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April 22, 2016

Colette Pollard, Reports Management Officer
QDAM, Department of Housing and Urban Development
451 7th Street SW., Room 4176
Washington DC 20410-5000

Re: Docket No. FR 5916-N-02: “60-Day Notice of Proposed Information Collection: Form 50900: Elements for the Annual Moving to Work Plan and Annual Moving to Work Report” (OMB Approval Number 2577-0216)

Dear Ms. Pollard:

The following comments are submitted on behalf of the National Housing Law Project (NHLP) and the Housing Justice Network (HJN) regarding the 60-Day Notice of Proposed Information Collection published on Tuesday March 1, 2016, “Form 50900: Elements for the Annual Moving to Work Plan and Annual Moving to Work Report.”¹ NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income tenants and homeowners; and increasing housing opportunities for protected classes. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. In addition, NHLP hosts the national Housing Justice Network, a vast field network of over 1,000 community-level housing advocates and tenant leaders, many of whom practice in Moving to Work jurisdictions. HJN member organizations are committed to protecting affordable housing and housing rights for low-income families and individuals nationwide. Meaningful tenant involvement is fundamental to all supported and public housing decisions, and the following comments draw on NHLP and HJN’s extensive experience working for decades with advocates, residents, and Public Housing Authorities (PHAs).

The collection of data is an essential component of the MTW Demonstration program. Congress, when it created and recently expanded the program, directed HUD to identify policies that would provide cost-savings to PHAs, assist families in obtaining self-sufficiency, and increase housing

¹ 60-Day Notice of Proposed Information Collection: Form 50900: Elements for the Annual Moving to Work Plan and Annual Moving to Work Report, 81 Fed. Reg. 10,647 (Mar. 1, 2016).

choice. As noted in the 2013 Office of Inspector General report,² due to inadequate oversight since the program's inception, little is known about how MTW agencies design programs to meet these statutory goals or how PHAs have changed their programs over time.

Form 50900 is the primary source of data that HUD receives to evaluate a PHA's participation in MTW and its compliance and success in meeting its stated objectives. Substituting for the PHA's Annual Plan, it is also the only way that tenants, advocates, and other stakeholders can provide input into and monitor MTW agency activities. To date, Form 50900 has not provided sufficient information to HUD, residents, or advocates to properly assess MTW activities. The following minor amendments to Form 50900 will allow for stronger oversight and will foster more meaningful resident participation.

I. *Financial Reporting Requirements*

HUD should take steps to require transparency in all financial reporting by de-regulated PHAs. It is no secret that several MTW PHAs have used single-fund flexibility to divert significant resources into cash reserves or excessive executive compensation. The following suggestions will help HUD provide meaningful oversight of MTW programs while making financial information easier to understand at a local level. In addition, we urge HUD to review the Cambridge Housing Authority's Annual MTW Report,³ which provides a model for financial reporting that meets both of these goals.

Revise Section (V) Sources and Uses of MTW Funds to Require PHAs to Report Data in a Format Other Than the Financial Data Schedule in Both Annual Plans and Annual Reports

HUD currently requires MTW PHAs to report the sources and uses of MTW funds in Section (V) of Form 50900 but only requires PHAs to report information in the prescribed Financial Data Schedule (FDS) format. The FDS format is meaningless to tenants, advocates and most other stakeholders. Using the FDS format makes it incredibly difficult for residents to comment on the MTW Plan and evaluate an agency's MTW activities. Line items are not defined in the plan and therefore understanding what is in the table requires consulting the FDS line definition guide. Financial information reported per the FDS format also cannot be compared to budgets from prior years, making it difficult to understand financial trends. HUD should revise Section (V) to require reports in a plain format that the public can analyze and understand.

An additional concern with the existing FDS format is that when advocates request "translated" financial information, PHAs refuse to provide it, arguing that they are in compliance with HUD so no additional information need be made available. This greatly frustrates the role of residents and advocates in evaluating MTW programs and prevents them from providing meaningful comments during the public participation process. HUD should require PHAs to report data in a format other than, or in addition to, the FDS.

² Audit Report on the Moving to Work Demonstration Program, Office of Inspector General, Number 2013-PH-0004, Sept. 27, 2013.

³ The Cambridge Housing Authority FY2015 Report can be found here: <http://cambridge-housing.org/civicax/filebank/blobdload.aspx?BlobID=23404>

At the least, HUD should require MTW PHAs to report financial information in the same format in both the MTW Plan and MTW Report. Currently, participating PHAs can exclude FDS data from MTW Reports making it incredibly difficult for residents and advocates to analyze financial data.

Revise Section (V) A. *Estimated Sources and Uses of MTW Funds to Clarify Certain Items*

Certain line items in Section (V) A. of the Annual MTW Plan, such as depreciation, are for non-cash outlays and do not constitute actual expenditures. It is therefore difficult for tenants and advocates to evaluate PHAs' annual budgets. HUD should revise this section of the form to distinguish between actual estimated expenditures in the plan year and non-cash outlays. This change will provide tenants and advocates with a more realistic snapshot of how MTW agencies are spending their annual federal subsidies.

Revise Section (V) *Sources and Uses of Funds to Clearly Link Sources to Uses of Funds in the Annual MTW Report*

The current format of Section (V) of the MTW Report does not allow tenants or advocates to comprehensively evaluate where funding is coming from and how it is being used. The use of voucher funds for other purposes, for example, has been a core issue for tenant advocates monitoring MTW program activity. HUD should revise Form 50900 to account directly for what funds were allocated to each program. HUD should do this in two ways:

- Require PHAs to report sources and uses in a chart format that explicitly tracks the source of funding to the program expense.
- Expand the Required Narrative in Section (V) A.iii. *Describe Actual Use of MTW Single Fund Flexibility*. Advocates report that the current narratives are vague and uninformative. HUD should require PHAs to explain each use of the demonstration program's single fund flexibility that results in a reallocation of funds from the original federal revenue stream to a different PHA cost center.

The failure of HUD to require this information also makes it difficult for tenants and advocates to analyze the "substantially the same" requirement, as explained in more detail below.

Retain Section (V) 5. A. C. *MTW Report: Commitment of Unspent Funds and Require MTW PHAs to Report on Reserves*

The current version of Form 50900 requires MTW agencies to include in their Annual MTW Report the commitment of unspent funds but only once HUD issues a methodology for defining reserves, including a definition of obligations and commitments. HUD should issue this methodology, if it has not already, and maintain the requirement that PHAs report any commitment of unspent funds in Section (V) of Form 50900. This will provide much-needed transparency regarding de-regulated agencies use of reserves and will help avoid situations in Baltimore and Chicago,⁴ where only after

⁴ News coverage on the Housing Authority of Baltimore City: <http://www.citypaper.com/news/features/bcp-112515-housing-money-20151125-story.html> and on the Chicago Housing Authority: <http://progressillinois.com/posts/content/2014/08/04/report-cha-failed-spend-millions-federal-housing-voucher-money-video>

close scrutiny of the PHA's internal financial documents was it discovered that the PHAs had used reserves to pay debt obligations off early.

In addition, HUD should revise the table in Section (V) A. i. of the Annual MTW Plan to include a line item on reserves. As a result of this information being omitted from the table, in some cases a significant portion of a housing authority's budget is missing, making it impossible to fully analyze spending in the "Uses" table as designated in the Annual MTW Report.

II. Requirements Regarding Resident Participation

Given that Form 50900 acts as an MTW agency's Annual Plan, it is imperative that HUD require a robust resident participation process. We suggest the following revisions to Form 50900 that will improve the resident participation procedures for MTW PHAs.

HUD Must Include Additional Reporting Requirements in Section (VI) B. Documentation of Public Process

HUD requires limited documentation of the public process in Section (VI) of the Annual MTW Plan. This section should require PHAs to report on additional information such as:

- A description of how the public was notified of the MTW Plan process (see below for more details on this requirement).
- A summary of public comments.
- A summary of the PHA's response to those comments including those that were accepted without modification, accepted with modification, and not accepted.
- Any changes that were made to the MTW Plan or MTW Report specifically in response to required comments/revisions by HUD.

Form 50900 explicitly states that HUD reserves the right to request additional information to verify that the PHA has complied with the public participation requirements in the MTW Standard Agreement. HUD should take resident participation requirements seriously and invoke this right if a PHA provides insufficient information regarding the process.

HUD Should Include Resident Participation Requirements in the General Instructions to Form 50900

HUD should add a box under the "General Instructions" Section: *Submission Requirements (resident participation)* of Form 50900. The instructions should set forth the minimum resident participation requirements for the MTW PHA Annual Plan and Report process including:

- Notice to residents and the community that the PHA Plan process has been initiated and that the Plan is available both in-person and on the PHA's website. The notice should include any upcoming hearing dates and their times and location.

- An explicit requirement to notify advocacy organizations in the local community of the planning process by (1) direct email or (2) an email to a listserv administered by the PHA that consists of housing advocacy organizations.
- The 30-day comment period should not commence until 2 days after the first formal notice has been delivered.
- Copies of the draft MTW Annual Plan and/or MTW Annual Report should be available (1) at each development, (2) at the PHA's central office and (3) on the PHA's website.
- Public hearings must be at times and locations convenient for residents.
- Public notices and hearings must address residents with Limited English Proficiency.
- Public notices and hearings must be accessible for people with disabilities.
- The final MTW Plan and Report must be made available once approved by HUD.

As HUD does with other planning documents, the instructions should encourage public involvement in the PHA Plan process, particularly among minorities, non-English speaking people, and people with disabilities.

Last, HUD should post final approved MTW reports and plans (as well as unapproved submitted plans if it anticipates a significant delay before approval) on its website to ensure that these are available to advocates in all communities.

III. Reporting on the “Substantially the Same” Requirement

Advocates report that it has been extremely difficult to determine whether PHAs are meeting the requirement to assist substantially the same total number of eligible low-income families as would have been served without single-fund flexibility. This is due at least in part to HUD's failure to define “substantially the same” or to provide a baseline by which to measure it.

HUD should add a required chart to Section (II) B. or D. of the MTW Report that would reflect whether the PHA served substantially the same number of families with MTW flexibility. The chart would require PHAs to calculate and report how many families they would be able to assist absent MTW status with the funding they receive for both the voucher and public housing programs, assuming a reasonable public housing occupancy rate and per-voucher subsidy cost. This would provide a baseline for analysis regarding the number of households that would have been served had the funds not been combined. The PHA should then be required to compare the baseline with the number of families actually assisted to determine whether it served substantially the same number of families. HUD should also establish a quantitative standard for “substantially the same” (for example, a difference of less than 5 percent) so that agencies can make their certifications in a consistent manner.

HUD should also make clear that only families that receive substantial on-going MTW-funded housing assistance should be counted as assisted for the substantially-the-same determination. In addition, in their reports of number of families assisted, agencies should be required to identify which specific “local, non-traditional” tenant-based, property-based, or homeownership program families are assisted through, and they should be required to report the actual number of families assisted for all types of assistance rather than estimates.

HUD should also revise Section (II) D. i. 75% of Families Assisted are Very low Income to reflect additional data that would help HUD and advocates determine whether the PHA is meeting the “substantially the same” requirement. HUD should:

- Restore the historical data previously required in Form 50900 that shows income levels of participants for previous years.
- Require PHAs to report the income of families broken down by public housing and the voucher program.
- Require PHAs to report on the income of families broken down by bedroom size.

HUD should also require PHAs to include in their report data on the incomes of families assisted through public housing and vouchers (not just local non-traditional programs) so that these data are available to the public — or alternatively HUD should extract these data for MTW agencies from its databases and make them available online in an easily accessible format. This would provide HUD and local stakeholders the data to analyze not only whether the PHA is serving the same number of families, but also the same types of families that would otherwise be served by the PHA, absent MTW status.

IV. Reporting Requirements for Housing Choice Vouchers

MTW PHAs should be required to report additional information about their voucher programs. **HUD should add an additional chart to Section (II) A. Housing Stock Information that would require PHAs to report on:**

- Voucher utilization rates
- Voucher success rates by month
- Average time for a voucher family to lease up
- Average cost per voucher

Requiring this information will make it easier for tenants and advocates to analyze MTW voucher activities and provide meaningful insight into the programs created as a result of single-fund flexibility.

V. Collect Data Related to Fair Housing

HUD should require additional fair housing data in Section (II) B. Leasing Information of the MTW Report. MTW agencies are required to Affirmatively Further Fair Housing,⁵ and agencies must certify as to compliance with AFFH obligations in the Certification of Compliance. But the proposed MTW Report form collects no demographics by which to evaluate whether actions undertaken by MTW PHAs are promoting residential segregation, or whether they have a disparate impact on protected classes (defined by race, color, national origin, disability, age, gender, and familial status). Such impacts should be measured by numerical data describing the number and

⁵ 42 U.S.C. § 3608; 24 C.F.R. § 903.2.

protected-class-status of families served separated out by program and by project, and tracked over time. Demographic data on neighborhoods where new assisted housing units are sited, as well as neighborhood characteristics for all Section 8 voucher families should be collected. This data should also include impacts of loss of units, if any, on protected classes, and the location of replacement housing and locations of relocated families.

To assess the impacts of admissions policies and practices, data on the racial and ethnic characteristics of families on the waitlist, and families recently admitted, are also important. All data should be separated by program and by project, and tracked over time.

One of three statutory goals of the MTW demonstration is to increase housing choice for families, but there is no data requested to demonstrate if this goal is met. The type of data that would be helpful is a comparison of the number, unit size and type of housing (elderly or family, rental or homeownership) by location such as by zip code or census tract and income and racial and ethnic mix of the housing pre-MTW and to date. Similar information should be reported for the location, census tract and household demographics of HCV families.

VI. Collect Data about Characteristics of Households on the Waitlist

HUD should require PHAs to report additional information in Section (II) C. Waiting List Information. Waitlist data should include metrics describing the income levels and protected-class status of households on each waitlist and the cumulative total for the waitlists of the housing authority and any affiliates receiving MTW capital or operating assistance. The data should include applicants' ethnicity, race, income bracket, and for each of the programs, the bedroom size the applicant needs.

Where there are site-based waitlists maintained by a PHA, it should include these demographics by site. For non-MTW housing authorities, 24 CFR § 903(b)(2)(v) requires those with site-based waitlists to assess changes in demographics of the housing by race, ethnicity, and disability based on MTCS occupancy data. It also requires the use of testers every three years and requires PHAs to correct problems that arise in the review. MTW sites ought to conduct similar reviews and report similar information as HUD does not have authority under MTW to waive civil rights related statutes, regulations or program requirements.

VII. Add a Section 3 Reporting Requirement

One of the statutory goals of MTW is to promote economic self-sufficiency. PHAs could go a long way toward achieving this goal by fulfilling their Section 3 obligations.⁶ **Section (VI) Administrative should include a section for reporting on compliance with Section 3.** Alternatively, the Annual Report should include a reference to relevant form HUD 60002 with a copy attached, so that residents and the public will know the outcomes of complying with Section 3. Cross referencing to the form HUD 60002 would also facilitate HUD's enforcement of Section 3.

⁶ Section 3 of the Housing and Urban Development Act of 1968, as amended, codified at 12 U.S.C. § 1701u.

Thank you for your consideration of our comments and recommendations. We look forward to working with HUD and are happy to further discuss our suggestions. Please contact Deborah Thrope (dthrope@nhlp.org) should you wish to talk with NHLP and/or HJN members to clarify our position on these important issues.

Sincerely,

Deborah Thrope, National Housing Law Project

On behalf of HJN:

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Cathy Hinko, Metropolitan Housing Coalition
Amanda Kass, Center for Tax and Budget Accountability
Virginia Knowlton, Maryland Disability Law Center
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