

June 5, 2017
Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Re: Docket No. FR-5994-N-01: Operations Notice for the Expansion of the Moving To Work Demonstration Program Solicitation of Comment

To Whom It May Concern:

The Council of Large Public Housing Authorities (“CLPHA”) and Reno & Cavanaugh, PLLC (“Reno & Cavanaugh”) are pleased to submit comments on the Operations Notice for the Expansion of the Moving To Work Demonstration Program Solicitation of Comment (the “Notice”).

CLPHA is a non-profit organization that works to preserve and improve public and affordable housing through advocacy, research, policy analysis, and public education. Our membership of more than seventy large public housing authorities (“PHAs”) own and manage nearly half of the nation’s public housing program, administer more than a quarter of the Housing Choice Voucher program, and operate a wide array of other housing programs. They collectively serve over one million low income households.

Reno & Cavanaugh represents more than one hundred PHAs throughout the country and has been working with our clients on public housing development and operations issues since its inception. Reno & Cavanaugh was founded in 1977, and over the past three decades the firm has developed a national practice that encompasses the entire real estate, affordable housing and community development industry. Though our practice has expanded significantly over the years to include a broad range of legal and legislative advocacy services, Reno & Cavanaugh’s original goal of providing quality legal services dedicated to improving housing and communities still remains at the center of everything we do.

On behalf of CLPHA and Reno & Cavanaugh, we applaud HUD for conducting outreach to stakeholders, industry groups, and housing authorities through a number of listening sessions to obtain feedback on the Notice and thank HUD for the opportunity to provide further feedback on the Notice through the below written comments. We encourage HUD to continue its effort to conduct outreach and obtain feedback from the existing thirty-nine MTW agencies, stakeholders, advocacy groups, and other PHAs. We endorse the comments submitted to HUD by the Steering Committee of the thirty-nine existing MTW agencies and urge HUD to provide those comments with additional consideration in its review process as they reflect the opinions of PHAs already engaged in MTW activities.

We also encourage HUD to revisit and revise the applications process. An earlier draft of the applications notice that was unofficially released showed a complicated, data heavy, administratively burdensome application that also restricted the first cohort to small agencies only. First, we strongly encourage HUD not to restrict any cohorts by size. Studying the flexibilities of MTW, for example, is just as an important evaluation goal for medium and larger sized housing authorities. Secondly, we also understand that HUD will be considering many factors when determining the constitution of the cohorts, such as geographic location and the need for comparative PHAs. We are concerned that housing authorities, who are already operating with limited resources, will undergo the significant application process only to be later rejected. In addition to simplifying the application itself, we propose a 2-tiered application process. Under this process housing authorities can submit a statement of interest for a particular cohort, after which HUD can invite select agencies to submit a full application. The statement of interest can include the basic eligibility information, such as number of units, PHAS or SEMAP scores to indicate high performing status, as well as additional information that may be useful, such as geographic location. This will give HUD both a sense of how many agencies are interested in a cohort and allow HUD to selectively choose which agencies it invites to submit full applications based on the mix of agencies that HUD intends for that cohort. A two-tiered process will also ensure that PHAs are not unnecessarily using staff time and funding to submit a full application that would not have been considered.

We appreciate HUD's efforts to expand Moving To Work ("MTW") and provide additional flexibility to PHAs in their efforts to achieve cost-effectiveness, enhance self-sufficiency, and increase housing choice. However, we remain concerned that though HUD did not intend to provide the new MTW agencies with any less flexibility than the current MTW agencies, the published Notice does exactly that by calling for new requirements, mandates, and processes that do not apply to current MTW agencies. Consistent with the statutory authorization for the expansion, all MTW agencies, whether newly-added or existing, ought to be subject to the same set of requirements outlined in the existing Standard Agreement.

Below we offer additional comments on the Notice as requested by HUD.

Waivers

HUD's stated goal for the Notice was to streamline and simplify the MTW program, including the approval process for waivers. While we appreciate HUD's intent to provide a streamlined "menu" of waivers that housing authorities can choose from, we feel the waiver list as proposed is both too prescriptive and overly complicated. The Notice proposes a new set of waivers distinct from the existing MTW demonstration. By contrast, under the current Standard Agreement agencies can choose from a list of "General" waivers, as well as propose additional waivers that are incorporated into Appendix D of their standard agreement contract. We believe

the Standard Agreement waivers, and related authorizations, strike the correct balance between providing MTW PHAs the flexibility and local decision-making Congress envisioned for MTW, with the Department's need to be certain that MTW PHAs are proposing and implementing permitted activities. Additionally, approach proposed in the Notice does not reflect the intent of Congress. Where Congress has not specifically spoken through the 2016 Appropriations Act, agencies added through the MTW expansion are to be treated no differently than the other "Moving to Work agencies authorized under section 204, title II, of the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 (Public Law 104-134; 110 Stat. 1321)."¹ There is nothing in the statutory language that mandates or suggests the level of oversight, regulations, and changes that HUD has proposed with regard to waivers.

Under the proposed MTW program, waivers are divided into "General", "Conditional" and "Cohort-Specific", with additional restrictive "Available Activities" and "Parameters" layered on. Many of the waivers in the existing Standard Agreement are not listed in Appendix A/B of the Notice, and in some cases HUD has explicitly removed a waiver that is available to current MTW agencies. While the Notice states that housing authorities will be able to request additional waivers not available in Appendix A/B, the proposed list represents a "retail" approach to waivers; offering housing authorities a seemingly limited selection of flexibilities to choose from. This does not allow for or encourage the kind of ground-up innovation that is a hallmark of the MTW program. Per Congressional intent, incoming MTW agencies should have the same flexibilities as offered to the current 39 MTWs, as laid out in the existing Standard Agreement. If HUD wants to provide a list of potential activities or parameters for waivers, which may be helpful as housing authorities are considering their initial activities, the agency should do so in the form of guidance or FAQs.

- 1) Does the list of general waivers, MTW activities, and parameters in Appendix A and Appendix B contain the needed flexibility to achieve the three MTW statutory objectives? If not, what waivers, activities, and/or parameters are missing?*

No. The Notice explicitly removes certain waiver flexibilities that are available to the existing MTW agencies without reason. For example, the Standard Agreement for the existing 39 agencies includes a waiver allowing an agency to "establish its own portability policies with other MTW and non-MTW housing authorities." In the proposed Notice, HUD states that "Section 8(r)(1) of the 1937 Act on HCV portability shall continue to apply unless provided as a cohort-specific waiver." This means that unless an agency uses portability as part of its cohort-specific evaluation or activities, HUD will not permit the agency the waiver flexibility to establish its own portability policy. The department gives no explanation for this change.

¹ HR 2029

Additionally, the “Available Activities” and “Parameters” for each waiver listed in Appendix A/B impose unnecessary restrictions on new MTW agencies that do not apply to the current MTWs and are not supported by statute. We encourage HUD to review the comments submitted by the Steering Committee of the 39 MTW agencies, which list ten specific examples where the activities and parameters of waivers listed in the Notice are overly restrictive, create unnecessary administrative and reporting burdens on PHAs and/or HUD, or conflict with current regulations and/or the existing Standard Agreement.

As stated previously, where Congress has not specifically spoken through the 2016 Appropriations Act, agencies added through the MTW expansion are to be treated no differently than the other “Moving to Work agencies authorized under section 204, title II, of the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 (Public Law 104-134; 110 Stat. 1321).”² HUD should provide the same list of waivers to incoming agencies as outlined in the existing Standard Agreement.

- 2) *Are there any MTW activities and/or waivers that should not be included as general waivers, available to all TMW agencies without prior HUD approval?*

No.

- 3) *Are there any MTW activities and/or waivers that should not be included as general waivers, available to all MTW agencies without prior HUD approval?*

Incoming MTW agencies should be given the same waivers and flexibilities as the current agencies, without restrictive “available activities” or “parameters”. This was the intent of Congress and the statutory language. If HUD wants to include a list of potential activities for PHAs as an initial starting point, it should do so in the form of guidance or FAQs.

- 4) *Are there any MTW activities and/or waivers that should not be included as conditional waivers but rather should be included as general waivers, or not included at all?*

Incoming MTW agencies should be given the same waivers and flexibilities as the current agencies, without restrictive “available activities” or “parameters”. This was the intent of Congress and the statutory language. If HUD wants to include a list of potential activities for PHAs as an initial starting point, it should do so in the form of guidance or FAQs.

² HR 2029

- 5) *Does the list of conditional waivers, MTW activities, and parameters in Appendix B contain the needed flexibility to implement any alternative income-based rent model? If not, what waivers, activities, and/or parameters are missing?*

See comment above. Incoming MTW agencies should be given the same waivers and flexibilities as the current agencies, without restrictive “available activities” or “parameters”. This was the intent of Congress and the statutory language. If HUD wants to include a list of potential activities for PHAs as an initial starting point, it should do so in the form of guidance or FAQs.

Term of Participation

- 1) *Assuming all cohorts are selected between 2017 and 2020, is the end of each MTW agency’s Fiscal Year 2028 an appropriate timeframe for MTW participation, and understanding that HUD may extend cohort-specific waivers to accommodate evaluation of MTW activities that require additional time?*

While we recognize HUD’s efforts to subject new MTW agencies to the same timing constraints and expiration date as current MTW agencies, Congress was clear that the Fiscal Year 2028 expiration is to apply only to “the current Moving to Work agreements of previously designated participating agencies.”³ Because the expansion MTW agencies will neither be a “previously designated participating agenc[y]” nor do such agencies have “current Moving to Work agreements,” the 2028 term of participation ought not to apply to new agencies brought into the MTW program under this expansion.⁴ Instead, new MTW agencies added through the expansion should retain their MTW status in perpetuity or until such time as Congress or the agency itself affirmatively declares otherwise.

- 2) *Is there a preferable length or structure for the term of MTW participation?*

As indicated above, the ten-year MTW extension authorized by Congress applies solely to “the current Moving to Work agreements of previously designated participating agencies.”⁵ Therefore, unlike the existing MTW agencies that are bound by Congress’ ten-year extension, the newly-added MTW expansion agencies are not restricted in the same manner. Congress has remained silent with respect to any such term of participation. Accordingly, until such time as Congress or the agency itself affirmatively declares otherwise, new MTW agencies added through the expansion ought to retain their MTW status in perpetuity.

³ HR 2029

⁴ HR 2029

⁵ HR 2029

3) *What elements of the MTW agency's transition plan should be mandatory?*

Because Congress has remained silent with respect to the term of participation for newly-added MTW agencies, such agencies should not be restricted to a set term of participation and, therefore, ought not to be required to submit a transition plan. However, to the extent that HUD will require agencies submit a transition plan, HUD should require both existing MTW agencies and newly-added MTW agencies to adhere to the same transition plan requirements, except where Congress clearly states otherwise, because such agencies added through the MTW expansion should be treated no differently than the other "Moving to Work agencies authorized under section 204, title II, of the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 (Public Law 104-134; 110 Stat. 1321)."⁶ This means that, per the existing Standard Agreement:

"Not later than one year prior to expiration of this Restated Agreement, the Agency shall submit a transition plan to HUD. It is the Agency's responsibility to plan in such a manner that it will be able to end all features of the MTW Plan upon expiration of the Agreement, as HUD cannot guarantee that it will be able to extend any features of the Plan. The transition plan shall describe plans for phasing out of such authorizations/features. The plan shall also include any proposals of authorizations/features of the Restated Agreement that the Agency wishes to continue beyond the expiration of the Restated Agreement. The Agency shall specify the proposed duration, and shall provide justification for extension of such authorization/features. HUD will respond to the Agency in writing in a timely manner. Only authorizations/features specifically approved for extension shall continue beyond the term of the MTW Restated Agreement. The extended features shall remain in effect only for the duration and in the manner specified in the approved transition plan.

HUD will review and respond to timely-submitted transition plans within 75 days or they are deemed approved. To the extent that HUD has questions or feedback within this 75-day period, HUD will transmit such information within a sufficient time period for the Agency to respond and for HUD to approve a transition plan within 75 days of submission of the plan."⁷

Requiring the same transition plan information of existing and newly-added MTW agencies will also serve to streamline the review process and ease any administrative burden that may result if HUD were instead required to enforce two different sets of transition plan requirements – one set

⁶ HR 2029

⁷ https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10240.pdf

of requirements for existing MTW agencies and one set of requirements for newly-added MTW expansion agencies.

- 4) *What elements of the transition process should HUD require in order to protect residents from potential harm and minimize disruptions to agency operations?*

As indicated above, should HUD require newly-added MTW agencies to submit transition plans, HUD ought to only require agencies to submit the transition plan components that are already required of existing MTW agencies. Existing MTW Plan and Report requirements are sufficient to protect residents from harm.

- 5) *In order to be eligible for MTW status, may an agency be considered high performing in either PHAS or SEMAP?*

Yes. Through the various Listening Sessions that HUD has held to discuss the Notice, it has come to our attention that HUD is interpreting the statutory requirement that PHAs be “designated as high performing agencies under the Public Housing Assessment System (PHAS) or the Section Eight Management Assessment Program (SEMAP)” to require that housing authorities be designated as high-performing in both public housing and Section 8 housing, meaning the PHA would be required to be high-performing in both PHAS and SEMAP. Such an interpretation is not only unsupported but is clearly in direct violation of the plain language of the 2016 Appropriations Act.

The Supreme Court stated in dicta that, “[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then...‘judicial inquiry is complete.’”⁸ Put simply, when Congress has directly spoken to the precise question at issue, the agency must give effect to the unambiguously expressed intent of Congress.⁹ The statute states that HUD shall “add to the program 100 public housing agencies that are designated as high performing agencies under the Public Housing Assessment System (PHAS) or the Section Eight Management Assessment Program (SEMAP).”¹⁰ There is no ambiguity in the language Congress chose to implement this requirement, and, therefore, HUD is required to give effect to Congress’ intent that high performing agencies under either PHAS “or” SEMAP be eligible to participate in the MTW expansion.

⁸ Connection Nat’l Bank v. Germain, 112 S. Ct. 1146, 1149 (1992) (internal citations omitted).

⁹ See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).

¹⁰ HR 2029

While we understand that HUD is required to use PHAS or SEMAP scores as a measure of high performance per the 2016 Appropriations Act, it is our view that these systems are inefficient and often penalize housing authorities based on criteria outside of their control – such as budget appropriations. Cuts to operating and capital funding have severely impacted the ability of housing authorities to adequately maintain their public housing stock, which has negatively impacted PHAS scores. Additionally, many housing authorities have a mix of housing that leans heavily toward public housing or Section 8 and should not be excluded from MTW for not being a high performing what may amount to a small portion of their overall housing programs. Given the unambiguously expressed intent of Congress, as well as the problematic status of PHAS and SEMAP, HUD should be using the broadest possible definition of eligibility by allowing housing authorities to apply for MTW that are designated as high performing under either system, not both.

Funding, Single Fund Budget, and Financial Reporting

1) Is a 90 percent HAP budget utilization requirement the appropriate amount?

No. MTW agencies added through the Congressionally-mandated expansion should not be obligated to achieve a 90 percent HAP budget utilization requirement as such obligation marks an unauthorized expansion of administrative authority, is arbitrary and capricious, and exceeds the scope of Congressional delegation to HUD. With respect to funding, in its authorizing statute, Congress simply stated that, “No public housing agency granted [MTW] designation through this section shall receive more funding under sections 8 or 9 of the United States Housing Act of 1937 than it otherwise would have received absent this designation.”¹¹ Where Congress has not specifically spoken through the 2016 Appropriations Act, such agencies added through the MTW expansion are to be treated no differently than the other “Moving to Work agencies authorized under section 204, title II, of the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 (Public Law 104-134; 110 Stat. 1321).”¹² Because existing MTW agencies are not subject to such a requirement, MTW agencies added through the expansion ought not to be either. Furthermore, absent clear Congressional intent, HUD has offered no justification, research, or other support for its proposed 90 percent HAP budget utilization requirement, making such requirement both arbitrary and capricious. This provision would reduce the funding flexibility provided by the MTW block grant, which is a hallmark of the program, and is particularly desirable to non-MTW agencies who are considering applying to the MTW program. To the extent that HUD seeks to impose these type of restrictions anyway, HUD should instead base the requirement on voucher utilization, rather than budget utilization which would disproportionately affect and may even

¹¹ HR 2029

¹² HR 2029

disincentivize housing authorities from adopting innovative, cost-saving rent reform policies. The ability of PHAs under MTW to choose the forms of housing assistance and related services is fundamental to MTW and for HUD to set arbitrary standards such as this would frustrate Congressional intent.

- 2) *What sanctions or restrictions should HUD consider using should an MTW agency continue to fail to meet the budget utilization requirement?*

HUD should not impose sanctions or restrictions because a 90% HAP budget utilization requirement is not appropriate. MTW agencies use funding fungibility to further their local goals and respond to local rental housing market demands. Such a requirement would prohibit or discourage MTW agencies from developing bold and innovative activities that respond to these local needs and deter agencies from looking for experimental ways to meet MTW obligations like encouraging family self-sufficiency and increasing housing choice. Incoming MTW PHAs should be given the same full funding fungibility that exists for current MTW agencies.

- 3) *Are there other methods for calculating HCV funding that HUD should consider?*

Any method for calculating HCV funding in MTW ought to provide the PHA with a predictable, reliable, and stable funding stream while allowing and not penalizing MTWs which innovate and explore new approaches to providing housing assistance. We would welcome the opportunity to discuss options with you further.

- 4) *Are there other factors HUD should consider in the calculation of funding?*

HUD should consider that the use of MTW flexibilities could decrease or increase the per-unit cost. While decreases in per-unit cost could allow more families to be served, HUD should tread lightly on making downward adjustments to counteract fewer units being leased, which may well reflect local markets and other local goals, such as mobility initiatives, rather than MTW flexibilities related to combining funds.

- 5) *Are there any comments or clarifications needed in relation to funding, the MTW Block Grant, or financial reporting?*

The Notice indicates that no funds provided in the HCV renewal formula may be used to fund “a total number or unit months under lease which exceeds the MTW agency’s authorized level of unit months available under the MTW agency’s ACC, in accordance with the funding formula used for non-MTW agencies.” However, once admitted into the expansion as a new MTW agency, these housing authorities ought to achieve full MTW status. Where Congress has not specifically spoken through the 2016 Appropriations Act, agencies added through the MTW expansion are to be treated no differently than the other “Moving to Work agencies authorized under section 204, title II, of the Department of Veterans Affairs and Housing and Urban

Development and Independent Agencies Appropriations Act, 1996 (Public Law 104-134; 110 Stat. 1321).¹³ This means that, like their existing MTW agency counterparts, newly-added MTW agencies ought to also have the flexibility to exceed current authorized ACC levels, provided the MTW agency stays within their funding allocations. Rather than eliminating the flexibility to exceed ACC levels on a per unit basis, HUD should set a funding cap that provides no more than 100% of authorized funding. This would ensure that HUD is not obligated to provide excess funding to agencies, while allowing PHAs who implement cost-savings or other efficiency measures the flexibility to serve more families.

Evaluation

We support HUD's efforts to document and share the full impact of MTW improvements. MTW agencies throughout the country are making significant changes, both large and small, throughout their communities and to the benefit of their residents. We understand that HUD will be taking on much of these data collection responsibilities. To the extent that new MTW agencies will be expected to significantly increase their **existing data collection practices**, we encourage HUD to provide this information **clearly** to the agencies at the **time of application or sooner** and to provide agencies with the appropriate supports to implement relevant data collection practices.

Furthermore, we strongly urge HUD to utilize the experience of the Research Advisory Committee members and those in the field, including housing policy experts and Congressional staff involved in MTW expansion, to revisit and reevaluate many of the questions below regarding the evaluation process. Before HUD can accurately determine what data it should be capturing, HUD must first clarify the scope and purpose of its evaluation, both collectively with respect to all MTW agencies and with respect to each individual cohort. For example, while HUD hopes to study whether the program has been successful in the three statutory objectives, HUD, in consultation with the Research Advisory Committee, PHAs, and other stakeholders, must determine how it plans to **define success and effectiveness**. In addition, HUD should consult with its Research Advisory Committee and local PHAs, especially existing MTW agencies, to determine what already-obtained metrics can be studied nationally and which metrics may need to be controlled for variations in local conditions before any statistically significant findings may be reached. Also, because information collection practices may not be consistent between PHAs, to the extent HUD plans to rely on self-reported data, HUD will need to control for these variations, and others, as well.

Ultimately, we would encourage HUD to reach out to existing MTW agencies to determine what information MTW agencies have found beneficial in evaluating the success of their initiatives, especially as it relates to the cohort-specific evaluations. We suggest holding at least one

¹³ HR 2029

additional day-long session with the Research Advisory Committee, PHAs including current MTW agencies, policy experts, and Congressional staff to further refine the goals and metrics of the cohort-specific evaluations.

CLPHA and Reno & Cavanaugh would be happy to work with HUD and facilitate dialogue with PHAs, both those that are presently MTW and those that are considering applying to become MTW, regarding the evaluation component.

1) Is there any information not captured in HUD administrative data systems that would provide informative data points or performance metrics for evaluating the MTW demonstration?

We encourage HUD to consider tracking the following data points in a centralized manner and recognize that much of this data may already be available for HUD to use in its evaluation:

- The number of MTW families that successfully graduate or otherwise move out of federally-assisted housing, thereby achieving self-sufficiency (as the term self-sufficiency is defined at the local level).
- The number of units preserved.
- Changes in the number of households served over time.
- Changes in household income, households receiving supportive services, housing stability, and other related factors.
- Units preserved.
- Leverage ratios with respect to federal dollars expended and long-term cost savings realized.
- Leverage ratios with respect to federal dollars expended on development and private capital raised.

We would encourage HUD to consider the above factors as they may relate to the agency's operations pre- and post-MTW. Such data points ought to only be evaluated in light of each agency's individual local circumstances. With that said, to the extent HUD wishes to extrapolate this data for use on a national scale, we would encourage HUD to control for the wide variety of local factors and influences that, for reasons completely unrelated to the MTW program, may affect the quality or the representative nature of the data being reported.

2) What are measures of activities that "reduce cost and achieve greater cost effectiveness in Federal expenditures" that can apply to and are either being reported in existing HUD systems or can be reported by every MTW agency?

Some factors that HUD may find helpful to consider when evaluating cost reductions and effectiveness may include:

- Number of families served.
- Per unit cost of providing housing and related services.
- Changes in administrative costs and overhead expenses.
- Types of services being offered.
- Cost efficiencies at the program level.
- Reinvestment of cost-savings into improved resident services, development/increased housing options, or agency operations.

Again, we would encourage HUD to consider the above factors as they may relate to the agency's operations pre- and post-MTW. Such data points ought to only be evaluated in light of each agency's individual local goals, market conditions, and community priorities. With that said, to the extent HUD wishes to extrapolate this data for use on a national scale, we would encourage HUD to control for the wide variety of local factors and influences that, for reasons completely unrelated to the MTW program, may affect the quality or the representative nature of the data being reported.

- 3) *What are measures of activities that “give incentives to families with children where the head of household is working, seeking work, or is preparing for work by participating in job training, educational programs, or programs that assist people to obtain employment and become economically self-sufficient” that can apply to and are either being reported in existing HUD systems or can be reported by every MTW agency?*

In addition to metrics measuring increases in work and income, HUD should consider less traditional measures of self-sufficiency including educational attainment, increased savings or assets, and homeownership.

- 4) *Should HUD standardize a definition of “self-sufficient”? If so, what elements of self-sufficiency should be included in HUD's definition?*

HUD should not standardize a definition of self-sufficient and should instead rely upon local definitions of self-sufficiency as each jurisdiction may choose to define the term. Self-sufficiency and the qualities that may make someone “self-sufficient” ought to be determined at the local level in light of local conditions.

- 5) *What are measures of MTW activities that “increase housing choices for low-income families” that can apply to and are either being reported in existing HUD systems or can be reported by every MTW agency?*

Flexibilities authorized under the existing MTW program have allowed agencies to preserve and revitalize their public housing stock, and provide increased housing options for residents in three substantial ways: rehabilitation of existing housing, preservation in emerging opportunity neighborhoods, and providing new housing options in existing opportunity neighborhoods. We

would encourage HUD to use these metrics to evaluate the statutory goal of “*increase housing choices for low-income families.*”

First, housing authorities have used MTW flexibility to improve existing stock in need of rehabilitation. In Atlanta, the housing authority undertook a portfolio transformation by recapitalizing and converting its public housing stock to mixed-income, mixed-financed developments. Financial flexibilities under MTW, such as the single agency fund and the exemption to HUD’s Total Development Cost limits allowed the Atlanta Housing Authority take an active “developer” role in the preservation and improvement of its housing stock.

Second, housing authorities have used MTW flexibility to preserve affordable units in emerging opportunity neighborhoods, such as King County Housing Authority in Washington. HUD has increasingly focused on providing affordable housing in areas of opportunity. However, many public housing units are already located in, or adjacent to, potential opportunity neighborhoods. In these cases, agencies have used their MTW authority to preserve existing housing in neighborhoods they may have been priced out of just a few years later.

And finally, housing authorities have used MTW flexibility to create new housing options in existing opportunity neighborhoods where affordable housing has been historically absent. Many housing authorities have developed mobility strategies to assist residents in moving to higher opportunity neighborhoods. The San Diego Housing Commission created the Choice Communities program aimed at helping move families into more affluent communities with better employment and education opportunities. The housing authority used its MTW authority to create more flexible rent limits, increase payment standards, and offer no-interest loans to assist families in paying higher security deposits. In Baltimore, low-income residents are given mobility counseling to support their transitions into new communities.

In each of the examples listed above, the housing authorities were able to tailor their policies according to local housing needs and set goals based on their local conditions and markets. Again, we would encourage HUD to consider the above factors as they may relate to the agency’s operations pre- and post-MTW. Such data points ought to only be evaluated in light of each agency’s individual local circumstances. With that said, to the extent HUD wishes to extrapolate this data for use on a national scale, we would encourage HUD to control for the wide variety of local factors and influences that, for reasons completely unrelated to the MTW program, may affect the quality or the representative nature of the data being reported.

- 6) *What is the best way to capture and report exit data on families exiting the Public Housing, HCV, and local non-traditional housing programs? What are the appropriate exit reasons to capture?*

HUD should revise existing data forms to include questions that capture and report exit data.

- 7) *Is there any information not captured in HUD administrative data systems that would be informative data points or performance metrics in terms of evaluating the MTW demonstration?*

See prior answer to Question 1 in this Evaluation section.

- 8) *In the list of performance metrics provided above, should any be clarified or removed?*

The list of potential performance metrics appears sufficient as is. Again, we would encourage HUD to only consider the list of performance metrics and related factors as they may relate to the agency's operations pre- and post-MTW. Such data points ought to only be evaluated in light of each agency's individual local circumstances. With that said, to the extent HUD wishes to extrapolate this data for use on a national scale, we would encourage HUD to control for the wide variety of local factors and influences that, for reasons completely unrelated to the MTW program, may affect the quality or the representative nature of the data being reported.

- 9) *Are there any alternative or additional metrics that would enhance performance evaluation on the MTW demonstration?*

There has been minimal research on MTW and its impact on partnerships. However, MTW housing authorities are in a unique position to leverage partnerships with local service providers, as well as develop partnerships across sectors. Many MTW housing authorities are already engaging in these innovative collaborations, including partnering with education, health, and financial institutions to provide more housing choices and better opportunities and outcomes for their residents. HUD should consider metrics that evaluate an MTW PHA's ability to form and sustain innovative partnerships.

HUD should also consider metrics for evaluating the impact of MTW on health and education outcomes for residents. Existing MTW housing authorities have been deeply engaged in building partnerships between housing and school systems to improve educational outcomes for children living in public housing. In Tacoma, WA, the housing authority created the McCarver School Initiative. Through the initiative, THA offers homeless or at-risk families housing vouchers with annual rent increases over a five year period, until the families pay 80 percent of the city's fair housing market rent. Parents in the program commit to keeping their children enrolled at McCarver Elementary School, as well as completing their own education and work-related goals as a condition of receiving their housing voucher. Housing authorities have also done innovative work around health outcomes for residents, particularly for seniors aging in place. In Cambridge Massachusetts, the housing authority used its MTW funding flexibility to subsidize housing and services costs in an assisted-living facility, in combination with funding from the Massachusetts Medicaid Group Adult Foster Care Program and PACE (Program of All-Inclusive Care for the Elderly).

Program Administration and Oversight

- 1) *Is the MTW Supplement to the Annual Plan, as described, an appropriate mechanism for HUD to track MTW agencies' activities and use of waivers? Are there specific elements that should be included in the MTW Supplement to the Annual Plan?*

No. HUD ought to hold existing MTW agencies and newly-added MTW agencies to the same standards. This means that both existing and newly-added MTW agencies should only be required to submit an Annual MTW Plan and an Annual MTW Report. Except where Congress has expressly indicated otherwise, the Congressionally-mandated MTW expansion is authorized pursuant to section 204, title II, of the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 (Public Law 104-134; 110 Stat. 1321) by “adding to the program 100 public housing agencies”.¹⁴ Agencies designated as MTW under the expansion should be held to the same standards as all other MTW agencies. Per HUD’s Standard Agreement, for MTW agencies with “ten percent or more of its housing stock in MTW, the Agency [may only be required to] prepare and submit an Annual MTW Plan...in lieu of the Five (5) year and Annual Plans required by Section 5A of the 1937 Act” in keeping with the current Standard Agreement requirements.¹⁵ The standard Annual- and Five-year PHA Plans required of the majority of non-MTW PHAs are highly technical documents that fail to account for the innovative nature of MTW agencies. Therefore, to the extent the Department seeks to revise the Annual MTW Plan and Annual MTW Report required of current MTW agencies, the Department should work with existing and new MTW agencies to ensure that the Annual MTW Plan is better streamlined, so it can serve as a useful administrative tool for HUD that can easily be understood at the Field Office level and to ensure that such a document also remains useful for the PHAs’ and their local stakeholders.

- 2) *Should MTW agencies with a combined unit total of 550 or less public housing units and Section 8 vouchers be exempt from the requirement to submit the Annual Plan? If so, how should HUD collect information on the activities and waivers implemented over the course of the demonstration?*

Regardless of size, all MTW agencies, whether existing or newly-added, should be exempt from the requirement to submit a PHA Annual and Five-year Plan. In keeping with the existing Standard Agreements for existing MTW agencies, all incoming agencies should be exempt from the standard Annual- and Five-year PHA Plans for the reasons listed in Question 1 above and, instead, should submit an Annual MTW Plan and an MTW Report.

¹⁴ HR 2029

¹⁵ https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10240.pdf

- 3) *Do you have suggestions for how HUD can strengthen the public engagement process to ensure that residents have an opportunity to offer meaningful input in the selection and implementation of MTW activities?*

PHAs selected to participate in the MTW program must already be considered high-performing. Thus, they have documented their ability to conduct extensive engagement with their residents and the public during their planning processes and HUD does not need to take any additional steps in this regard. Furthermore, we support the comments submitted by the Steering Committee of the thirty-nine current MTW agencies, which call for HUD to improve the format of the MTW Annual Plan and MTW Annual Report to increase accessibility and understanding by residents, HCV participants, and other interested stakeholders. Simplifying the Form 50900 will be an essential part of that improvement.

- 4) *How could HUD measure public housing and voucher program performance for MTW agencies and incorporate those measures into PHAS and SEMAP?*

The Annual MTW Plan and Annual MTW Reports already require MTW agencies to provide the information necessary for HUD to assess the Agency's activities, in both regular operations and in activities authorized by MTW. HUD should not require agencies to also provide this duplicative information through PHAS or SEMAP as such efforts are unnecessarily burdensome.

- 5) *Are there MTW-specific indicators that should be included in a revised PHAS and SEMAP assessment?*

No. As indicated above, the Annual MTW Plan and Annual MTW Reports already require MTW agencies to provide the information necessary for residents, the public, and HUD to assess the Agency's activities, in both regular operations and in activities authorized by MTW.

Given the limitations of PHAS and SEMAP, especially with respect to applying them to MTW agencies, we strongly encourage HUD to consider an accreditation model as an alternative. As applied to hospitals and other sectors, accreditation provides an effective and appropriate method of peer review that assures industry standards and expertise are used to evaluate internal operations. Fellow practitioners have the unique and special experience and insights required to evaluate similarly-situated organizations, ensuring that they meet meaningful performance standards that measure outcomes, not process, and offering best practices and advice on how to improve performance. Accreditation would not replace HUD oversight of MTW agency compliance, but would supplement it in order to advance the congressional goals of the program. We particularly note that the Affordable Housing Accreditation Board (AHAB) has already been created as a 501(c)(3) corporation by the public housing industry and is in the process of developing accreditation standards for PHAs. AHAB has offered to work with the MTW agencies and HUD to explore this initiative and we urge HUD to join that effort.

- 6) *Should an MTW agency retain its high-performer status in PHAS or SEMAP until MTW specific indicators are developed?*

Yes. Furthermore, like their existing MTW agency counterparts, new MTW expansion agencies should not be required to receive a score through either PHAS or SEMAP. Unless the MTW agency defaults or is otherwise in noncompliance with their MTW Agreement, the agency should retain its high-performer status in PHAS and/or SEMAP throughout the duration of its MTW participation.

- 7) *What are the specific areas of risk that should be considered for MTW agencies?*

Through successful integration of the newly-added MTW agencies into the existing MTW program, there should be no increased areas of risk for HUD to consider. These MTW agencies are high performers who have successfully applied for and been accepted by HUD into MTW based on their documented experience and capacity to meet program requirements and provide high-quality housing in their communities.

- 8) *Are there additional areas that should be monitored for MTW agencies?*

No. The monitoring that HUD already performs of MTW agencies is sufficient. Please refer to our response in question 7, above, with respect to the fact that these MTW agencies will have already successfully applied for and been accepted by HUD into MTW based on their documented experience and capacity to meet program requirements and provide high-quality housing in their communities.

Regionalization

- 1) *How should “adjacent” be defined for the purposes of identifying which PHAs should be allowed to be part of an MTW agency’s regional agency designation? Should regional MTW agencies extend across state borders?*

Instead of prescribing rigid rules for when a PHA may or may not be “adjacent,” HUD should allow PHAs to self-define the regional housing market in which they operate and who their other PHA partners are. This definition is unique to local circumstances, and whether a PHA is considered “adjacent” for purposes of an MTW agency’s regional agency designation depends as much on whether they are addressing common housing issues as on geography. Furthermore, regional MTW agencies should be allowed to extend across state borders if such expansion is the best way to address regional housing issues faced by the PHAs involved and consistent with each State’s individual enabling act.

- 2) *What flexibilities should the regional MTW agency be able to administer on behalf of its regional partners? Should the partner PHAs have full flexibility in the use of funds?*

Regional MTW agencies should have any and all flexibilities that the participating agencies deem appropriate among themselves consistent with State and local law. The participating PHAs should be permitted to develop their agreement between the existing MTW agency and its partner PHAs describing their relationship and how obligations and responsibilities are to be allocated. If the existing MTW agency decides that it wishes to grant partner PHAs full flexibility in the use of funds, HUD should honor this.

- 3) *What form of governance structure, if any, should be formed between the regional MTW agency and its partner PHAs?*

Rather than prescribing one specific form of authorized governance structure or a set of approved governance structures, HUD should allow PHAs to determine the appropriate regional governance structure that would best meet their needs and achieve the proposed regionalization goals. As long as the proposed governance structure is legally permissible under the relevant State enabling acts, HUD should leave it to PHAs to -determine the governance structure that would work best to achieve their individual, specific needs. MTW is intended to be a laboratory for addressing critical issues in public housing and Section 8 that have not been adequately addressed by existing HUD programs and rules. The manner in which PHAs choose to provide housing assistance and related services across jurisdictions is a critical matter and HUD should defer to these high performing MTW agencies to develop a range of models to explore it.

- 4) *What form should the agreement (i.e., contract, memorandum of understanding, partnership agreement, etc.) take between the regional MTW agency and its PHA partners?*

A regional MTW agency and its PHA partners should be permitted to enter into whatever form of agreement makes the most sense for them to address their regional housing, which may be any of the forms of agreement above or an Intergovernmental Agreement or other similar document. Such an agreement would outline the terms of regional participation, the shared goals of the agencies, and how they will meet those goals.

- 5) *Should the criteria for regionalization be the same for current MTW agencies and PHAs that join under the expansion?*

With the few exceptions where Congress has specifically indicated otherwise, all MTW agencies, whether admitted prior to the 2016 MTW Expansion Statute or newly admitted under the 2016 MTW Expansion Statute should be subject to the same set of requirements. Therefore, yes, the criteria for regionalization should be the same whether applied for by a current MTW agency or a PHA that joins under the expansion and, as stated above, those criteria should provide the needed flexibility to adapt to local circumstances.

- 6) *Should HUD issue a revised Public Housing and Voucher Consortia Rule to further the regionalization concept?*

No. We strongly support allowing regionalization and encourage HUD to revisit the Consortia Rule and take other steps to promote voluntary regionalization. However, the Public Housing and Voucher Consortia Rule and the regionalization concept authorized by Congress for MTW agencies should be implemented separately.

MTW Agencies Admitted Prior to 2016 MTW Expansion Statute

- 1) *Is it appropriate to permit existing MTW agencies to come under the framework of this Operations Notice and associated MTW agreement?*

No. The Expansion Statute does not authorize HUD to create an entirely new MTW program through the Operations Notice, but, instead, authorizes HUD to add an additional 100 agencies to the existing MTW program authorized under section 204, title II, of the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 (Public Law 104-134; 110 Stat. 1321). Therefore, no MTW agencies, existing or new, should be required to come under this Operations Notice. Instead, new agencies should be offered an MTW Agreement consistent with the existing MTW Agreements and the 2016 Appropriations Act authorizing the expansion.

- 2) *Should these existing PHAs be subject to any different or supplemental requirements?*

With the few exceptions where Congress has specifically indicated otherwise, all MTW agencies, whether admitted prior to the 2016 MTW Expansion Statute or newly admitted under the 2016 MTW Expansion Statute should be subject to the same set of requirements.

Thank you for the opportunity to comment on the Notice. If you have any questions, please do not hesitate to contact us.

Sincerely,



Sunia Zaterman
Executive Director
CLPHA



Stephen I. Holmquist
Member
Reno & Cavanaugh, PLLC