

To: Jenn Jones, Peggy Bailey, Dominique Blom, Todd Richardson, Marianne Nazarro, HUD
Jessica Lee, OMB
Erika Poethig, DPC
From: Deborah Thrope, NHLP
Re: Request to Pause the MTW Expansion
Date: February 3, 2021

The National Housing Law Project writes to request that HUD immediately pause the expansion of the Moving to Work program in order to better meet MTW's statutory objectives and align more closely with the new administration's agenda. HUD should not select agencies for any additional cohorts until the Operations Notice is revised to (1) eliminate harmful cohorts (2) eliminate harmful waivers (3) improve opportunities for resident participation and transparency and (4) make other important revisions to the program design.

I. Background

NHLP is broadly supportive of MTW's statutory goals -- to expand housing choice, reduce costs and increase program efficiency -- but the changes wrought by MTW have reduced the number of families served and harmed far too many low-income residents. MTW PHAs divert money away from the voucher program, leaving tens of thousands of low-income families without access to housing. In fact, MTW PHAs serve significantly less families than their non-MTW counterparts. In 2015, 60,000 fewer families received a housing voucher from MTW PHAs than would have had the PHAs not participated in the MTW program.¹ MTW agencies also used far less of their funded vouchers than their non-MTW counterparts.²

MTW participants are often subject to unfair, unproven experiments in rent-setting, time limits, and work requirements. Meanwhile, MTW PHAs face extremely limited oversight, so HUD is unable to curtail financial mismanagement or administrative incompetence. For the MTW program to be effective, PHAs must have clear guidelines from HUD, adequate supports from relevant program offices, and, most importantly, a robust, demonstrable commitment to serving low-income tenants.

The 2016 Appropriations Act expanded the MTW program to 100 additional agencies.³ Five cohorts of PHAs will participate in a research study, with each study focused on specific policy changes (the cohorts will study general MTW flexibilities at small agencies, rent reform, work requirements, landlord incentives to participate in the voucher program, and general MTW flexibilities). HUD recently issued the final Operations Notice for the expansion which establishes program requirements.⁴ The Operations Notice is problematic in many respects and is not aligned with the new administration's policy priorities. HUD should halt the MTW expansion until the Operations Notice can be revised in ways that more clearly meet HUD's program objectives without further harm to tenants.

¹ Will Fisher, *New Report Reinforces Concerns About HUD's Moving to Work Demonstration*, Center on Budget and Policy Priorities (October 30, 2017).

² *Id.* In 2015, MTW agencies utilized 81% of their funded vouchers versus 99% at non-MTW agencies.

³ Consolidated Appropriations Act, 2016, Pub L. No. 114-113, tit. II Sec. 239 (2015).

⁴ Operations Notice for the Expansion of the Moving to Work Demonstration Program, 85 Fed. Reg. 53,444 (Aug. 28, 2018).

- II. HUD should replace the cohorts on work requirements and rent burdens and focus on policies that seek to improve the voucher program.

Expanding affordable housing opportunities as a way to advance racial equity is a key component of President Biden's agenda. The administration aims to expand federal rental assistance to meet the needs of all eligible households, most likely through the Housing Choice Voucher program. In order to accomplish this goal, not only are generous funding increases needed, but key programmatic reforms as well. **HUD should seize the opportunity presented with MTW to study policies that will support an expansion of the voucher program.** Neither work requirements nor time limits are likely to have any impact on the voucher program's overall effectiveness or increase voucher families' housing choice or mobility options. And in fact, these punitive policies run the high risk of causing housing instability and increasing tenants' rent burdens above 30%.

While HUD followed the MTW Research Advisory Committees' recommendation that a rigorous, cohort-specific evaluation be undertaken on work requirements and rent policies, HUD should reconsider these cohorts in light of the new administration's plans. And in fact, because the Research Advisory Committee was selected and met after the expansion legislation was initially enacted in 2016, **HUD should consider convening a new committee to determine what policies should be studied to help families maintain and obtain safe and stable housing.**

- III. HUD should eliminate general MTW waivers from the program completely; at the least HUD should prohibit waivers that pose serious risks to housing stability.

MTW expansion agencies apply waivers in a cohort-specific category to allow for the targeted study of certain PHA policies. However, agencies may also select and apply waivers from a long list of general waivers, many of which do not require HUD approval. These waivers are incredibly broad in scope ranging from rules about reexaminations to raising rents for the most vulnerable HUD residents. Per the authorizing statute, the MTW program was designed to test and analyze innovative PHA policies.⁵ It is hard to see how making general MTW waivers available to all 100 agencies without HUD approval will meet Congress' statutory goals. **How will these waivers, absent HUD oversight and without any formal study, allow PHAs to test policies that increase self-sufficiency and housing choice among public housing and voucher program participants?**

By allowing PHAs in cohort-specific studies to adopt MTW waivers, it is unlikely that HUD will be able to determine the true impacts of a particular policy. **In order to evaluate specific cohorts, HUD must eliminate or severely restrict general MTW waivers.** HUD anticipated the pitfalls of allowing general waivers within each research cohort. The Operations Notice restricts agencies from applying certain MTW waivers if they conflict with a cohort-specific study. HUD will identify in the cohort selection notice MTW activities that would conflict with the cohort-specific policy change. HUD's identification of specific conflicting waivers is important, although it does not go far enough to protect the integrity of the study.

⁵ Consolidated Appropriations Act, 1996, Pub L. No. 104-134, tit. II, § 204(a) (1996).

At the least, HUD should eliminate the option for PHAs to apply the most harmful MTW waivers to tenants. Waivers regarding work requirements, time limits, and rent increases, remnants of the Trump Administration, are likely to result in termination of assistance, evictions, and even homelessness. While HUD put in place minimal safeguards to measure the impact of such waivers, without close HUD oversight and without participation from residents and advocates, these “safe harbors” will not be enough to protect residents. Especially during the Coronavirus pandemic, when housing stability is a key strategy to curb public health impacts, HUD should reconsider allowing MTW PHAs to implement waivers that have a high likelihood of displacing tenants.

IV. HUD should improve tenant participation requirements and program transparency

Historically, residents and their advocates have been shut out of the MTW Plan process. **HUD should encourage resident engagement during the expansion as residents provide an important degree of oversight of MTW operations.** PHAs are currently required to undergo a public notice and comment period as part of the MTW Plan process. The Operations Notice for the expansion requires an additional public notice and comment period for certain waivers. HUD should require at least two additional notice periods and opportunity for comment prior to the formal notice and comment period required by the MTW plan process. Additional comment periods will ensure that residents are informed of waivers, impact analyses, safe harbors, and other policies that will directly impact their housing.

Resident participation is especially important because HUD indicated that at least part of HUD’s MTW oversight responsibilities will sit with local HUD field offices. In general, local HUD field offices are less familiar with the MTW program and its impacts. Some local offices are also thinly staffed and it is not clear that additional resources will be devoted to MTW administration and monitoring. It is therefore essential that residents be provided an opportunity to comment, that their comments be reflected in the PHA plan, and that the PHA be required to submit a response.

V. HUD should make other changes to the Operations Notice to better meet the goals of the MTW program.

The following changes are critical to meet the statutory goals of the MTW program and align the program with this administration’s agenda:

- **Eliminate 20-year participation allowed in the current Operations Notice.** The MTW Operations Notice allows selected agencies to participate in MTW for twenty years, far beyond the amount of time it takes to complete a research study. This means that selected agencies will be able to access all waivers for that entire term, even after the cohort ends, which is certainly outside the scope of the MTW demonstration expansion. A twenty-year term also makes it more likely that the program will become permanent.
- **Ensure that voucher funds are not diverted to other programs.** The Obama Administration proposed an important safeguard that would have required PHAs to use, at a minimum, 90% of HAP funds on vouchers because scarce housing resources should not be used for “local, non-traditional” housing services. In its current Operations Notice, HUD removed the 90% requirement. **HUD should put the 90% requirement back in the Operations Notice and**

even raise it above 90% to preserve HUD funding for its intended use to provide housing to low-income families. Indeed, absent regulation, MTW PHAs have historically diverted funds away from the voucher program.⁶

- **HUD should restrict regionalization of MTW.** While there is some benefit to studying MTW flexibilities at regional agencies, HUD must put in place procedural safeguards to ensure regionalization is not simply used as a tool to expand MTW flexibilities beyond the intended 100 agencies without any targeted research goals as intended by Congress. Importantly, we also urge HUD to make the process for selecting any regional agencies fully transparent with an opportunity for tenant and advocate engagement, particularly if the expansion involves one of the original 39 MTW agencies. Given the complete lack of HUD oversight during the first years of the program, it is imperative that HUD seek input from residents with first-hand knowledge of the impacts of MTW, prior to allowing agencies to expand via regionalization.
- **HUD should strengthen the definition of “assistance.”** Since the MTW program began, HUD has failed to consistently define and track whether PHAs are meeting the statutory requirement to assist “substantially the same” total number of eligible low-income families as would have been served without single-fund flexibility. There has been absolutely no transparency with respect to this statutory requirement, which has contributed to the fact that less families are being served by participating PHAs. HUD should partly revert back to the proposal from the Obama Administration to define assisted families as only those with rent burdens below 50% of income but change the percentage to 40% if income, which generally reflects that amount of rent a family can pay to maintain housing stability. PHAs should not be allowed to count tenants with high rent burdens (and therefore at risk of eviction and subsidy termination) as “assisted” under any circumstances.

Thank you for considering our 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 clarify our position on these important issues.

Sincerely,



Deborah Thrope
Deputy Director
National Housing Law Project

⁶ Center for Tax and Budget Accountability, *A Fiscal Review of the Chicago Housing Authority* (July 2014).