures and tenant self-sufficiency requirements, as the Standard Agreement allows.

PBV Unit Cap Percentage Waivers:
The Agency is authorized to use for project-based assistance up to 50% of its total authorized units as long as units are located in census tracts with no more than 20% poverty rate and/or house at-risk populations defined as an individual or family that does not have sufficient resources or support networks immediately available to prevent them from moving to an emergency shelter or lacks a fixed, regular, and adequate nighttime residence.
NAHRO recommends removing any restrictions on the percentage of HAP used to project-base units. Like current MTW agencies, MTW Expansion agencies should be allowed to waive requirements set forth in PIH Notice 2015-05 that are not statutorily required.

**PBV Development Percentage Waiver:**
The Agency is authorized to determine the percentage of units within a development that can be project-based that differs from the percentage currently mandated in the 1937 Act and its implementing regulations. In using this authorization, the Agency must place units in locally defined areas of opportunity.

NAHRO recommends removing any restrictions on the use of project-based vouchers. Like current MTW agencies, MTW Expansion agencies should be allowed to waive requirements contained in PIH Notice 2015-05 that are not statutorily required.

**PBV Elimination of Competitive Process:**
Subject to subsidy layering review, the Agency is authorized to project-base Section 8 assistance at properties owned by a single asset entity of the Agency that are not public housing properties, subject to HUD’s requirements regarding subsidy layering. Project-based assistance for such owned units does not need to be competitively bid, nor are the owned units subject to any required assessments for voluntary conversion. Agency still needs to complete site selection requirements.

NAHRO recommends allowing MTW Expansion agencies to waive non-statutory guidance in PIH Notice 2015-05, similar to current MTW agencies.

**PBV Alternate Competitive Process:**
The Agency is authorized to establish a reasonable competitive process or utilize an existing local competitive process for project-basing leased housing assistance at units that meet existing Housing Quality Standards and that are owned by non-profit, for-profit housing entities, or a single asset entity of the Agency.

NAHRO recommends allowing MTW Expansion agencies to waive non-statutory guidance in PIH Notice 2015-05, similar to current MTW agencies.

**PH Initial, Annual and Interim Income Review:**
The Agency is authorized to restructure the initial, annual and interim review process in the public housing program in order to affect the frequency of the reviews and the methods and process used to establish the integrity of the income information provided. In addition, the Agency is expressly authorized to adopt a local system of income verification in lieu of the current HUD system.

The parameters of the general waivers require PHAs to allow for at least one interim adjustment at the request of the household per year. Certain current MTW agencies only allow recertification for families that see a significant, non-recoupable loss of income. If the family does not experience this, they are not allowed an interim review. These MTW PHAs have seen success with this model, both in administrative efficiencies and increased tenant self-sufficiency. MTW Expansion agencies would not be allowed this flexibility based on the language in the Operations Notice. NAHRO recommends removing language requiring PHAs to grant one interim review per year at the request of the family,
to instead require hardship provisions regarding interim reviews for families that experience significant, non-recoupable losses of income.

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. However, NAHRO continues to caution against an Operations Notice that limits PHA flexibility and fungibility, as these components are what make the MTW Demonstration so successful.

NAHRO understands HUD will continue improve this draft Operations Notice, and we look forward to providing input to ensure the MTW Expansion remains attractive to PHAs and that PHAs that join MTW through the expansion are rewarded the full flexibilities inherent to the success of the MTW Demonstration. Please do not hesitate to contact us if we can provide additional information or clarification.

Please find our previous comments on the Operations Notice, submitted to HUD March 24, 2017, attached below.

Thank you,

Eric Oberdorfer
Policy Advisor, Public and Affordable Housing
ATTACHMENT 1:
NAHRO Comments on MTW Expansion Operations Notice Published January 23
March 24, 2017

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
Solicitation of Comment [Docket No. FR-5994-N-01]

To Whom It May Concern:


Formed in 1933, NAHRO represents over 20,000 individual and agency members. Collectively, our membership manages over 970,000 public housing units, or approximately 83 percent of the entire public housing inventory, as well as 1.7 million Housing Choice Vouchers. NAHRO also represents numerous Public Housing Agencies (PHAs) participating in the Moving to Work (MTW) Demonstration Program. Many of NAHRO’s members are also involved in the administration of federal funding through Community Planning and Development programs. NAHRO works to support policies that promote regulatory relief and provide local discretion and flexibility to housing authorities so that they may best meet the need of their communities.

NAHRO was extremely pleased that the 2016 Consolidated Appropriations Act (the 2016 Act) authorized the U.S. Department of Housing and Urban Development (HUD or the Department) to expand the MTW Demonstration program by an additional 100 high performing PHAs over a period of seven years. NAHRO has long called for meaningful expansion of the MTW Demonstration and is deeply supportive of Congress’s efforts to move the MTW Demonstration expansion (the MTW expansion or the expansion) forward. PHAs that participate in the MTW Demonstration enjoy broad funding flexibility and may experiment with alternative program structures to better serve their communities.

The Operations Notice for the Expansion of the Moving to Work (MTW) Demonstration Program
Solicitation of Comment” (Operations Notice or MTW Expansion Operations Notice) establishes the requirements for the implementation and continued operations of the MTW Demonstration program pursuant to the MTW expansion statute. HUD is seeking public comment on all aspects of the Operations Notice and on the topic of regionalization that was included in the statutory language authorizing the expansion. The draft Operations Notice discusses three categories of waivers and the associated activities that MTW agencies may pursue. The draft Operations Notice calls for HUD to grant general waivers, conditional waivers, and cohort-specific waivers for agencies participating in the MTW expansion. General waivers would be available to MTW expansion agencies without HUD review, conditional waivers would require HUD review and approval. Cohort-specific waivers would be defined in a series of notices soliciting applications for participation in the MTW expansion. HUD will not grant any waivers that deviate from compliance with fair housing and civil rights laws and regulations.

NAHRO is disappointed in HUD’s draft Operations Notice due its significant deviation from the 1996 MTW Demonstration authorizing language included in the 1996 Appropriations Act (the 1996 Act), the 2016 MTW Expansion authorizing language, and the current MTW Standard Agreement. NAHRO also believes that as drafted, the Operations Notice greatly reduces the ability of PHAs participating in the expansion to meet the statutory objectives of the MTW Demonstration. The statutory objectives include cost-efficiency, self-sufficiency, and housing choice.

Although NAHRO acknowledges HUD’s requirement to evaluate specific policy interventions, this Operations Notice is entirely too restrictive for PHAs to reap the benefits of the flexibilities inherent in the current MTW Demonstration. NAHRO fears that this will prevent many PHAs from applying to the expansion. The draft Operations Notice contains far too many conditional waivers without providing any transparency in the approval process. Furthermore, there are significantly fewer waivers available in the Operations Notice than waivers available for current MTW agencies. As the background section in the Operations Notice states, “MTW agencies use the opportunities presented by MTW to better address local housing needs.” HUD’s top-down approach alongside the restrictions, limitations, and conditions contained in this draft Operations Notice will make it extremely difficult for PHAs to make decisions at the local level to address local housing needs and meet the statutory objectives of the MTW Demonstration.

This comment letter makes several suggestions over the course of two main sections. The first section highlights some of NAHRO’s general comments, while the second section responds to HUD’s specific request for comments.

1. **NAHROs’ General Concerns**

   **Limited Flexibilities**

   NAHRO is concerned that the draft Operations Notice does not include the flexibilities inherent to the success of the existing MTW Demonstration and that the intent of the draft Operations Notice is contrary to both the 1996 statutory language authorizing the original MTW Demonstration and the 2016 statutory language authorizing the expansion. Through conversations with our members, especially members that are existing MTW agencies, we have determined that the draft Operations Notice does not provide PHAs the necessary flexibilities to meet the needs of their communities through local decision-making processes. The draft Operations Notice relies far too heavily on top-
down decisions made by HUD about which policy interventions PHAs may use at their agencies, and the draft Operations Notice contains little transparency in how HUD will make those decisions. The amount of conditional waivers compared to the amount of general waivers provided in this draft Operations Notice is representative of this concern. There are far more conditional waivers that would require PHAs to get HUD permission than general waivers. HUD’s reliance on conditional waivers is contrary to the statutory intent of the MTW Demonstration. Even within this draft Operations Notice, HUD notes that “MTW agencies use the opportunities presented by MTW to better address local housing needs.” The top-down approach promoted by this draft Operations Notice for the expansion makes it nearly impossible for PHAs to collaborate with their communities to locally decide which policy interventions should be pursued to “better address [their] local housing needs.”

In general, NAHRO is concerned that this draft Operations Notice is too restrictive and will limit PHA interest in joining the MTW expansion. NAHRO and its members are disappointed that the expansion is much more limited than the existing MTW Demonstration and MTW Standard Agreement. This draft Operations Notice would require considerable effort on the PHA’s side to get approval for conditional waivers and includes no mention of any timeline in which PHAs may expect to get responses from HUD. Pursuing new policy interventions can be time consuming for MTW PHAs as they must go through rigorous public input processes that require considerable staff resources. This is especially noteworthy in the current fiscal environment where funding is limiting and PHAs are understaffed. PHAs would be less likely to pursue innovative policies that best address local needs if they are unsure whether their proposals would be approved by HUD at the end of the process, greatly limiting the innovations that MTW expansion PHAs would be able to achieve.

Lack of Transparency

NAHRO is concerned about HUD’s lack of transparency regarding the selection of policies that require conditional waivers and HUD’s process to approve or deny the use of conditional waivers. There are no guidelines detailing the process that HUD would utilize to approve conditional waivers, or how HUD determined which policy interventions would be conditional or general. NAHRO understands that HUD is concerned about potential waivers that may impact residents. However, if a policy change does not lead to a negative impact on residents, it remains unclear why PHAs would be required to undertake such an onerous process - especially considering the public input process PHAs would undertake before implementing any policy. This draft Operations Notice provides PHAs with no information on what HUD would deem acceptable as they apply for conditional waivers or the review process that HUD would undertake to determine which waivers are approved and which are not. NAHRO recommends HUD provide increased transparency on the Department’s decision making process in future iterations of this Operations Notice.

Disregard for Local Public Input Processes

Existing MTW agencies, and agencies that join the expansion, are required to undertake considerable public input in order to implement policy interventions. Requiring additional approval from HUD for these policies that have been agreed upon at the local level goes against the current framework of the MTW Demonstration. Furthermore, this burdensome process is already limiting for small PHAs, who will comprise half of the expansion, as many are understaffed and in need of additional resources due to significant and drastic federal budget cuts. One purpose of the MTW Demonstration
is to increase cost-saving efficiencies in ways that make sense at the local level. For small PHAs, undergoing a public input process, agreeing upon a policy intervention that works for the local community, and having HUD ultimately deny the waiver defeats this purpose. Furthermore, the lack of transparency in HUD’s decision making process will act as a deterrent for small PHA participation in the expansion. The complexity of the expansion outlined in this draft Operations Notice is overly onerous for agencies that plan to enter the MTW expansion and walks back local processes to solve local problems. This removes the flexibility and local decision making inherent to the success of the MTW Demonstration, and must be addressed in future drafts of this Operations Notice.

**Administrative and Economic Burdens**

NAHRO is concerned that this draft Operations Notice contradicts the first MTW statutory objective, “reduce cost and achieve greater cost effectiveness in federal expenditures.” As drafted, this Operations Notice adds significant administrative and economic costs to PHAs that enter the MTW expansion. As mentioned earlier, PHAs implementing policy interventions through the MTW Demonstration are already required to undergo lengthy public input processes before updating their policies. This unto itself takes administrative time and effort. NAHRO acknowledges that public input is critical in creating successful policies that best address local needs. That said, if a policy intervention requires a conditional waiver, and HUD rejects the application, the PHA would be required to either begin this process again, or decide against pursuing the waiver in question. This results in a PHA having to spend twice the amount of time and resources to get approval for the conditional waiver that was already approved at the local level, or lost administrative time and effort in pursuing a policy that makes sense at the local level that HUD rejects.

PHAs have been critically underfunded for years. The public housing inventory faces a mounting capital needs backlog while funding for operations has endured deep cuts, forcing PHAs to forego critical maintenance functions and further jeopardizing the long term sustainability of many properties. Each year, PHAs receive enough funding to address only about half of their newly occurring physical needs. Recent unfunded regulations from HUD have increased PHAs’ challenges in meeting the needs of their residents and properties. The first statutory objective for the MTW Demonstration is to “reduce cost and achieve greater cost effectiveness in federal expenditures.” This MTW Expansion Operations Notice should be drafted in such a way that PHAs can implement policies that address local concerns and safely house their residents without facing additional costs caused by HUD requirements that fall outside of the intent of the MTW Demonstration. As drafted, this Operations Notice does not achieve this goal.

**Operations Notice Contradicts Statutory Language**

NAHRO staff was involved in initial conversations with Congressional Appropriations staff regarding language to expand the MTW Demonstration in the 2016 Act. Having been a part of those conversations, it is clear that the version of MTW that this draft Operations Notice creates is not the statutory intent of what Appropriators envisioned the expansion to be. Although Congress did request additional research and evaluation of the program by HUD, it did not authorize a weaker version of MTW. By accurately capturing baseline information from PHAs joining the MTW expansion, HUD could better understand the impacts of the program when evaluating specific policy interventions that are allowable through MTW flexibilities. This does not require HUD to rely so heavily on granting conditional waivers removed from local decision-making processes or to pursue such a restrictive
top-down approach. The expansion should allow agencies to be able to use waivers so long as they undergo the same process as current MTW agencies, including the public input component.

NAHRO recommends that HUD go back to the original authorizing language for the MTW Demonstration and the expansion and draft an Operations Notice that better reflects the true intent of the Demonstration and allows PHAs to “better address local housing needs” in ways that make sense for their local communities. If the first cohort is testing the overall impact of MTW, HUD should be testing a program that resembles the MTW Demonstration as it currently exists, not an entirely new program. This Operations Notice would create something entirely different than MTW as it currently exists.

2. HUD’s Specific Solicitations of Comment

In HUD’s solicitation of comments, the Department asks for numerous specific public comments. NAHRO’s responses to these questions, divided up by the topics in the Solicitation of Comment, are below.

Waivers

In keeping with the 2016 Act statutory language that authorizes the expansion, and keeping with the MTW Standard Agreement, NAHRO recommends that HUD make all conditional waivers general waivers, except for those that limit portability, as prohibited by the 2016 Act. NAHRO understands HUD’s concerns regarding potential impacts to residents resulting from changes to rent policies and leasing, however limiting or restricting MTW expansion PHAs from pursuing these policies through conditional waivers contradicts statutory language. MTW expansion PHAs would still be required to receive substantial public and resident input in drafting and approving any policy intervention that an MTW PHA pursues. It should be the decision of the local PHA and the community to determine if such an intervention makes sense in the local context.

NAHRO also requests that HUD remove the restrictions included on the project-based unit cap percentage general waiver. Lifting the cap on the number of project-based vouchers PHAs can use would help PHAs better utilize project-based vouchers. This would allow PHAs to either target project-based vouchers to specific populations (like elderly and disabled residents) or allow PHAs to target project-based vouchers to neighborhoods (especially those that are higher-opportunity). This is often the only way PHAs are able to increase housing choice for eligible families in high-cost areas with tight rental markets. The restriction included in this general waiver will make this more difficult. Furthermore, existing MTW PHAs have no such restriction, and NAHRO believes the expansion should be granted the same flexibility.

The draft Operations Notice is also missing a significant number of general waivers included in the MTW Standard Agreement. NAHRO requests that HUD include these waivers as general waivers in the MTW Expansion Operations Notice as well. The following waivers are waivers identified by NAHRO to be in the MTW Standard Agreement, but missing from the MTW Expansion Operations Notice:

General Waivers for Both Public Housing and Section 8:
Partnerships with For-Profit and Non-Profit Entities;
  o Agencies may partner with for-profit and non-profit entities including mixed-income, mixed-finance development partners and third party management companies, as well as affiliates and instrumentalities of the Agency to implement and develop all or some of the initiatives that may comprise the Agency’s MTW Demonstration program. Agency may make available to these partners the least restrictive regulatory requirements allowable.

Definition of Elderly Family;
  o Can include head of household who is at least 55 years old;

Transitional/Conditional Housing Program; and,

Agency may develop and adopt new short-term transitional housing program, consistent with eligible uses of Section 8 and 9 funds, with supportive services in or more buildings in collaboration with local community-based organizations and government agencies.

Public Housing Only Waivers:

  • Site Based or Geographic Wait List System;
  • Local Preferences and Admission and Continued Occupancy Policies and Procedures;
  • Deconcentration Policy
    o Allows income mixing in developments;
  • Use of Public Housing as an Incentive for Economic Progress
    o e.g.: revising maximum income limits;
  • Incentives for Underutilized Developments
    o Regulatory relief to benefit partners that are involved in the development and redevelopment of Public Housing;
  • Streamlined Demolition and Disposition Procedures;
  • Simplification of Property Management Practices;
    o MTW agency may allow any authorizations and regulatory relief to benefit agency partners;
    o Agency may establish homeownership programs not limited by existing public housing homeownership programs;
  • Special Admissions and Occupancy Policies for Certain Public Housing Communities;
  • Design Guidelines;
  • Non-HUD Approved Site Acquisition;
  • Ability to Enter Into Commercial Business Venture;
  • Ability to Make Available Property So Long as It Benefits Residents and Program Participants; and
  • Total Development Costs (TDC) Limits.

Section 8 Only Waivers:

  • Property Eligibility Requirements;
  • Different Income Qualifications;
  • Waiting List Policies; and,
  • Ability to Certify Housing Quality Standards.
The Standard Agreement also allows for agencies to adopt investment policies consistent with state law that are consistent with OMB circulars and other federal laws, subject to HUD approval. NAHRO would like this waiver to be included in the Operations Notice as well, with the understanding it must be conditional.

**Term of Participation**

HUD asks specifically whether ending the MTW contract in Fiscal Year 2028 is an appropriate timeframe for MTW participation for the expansion. NAHRO believes that it is not, especially for agencies that enter the expansion in the fourth cohort, which may be as late as 2020. NAHRO has learned from existing MTW PHAs that it can take up to 3 years to draft, approve, and implement policy interventions. Existing MTW agencies note that they typically pursue one policy intervention at a time in order to lessen impacts on residents or staff. Considering the unknowns regarding HUD’s approval process for granting conditional waivers, this timeframe may be even longer for MTW expansion agencies. As such, this would greatly limit the length of time PHAs that join the MTW expansion could implement and test new policies. This would not only lead to ineffective policies for PHAs, but may also lead to inaccurate and inconclusive data for the research and evaluation component of the expansion, as there would be less data to measure. HUD’s timeframe would most likely cause agencies to implement fewer policy interventions prohibiting them from achieving the statutory objectives of MTW. This appears to be contrary to Congress’ intent for the MTW expansion.

NAHRO recommends providing a term of participation of at least ten years for each cohort. This would provide enough time for PHAs to implement the specific policy proposal to be evaluated through their cohort and implement other policy innovations that allow them to better meet the MTW statutory objectives. NAHRO recommends making the MTW Demonstration permanent once PHAs have completed the research and evaluation component of the expansion so long as they remain in compliance. NAHRO also recommends making the MTW Standard Agreements permanent for existing MTW agencies once they expire in 2028, and moving PHAs that enter MTW through the expansion to the Standard Agreement at the end of their contract.

**Funding, Single Fund Budget, and Finance Reporting**

In HUD’s draft Operations Notice, HUD requires a PHA to spend at least 90 percent of its Annual Budget Voucher Allowance (ABVA) on eligible Housing Assistance Payment (HAP) expenses each year. NAHRO is strongly opposed to this provision and requests that HUD remove this provision as it significantly limits the flexibility that should be inherent with MTW.

One of the statutory objectives for MTW is to provide incentives to families with children where the head of household is working, is seeking work, or is preparing for work by participating in job training, education programs, or programs that assist people to obtain employment and become economically self-sufficiency. In the existing framework for Section 8 and 9 programs, this is nearly impossible due to funding restrictions and limited funding for programs that exist outside the day-to-day operation of the program. To meet this statutory objective, many existing MTW PHAs use subsidies toward programs that increase self-sufficiency that may otherwise be used toward HAP. This is allowed in the MTW Demonstration, so long as PHAs serve substantially the same amount of
residents. The ability to move funding from one source to another in this manner is a critical component of what makes the MTW Demonstration successful.

Many existing MTW agencies use less than 90 percent of their ABVA on eligible HAP expenses to provide funding to programs that encourage tenant self-sufficiency. These PHAs are able to serve substantially the same amount of families over time, as families that have access to self-sufficiency programs are able to move out of federally-assisted housing more rapidly than families that do not. As such, although less than 90 percent of their ABVA may be applied to HAP at any point in time, the number of families served remains substantially the same over time. Requiring 90 percent of ABVA must be used on HAP expenses removes a critical flexibility that existing MTW agencies utilize to the benefit of families that are able to seek self-sufficiency.

Furthermore, requiring agencies in the MTW expansion to use no less than 90 percent of their ABVA on HAP expenses will disincentivize agencies from trying new, innovative approaches to meet MTW statutory objectives. If agencies are required to spend 90 percent of ABVA on HAP funding, they will have no wiggle room when unexpected issues occur, especially if that money is being utilized for programs that encourage self-sufficiency or resident mobility. In light of the current fiscal climate PHAs face, potential prorations and decreased funding would have devastating effects. In order to ensure they have a buffer if something unexpected occurs, agencies would need at least a 92 percent utilization. This leaves very limited funding to implement innovative new policies.

Requiring MTW expansion agencies to spend at least 90 percent of ABVA on HAP is especially troubling considering 50 of the 100 agencies admitted to the expansion will have 1,000 units or less. Small agencies will have very little room for error 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. The 90 percent requirement essentially creates a far too restrictive environment for small PHAs to implement innovative approaches to cut costs and increase self-sufficiency. The 90 percent requirement will prevent many small PHAs that would have otherwise applied to the expansion from applying.

NAHRO recommends that HUD should not apply any sanctions or restrictions if an MTW fails to meet this arbitrary budget utilization requirement. HUD should focus on outcomes as opposed to inputs to truly determine the impact of the proposed policy changes. Any evaluation of MTW should include non-traditional housing assistance that PHAs are able to provide through the flexibility found in the MTW demonstration, otherwise the overall impact of the program may be understated. If a PHA is serving substantially the same amount of residents over time, they should not be penalized for trying innovative approaches that allow them meet MTW statutory requirements. Focusing on policy outcomes is far more important.

**Evaluation**

NAHRO cautions that the research and evaluation component of the MTW expansion must minimize additional burdensome reporting requirements on MTW agencies. Although NAHRO understands HUD’s need to provide oversight and evaluation, one of the most critical components of the MTW demonstration is the flexibility that PHAs can utilize to meet the needs of their communities. Time-consuming and overly burdensome reporting requirements may prevent PHAs from being able to use
their MTW designation in the most practical and cost-efficient manner, and may deter smaller agencies from applying to the expansion.

NAHRO recommends that HUD only evaluate data that would be provided by a PHA regardless of whether they are an MTW agency or not. NAHRO also recommends that HUD use pre-existing data already provided by agencies entering the MTW expansion as baseline data. This will help better demonstrate the impacts of the policy changes implemented without requiring HUD to collect additional information or PHAs to provide HUD with additional information.

Many of HUD’s potential performance metrics focus specifically on changes to tenant populations and PHA operations year-over-year. Although focusing on changes makes sense in determining the impact of policy interventions, HUD does not require non-MTW PHAs to calculate year-over-year changes to their tenants or their operations. However, PHAs currently submit a significant amount of data to HUD each year through HUD’s various reporting systems. HUD should rely on the individuals tasked with evaluating each specific cohort to use this data and calculate changes over time. It is an additional administrative step for PHAs to complete this task, and as HUD will already be relying upon researchers to evaluate the MTW expansion overall, it would be logical for researchers to be responsible for evaluating the data provided to them.

NAHRO strongly recommends against HUD requiring PHAs to submit additional information that is not already collected by the agency. Doing so would make it more challenging to determine the impacts of MTW policy interventions over time as there would be no historical data to compare. Furthermore, it would deter many agencies from applying to the expansion.

Program Administration and Oversight

HUD should make any oversight of MTW that requires specific indicators as streamlined as possible, especially if the first cohort intends to measure the impact of the MTW program overall on smaller PHAs. This should be completed, as much as possible, through the use of data already provided to HUD by PHAs. Existing MTW agencies are required to spend significant time and staff resources completing analytics for oversight on their MTW specific indicators. This would be especially challenging for smaller PHAs that do not have the ability to hire dedicated analytic staff. For unique policy interventions that smaller PHAs may implement, HUD should rely on information provided in the Annual MTW Supplement and information collected annually by HUD for oversight, understanding that smaller agencies may be more limited in their capacity to provide analytics to HUD themselves. This process should be a part of the evaluation component of the expansion and should be led by researchers.

In light of the resource limitations smaller PHAs face, MTW agencies with a combined unit total of 550 or fewer public housing units and Section 8 vouchers, or “qualified agencies,” should be exempt from the requirement to submit an Annual Plan, just as non-MTW qualified agencies are exempt. At least 50 of the new MTW slots are reserved for PHAs that administer 1,000 or fewer aggregate vouchers and units; a significant portion of the MTW expansion overall. Any number of that group could be a qualified agency. Qualified agencies are often understaffed, underfunded, and over regulated. Costs associated with policy development and staff and resident training are greater for small PHAs that do not benefit from having large staffs. Requiring qualified agencies to submit
Annual Plans will come at a significant cost to these PHAs and will greatly reduce their participation in the expansion.

HUD asks specifically how the Department should collect information on qualified PHAs if they do not submit Annual Plans. Qualified PHAs would still be required to submit 5-Year plans and Annual MTW Supplements. This is more than enough to ensure that HUD captures information on the activities and waivers implemented over the course of the Demonstration. If the first cohort remains oriented toward smaller PHAs, this provides ample time to submit data and information to HUD that can be evaluated even if HUD does not change the expansion timeline. However, if contracts last for at least ten years, HUD would have access to at least two 5-Year plans to determine overall impacts of the program. Qualified PHAs would still be required to submit yearly information to HUD through HUD’s other data collection systems.

NAHRO also recommends allowing an MTW agency to retain its high-performer status in PHAS or SEMAP until MTW specific indicators are developed. Although PHAS and SEMAP are not accurate in assessment MTW agencies, the high-performer status is still relevant to PHAs for other purposes.

Regionalization

The Act of 2016 authorized HUD to designate an MTW agency and one or more adjacent public housing agencies in the same area as a regional MTW agency, making the flexibilities specified in the MTW agreement with HUD applicable to all participating PHAs. The notice seeks numerous comments regarding how to draft the expansion’s regionalization component.

The language included in the 2016 Appropriations Act reads as follows:

The Secretary may agree to extend the term of the agreement and to make any necessary changes to accommodate regionalization. A Moving to Work agency may be selected as a regional agency if the Secretary determines that unified administration of assistance under sections 8 and 9 by that agency across multiple jurisdictions will lead to efficiencies and to greater housing choice for low-income persons in the region.

As such, NAHRO recommends that HUD provide the greatest flexibility possible to MTW agencies that regionalize so long as doing so leads to greater efficiencies and increased housing choice. If an MTW PHA is able to demonstrate to HUD that regionalization will achieve these goals, the manner in which they regionalize should not matter.

NAHRO is concerned that HUD’s efforts to standardize the operationalization of MTW regionalization will be overly rigid, making it impractical for agencies to utilize. There should not be one standardized system or governance structure that PHAs are required to enter into in order to become regional MTWs. Local PHAs should be able to determine a governance structure that works for them and determine with which agencies they plan to partner. Governance structures may include contracts, memorandums of understanding, partnership agreements and so forth, however individual PHAs should be able to determine and agree upon which form of governance works best for them. These structures will inherently look different depending upon the location of the PHA, the
relationship the PHA has with other local PHAs, the goals and reasoning for regionalizing, and the local context.

NAHRO believes that HUD should allow PHAs to determine what “adjacent” may mean. Again, this will depend greatly upon local contexts. If there is a region where 90 percent of the agencies decide to regionalize but 10 percent decide not to, that should be allowable even if that means one agency’s service area does not specifically border the other agencies’ service areas. As long as regionalizing ultimately results in cost efficiencies and increased housing choice within a region, whether all service areas are explicitly adjacent should not be a concern. Agencies should be allowed to regionalize across state lines if it makes sense for that region, and state laws align so that it is feasible.

MTW agencies that opt to regionalize should be allowed to determine which flexibilities are afforded to their regional partners based upon the structure and context of their regional MTW agreement. Regional agencies should be allow to afford full MTW flexibility or limited MTW flexibility to their partners. Again, this will depend significantly on the structure and organization of the regional MTW. MTW PHAs should be allowed to determine what criteria they afford to regional partners based upon the local context.

NAHRO would like to take this opportunity to stress that MTW regionalization must be voluntary because PHAs are in the best position to decide if working with an MTW PHA or affording MTW flexibilities to their regional partners makes sense for them and their local communities.

NAHRO also recommends expanding the ability to create regional MTWs to current MTW agencies through the use of Amendment D in the Standard Agreement. Like the MTW expansion regional provision, PHAs should be able to enter a regional agreement voluntarily and under terms that work for them if they desire to do so.

**MTW Agencies Admitted Prior to 2016 MTW Expansion Statute**

As MTW agencies admitted prior to the 2016 MTW Expansion already have MTW Standard Agreements in place until 2028, NAHRO believes this question is moot. Existing agencies should be allowed to maintain their current Standard Agreement through the end of the contract. NAHRO strongly recommends that the new Operations Notice for the MTW Expansion should be as similar to the Standard Agree as possible. NAHRO further recommends HUD use the structure and flexibilities included in the Standard Agreement to help draft future iterations of this Operations Notice.

### 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. However, NAHRO continues to caution against an Operations Notice that limits PHA flexibility and fungibility, as these components are what make the MTW Demonstration so successful. Although NAHRO supports this MTW expansion, we want to ensure that this Operations Notice does not divert the local discretion built into the MTW Demonstration that allows PHAs to meet the core statutory objectives of the program: cost
effectiveness, self-sufficiency, and housing choice. Currently, as drafted, the MTW Expansion Operations Notice is overly restrictive, takes a top-down approach, and goes against the statutory intent of both the 1996 MTW Demonstration authorization language and the 2016 MTW Expansion authorization language. NAHRO understands HUD will continue improve this draft Operations Notice, and we look forward to providing input to ensure the MTW Expansion remains attractive to PHAs and that PHAs that join MTW through the expansion are rewarded the full flexibilities inherent to the success of the MTW Demonstration. Please do not hesitate to contact us if we can provide additional information or clarification.

Thank you,

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