



**Council of Large Public Housing Authorities**

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November, 26 2018  
Regulations Division  
Office of General Counsel  
Department of Housing and Urban Development  
451 7<sup>th</sup> Street SW, Room 10276  
Washington, DC 20410-0500

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

To Whom It May Concern:

The Council of Large Public Housing Authorities (“CLPHA”) is pleased to submit the following comments on the Operations Notice for the Expansion of the Moving To Work Demonstration Program (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. CLPHA’s membership consists of more than seventy large public housing authorities (“PHAs”), who, collectively, own and manage nearly half of the nation’s public housing program, administer more than a quarter of the nation’s Housing Choice Voucher program, and operate a wide array of other housing programs. They collectively serve over one million low-income households.

CLPHA is pleased to see HUD move forward with the Congressionally-authorized expansion of the Moving To Work (“MTW”) program, which we believe will provide much-needed flexibility to PHAs in their efforts to achieve cost-effectiveness, enhance self-sufficiency, and increase housing choice. We appreciate HUD’s efforts to solicit feedback through listening sessions and meetings with stakeholders, industry groups, and housing authorities, and thank HUD for the additional opportunity to provide the below written comments. 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.

While we are encouraged to see several policy changes from the original 2017 Operations Notice, we remain concerned that the MTW expansion HUD seeks to implement is inconsistent with Congress’s intent that there be one MTW program for all MTW agencies, regardless of whether such agencies are newly admitted under this MTW expansion authorization or previously designated as one of the existing thirty-nine (39) MTW sites. Despite HUD’s stated intent of using the Notice to “streamline and simplify” processes for newly-admitted MTW agencies, the Notice as drafted would provide new MTW agencies with less flexibility than current MTW agencies receive and would require new MTW

agencies to comply with burdensome requirements, mandates, and processes that do not apply to current MTW agencies. Instead of achieving HUD's goal of streamlining and simplifying the MTW program, we fear that expanding MTW in this manner will result in confusion and the programmatic changes proposed in the Notice would be to the detriment of the newly added MTW agencies, stifling their ability to engage in local decision-making and innovation. We instead believe, consistent with Congress's original intent, that all MTW agencies be subject to the same set of requirements and processes outlined in the existing Standard Agreement.

Below, please find our additional comments on the Notice:

***The Operations Notice is inconsistent with Congressional intent and is an insufficient mechanism through which to conduct the expansion of the MTW Program.***

While we understand that there is some concern within HUD about its internal capacity to administer the MTW program effectively with the addition of one-hundred new PHAs and that some of the programmatic changes made through this Notice are in response to that concern, this is an issue for HUD to address internally and through the annual appropriations process and should not necessitate changes to how MTW functions and operates for the expansion PHAs.

Contrary to HUD's belief that the Operations Notice will ease its administrative challenges, we believe that the operation of the MTW program in this manner will instead increase administrative burdens as HUD will instead have to monitor and track what are essentially two different programs: (1) the original MTW program with its thirty-nine participating agencies governed by the Standard Agreement, and (2) the additional one-hundred agencies that HUD proposes to be admitted under this Notice.

Except where Congress has expressly indicated otherwise with respect to the selection of new MTW agencies, the specific policy change to be implemented, and the evaluation process, 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"<sup>1</sup> As such, agencies designated as MTW under the expansion should be allowed the same flexibilities and held to the same standards as all other MTW agencies. This means that the new agencies should receive an MTW Agreement consistent with the existing MTW Agreements and the 2016 Appropriations Act authorizing the expansion. There is nothing in the statutory language that mandates or suggests the level of change or oversight that HUD has proposed in the Notice.

Furthermore, the operation of the program through the Notice, rather than the Standard Agreement, is troubling to us, as well as to PHAs considering applying for the MTW designation. Absent the contractual protections granted by the Standard Agreement, HUD could unilaterally change the Notice, and thereby the framework under which the expansion agencies are expected to operate. As the MTW Steering Committee noted in their original comments to the 2017 Operations Notice, "The

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<sup>1</sup> HR 2029

MTW Agreement is a stabilizing force for PHAs, which largely insulates them from shifting priorities in Washington; this is a model that should be emulated, not eviscerated.”

***HUD cannot expect PHAs to make an informed decision about participation in the MTW Expansion without first providing PHAs the opportunity to review the proposed MTW CACC Amendment.***

The Notice suggests that HUD will formalize an agency’s participation in MTW through an amendment to PHA’s Consolidated Annual Contributions Contract (“CACC”), which is consistent with HUD’s current practice for the thirty-nine existing MTW agencies. However, based on conversations with HUD, we have reason to believe that the form of amendment under consideration, which HUD refers to in the Notice as the “MTW CACC Amendment,” will not be the Standard Agreement used by current MTW agencies but will instead be a different type of CACC amendment requiring the newly-admitted MTW agency to comply with the Notice.

While we believe that HUD should extend the Standard Agreement to the incoming MTW PHAs, for the aforementioned reasons, should HUD decide to move forward with the proposed Operations Notice and MTW CACC Amendment, **HUD should release the MTW CACC Amendment for review as soon as possible.** With the selection notice for the first cohort of MTW expansion agencies already released and public review and comment underway, PHAs are actively considering whether or not to apply for this MTW expansion. However, without all of the details, including but not limited to the form of MTW CACC Amendment that HUD will expect new MTW Agencies to execute, HUD can hardly expect these agencies to make a fully informed decision on what participation would mean for them.

***The proposed waivers in Appendix A fail to account for the many locally driven, innovative activities PHAs often engage in. The Agency-Specific waiver approval process requires additional detail and the Field Office capacity to review such requests should be reevaluated.***

We recognize the changes that HUD has made to the waiver section from the previous 2017 Operations Notice and believe the Notice presents an improvement over HUD’s original 2017 proposal; however, we remain concerned that the top-down approach to prescribing waivers in this format could stifle innovation. HUD seems to miss the fact that MTW is not only about receiving waivers of various regulatory requirements, it’s also about creating and encouraging locally driven innovative solutions and programs to address our nation’s affordable housing crisis, improve the stock of available housing, and produce better outcomes for residents.

Instead of helping PHAs consider what locally driven, innovative activities they may seek to implement with their MTW designation, the MTW Waivers present the appearance of a more limited, top-down approach to the flexibilities that HUD is willing to consider. While we recognize and appreciate that many of the flexibilities offered in Appendix A are practices currently in use by the existing thirty-nine MTW agencies, we believe the retail approach to waivers does not encourage the kind of grassroots, local innovation that is a hallmark of the MTW program.

We previously recommended in our comments to the 2017 Operations Notice that HUD create a “safe harbor” under which PHAs could implement MTW flexibilities without further HUD review and appreciate HUD’s inclusion of this concept in the Notice. While merging the General and Conditional waiver categories into a single MTW Waiver category, allowing PHAs to implement waivers within a range of safe harbors without the need for additional HUD approval, is helpful, we are concerned that several of the listed waivers include unnecessary restrictions and do not contain the flexibilities needed to achieve the three MTW statutory objectives.

Outside of the prescribed MTW Waiver process in Appendix A, we strongly encourage HUD to provide additional detail regarding the Agency-Specific Waiver process. For example, while the Notice describes the process for submitting an Agency-Specific Waiver request to HUD for review, it fails to detail the standards that HUD will use when evaluating such requests. Because HUD has placed restrictions on certain waiver activities under Appendix A, we believe it is particularly important that HUD more specifically detail the Agency-Specific Waiver process, should an agency want to implement an activity outside the given safe harbors.

Furthermore, because the review of Agency-Specific Waivers, as proposed, will occur through the Field Office, rather than HUD’s MTW Office, we are concerned that such waivers will not be consistently evaluated using the same standards for review. CLPHA members have reported a wide range of experiences when working with their local Field Offices – while some have great relationships with the Field Office, others report their experiences to be frustrating and/or inefficient. HUD has not described how it will update and train the local Field Offices on the agency-specific waiver approval process or the MTW Supplement approval process. While the Notice requires Agency-Specific Waivers to not conflict with the cohort-specific evaluation, we question whether the local Field Office staff will have sufficient information, knowledge, and guidance to make such determinations when evaluating a request.

***Newly-designated MTW PHAs should retain their MTW designation until Congress requires HUD to do otherwise.***

We are pleased that HUD removed the 2028 sunset date that was required in the 2017 Operations Notice, as well as the provision that new agencies must submit a “transition plan” that describe an agency’s plan for phasing out of MTW.

However, we disagree with HUD’s decision to set the term of each agency’s MTW designation to expire twelve years from the date of their designation as an MTW agency. Congress made clear that the ten-year MTW extension authorized by Congress applied solely to “the current Moving to Work agreements of previously designated participating agencies.”<sup>2</sup> Because Congress has remained silent with respect to the term of participation for newly-added MTW agencies, we believe such agencies should not be restricted to a set term of participation and should retain their MTW designation until Congress requires HUD to do otherwise. Therefore, unlike the existing MTW agencies that are bound by Congress’ ten-year extension, the timeframe for newly-added MTW expansion agencies to

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<sup>2</sup> HR 2029

maintain their MTW designation should not be restricted. A proposed 12-year expiration date does not reflect the longevity and institutionalization of the MTW program that has occurred so far and may even prove too restrictive for HUD's own evaluation purposes. While we appreciate that HUD may need to limit the evaluation period for each cohort, HUD can do so without limiting the term of an agency's overall participation in the MTW program.

***Incoming PHAs should be able to use their funds, including reserves, with full fungibility and flexibility in accordance with MTW statute.***

The Notice restricts incoming PHAs from applying the MTW fungibility to their Operating, Capital, and/or HAP reserves accrued prior to MTW designation. In conversations with HUD's MTW Office, we have learned that HUD, similarly, wishes for full MTW fungibility to apply to all PHA funds, whether newly appropriated or held in reserve. We are pleased to hear that HUD is working to fix this issue so that newly-designated MTW agencies could use their accrued reserves with full MTW fungibility, and are happy to assist HUD in this effort.

However, we do note that the Notice requires Capital Fund Program ("CFP") funds used for eligible CFP purposes to remain in a local CFP fund and retain their CFP identity and strongly object. As stated in the Notice, this means that only CFP funds used for non-CFP eligible purposes will move into the MTW block grant fund, instead of all CFP funds, and those CFP funds in the MTW block grant fund could only be used for non-CFP purposes rather than any purpose authorized by the MTW block grant. As a result, though funds used for non-CFP purposes would lose their CFP identity, CFP funds designated for CFP purposes would retain the obligation and expenditure restrictions and reporting requirements of that program, thereby creating two different sets of accounting and funding requirements for CFP funds, which is unnecessarily complicated, burdensome, and inconsistent with existing MTW requirements.

***Incoming PHAs should be subject to an accreditation requirement rather than PHAS or SEMAP.***

The Notice states that HUD will be developing new protocols for assessing MTW PHA performance through PHAS and SEMAP. We have several concerns with this provision as HUD has made little, if any, mention of what these new protocols and assessment instruments will be, through either the Notice or the various listening sessions and meetings the agency has held over the past year.

The PHAs selected to participate in the MTW expansion are required to be high performing in PHAS or SEMAP, which we believe should be sufficient evidence of their ability to operate HUD programs effectively. HUD uses PHAS and SEMAP to assess risk and identify underperforming PHAs in the traditional public housing and voucher programs. Existing MTW agencies are exempt from PHAS and SEMAP in part because, by HUD's own admission, "...MTW flexibilities make it difficult to accurately assess the performance of MTW agencies under the existing systems." Through the Annual MTW Plan and Annual MTW Reports, existing MTW agencies provide sufficient information for HUD to assess the existing MTW PHA's activities, in both regular operations and in activities authorized by MTW. Similarly, if HUD proceeds with its plan to require incoming MTW PHAs to submit a PHA Annual Plan and MTW Supplement in replacement of the Annual MTW Plan and MTW Report, these documents should also provide sufficient information for HUD to assess the

adequacy of the MTW expansion PHA's activities. HUD should not require agencies to also provide this duplicative information through PHAS or SEMAP as such efforts are burdensome, duplicative, and do not accurately assess the performance of MTW agencies.

Given the limitations of PHAS and SEMAP, especially with respect to MTW agencies, we would like to reiterate our previous comments and 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 ensures 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 Congressionally-mandated 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.

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

In the 2017 Operations Notice, HUD included a question that asked, "Is it appropriate to permit existing MTW agencies to come under the framework of this Operations Notice and associated MTW agreement?" Although this new Notice does not contain language or provisions relating to the existing MTW agencies, we would like to again reemphasize our prior comments on this matter. 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 one-hundred 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 agency, 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.

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  
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CLPHA