

***Disclaimer** – This document is reformatted on HUD’s website for ease of review. The original “Operations Notice for the Expansion of the Moving to Work Demonstration Program” notice, which mirrors this document, was published on August 28, 2020, at FR-5994-N-05.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5994-N-05]

Operations Notice for the Expansion of the Moving to Work Demonstration Program

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This final Operations Notice for the Expansion of the Moving to Work (MTW) Demonstration Program (MTW Operations Notice) establishes requirements for the implementation and continued operation of the MTW demonstration program pursuant to the 2016 MTW Expansion Statute, which authorizes HUD to expand the MTW demonstration program from the current size of 39 agencies to an additional 100 agencies over a period of 7 years. Under the MTW program, MTW agencies have the flexibility to apply fungibility among three core funding programs’ funding streams – public housing Operating Funds, public housing Capital Funds, and HCV assistance (to include both HAP and Administrative Fees) and are also permitted to waive a number of program requirements.

This notice follows prior Federal Register notices for public comment and, following HUD’s consideration of the comments received, revises and adds waivers and activities, which are included in the three Appendices also published in today’s Federal Register. Appendix 1, MTW Waivers, is a simplified guide for MTW agencies seeking to develop MTW initiatives that have already been executed by existing MTW agencies. MTW agencies may implement any activity contained in Appendix I without further HUD approval as long as it is included in the MTW Supplement and implemented with the associated safe harbors. Appendix II contains instructions for written impact analyses and hardship policies. Impact analyses are required for

certain activities, such as Work Requirements, Term-Limited Assistance, and Stepped Rent. Appendix II also contains procedures for the written policies MTW agencies must adopt for determining when a requirement or provision of an MTW activity constitutes a financial or other hardship for the family. Appendix III contains the method for calculating the requirement that MTW agencies house substantially the same number of families as they would have absent MTW.

This notice is final and effective immediately. This final notice also solicits additional public comments on additional activities and waivers added in this notice, and HUD will notify the public if any changes are made as a result of these additional public comments.

DATES: *Effective date:* August 28, 2020.

COMMENT DUE DATE: (For material listed in section III under the subheading “*Additional activities and waivers*” only): October 27, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding the “additional waivers and activities” in section III of this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title.

Electronic Submission of Comments. HUD strongly encourages interested persons to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Interested persons may submit comments the “additional waivers and activities” in section III of this notice electronically through the Federal eRulemaking Portal at www.regulations.gov. Comments submitted

electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Submission of Comments by Mail. Alternatively, interested persons may submit comments regarding the “additional waivers and activities” in section III of this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 1-800-877-8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Marianne Nazzaro, Director, Moving to Work Demonstration Program; e-mail: mtw-info@hud.gov; telephone number 202-402-4306

(this is not a toll-free number), or visit the MTW demonstration program website at:

www.hud.gov/mtw. Hearing- and speech-impaired persons may access this number through

TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Public Housing/Section 8 Moving to Work (MTW) demonstration program was first established under Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104-134, 110 Stat. 1321 (1996 MTW Statute) to provide statutory and regulatory flexibility to participating public housing agencies (PHAs) under three statutory objectives. Those three statutory objectives are: to reduce cost and achieve greater cost effectiveness in Federal expenditures; to give incentives to families with children whose heads of household are either working, seeking work, or are participating in job training, educational or other programs that assist in obtaining employment and becoming economically self-sufficient; and to increase housing choices for low-income families.

Section 239 of the Fiscal Year 2016 Appropriations Act, P.L. 114-113 (2016 MTW Expansion Statute), signed by the President on December 18, 2015, authorizes HUD to expand the MTW demonstration program from the current size of 39 agencies to an additional 100 agencies over a period of 7 years. This notice was originally proposed on January 23, 2017, in the Federal Register, at 82 FR 8056, entitled “Operations Notice for the Expansion of the Moving to Work Demonstration Program Solicitation of Comment.” On May 4, 2017, the notice was republished with three technical revisions and an extension of the comment period at 82 FR 20912. HUD took all comments received into consideration. On October 5, 2018, the notice was

republished at 83 FR 50387 with revisions based on public comments and policy determinations and to provide an additional comment period.

II. The public comments

HUD received 17 public comments on the October 5, 2018 notice, from a wide variety of public commenters. Commenters included a Congressional representative, public housing agencies, trade associations, interest groups, and individuals, and HUD considered all comments received. HUD has also been considering during the process all comments submitted in response to the earlier notices. HUD thoroughly considered all public comments and accordingly is making some changes in this final notice, as stated in section III, “This final notice.”

III. This final notice

HUD has reviewed and considered the feedback that was provided, and changes to this notice have been made to incorporate feedback from the three previous publications and to reflect final policy decisions. The primary changes are as follows:

- **Term of Participation**

The term of participation is now 20 years from designation.

- **Simplified Agency-Specific Waiver Request Process**

In response to feedback, the process for MTW agencies to request an Agency-Specific Waiver in order to propose additional activities that are not included as MTW Waivers has been simplified.

- **Safe Harbor Waivers**

The MTW Operations Notice describes a simplified process for MTW agencies to implement MTW activities outside of the safe harbors described in Appendix I.

Additionally, certain safe harbors have been revised drawing from research of a current MDRC study on rent reform (e.g., safe harbors relating to minimum rent and gross rent activities). MTW agencies may alter the safe harbors through a Safe Harbor Waiver request.

- **Impact Analysis and Hardship Policy Requirements**

Since certain safe harbors have been revised, the MTW Operations Notice eliminated one or both of the requirements for an impact analysis and hardship policy from several of the rent reform activities. In addition, to respond to concerns about transparency, two additional questions have been added to the impact analysis, which must now be appended to the yearly MTW Supplement (See section VI.7.a) to make them more accessible to the public. Finally, to respond to concerns about the low frequency of hardship use, MTW agencies will be required to discuss their hardship policy(s), which must also be appended to the MTW Supplement, with residents during intake, reexamination, and to consider their applicability should a potential termination of assistance occur due to an MTW activity.

- **Factors for Discontinuing an Activity.**

In the MTW Operations Notice, HUD has clarified what factors may be considered when determining if a PHA should discontinue an activity.

- **Funding Cap for Local, Non-Traditional Activities**

The MTW Operations Notice provides a funding cap for local, non-traditional activities to be ten percent of an MTW agency's Housing Choice Voucher (HCV) Housing Assistant Payment (HAP) funding. MTW agencies may exceed the cap through the simplified Safe Harbor Waiver process.

- **Serving Substantially the Same Number of Households**

HUD's approach to the Substantially the Same (STS) requirement for MTW agencies has been updated so that the methodology differs for the public housing and HCV programs, since the funding calculation for each is significantly different. In the public housing program, MTW agencies must maintain a 96 percent occupancy rate to remain compliant with the STS requirement. In the HCV program, the number of families required to be housed is related to the amount of funding received. To be compliant with the STS requirement in the HCV program, the MTW agency will be required to house at least 90% of the families it would be able to house based on the HCV HAP dollars it receives each year. This method is the same concept, but simplified, from prior proposed iterations of the STS methodology.

Additional activities and waivers

Additional activities and waivers were added to Appendix I, MTW Waivers.

- Payment Standards and Rent Reasonableness
 - a. Payment Standards – Fair Market Rents (HCV)
 - b. Rent Reasonableness – Third-Party Requirement (HCV)
- Housing Quality Standards (HQS)
 - a. Pre-Qualifying Unit Inspections (HCV)
 - b. Reasonable Penalty and Incentive Payments for Landlords (HCV)
 - c. HQS - Third-Party Requirement (HCV)
 - d. Alternate Inspection Schedules (HCV)
- Project Based Vouchers (PBV)
 - a. Alternate PBV Unit Types (Shared Housing and Manufactured Housing) (HCV)

- b. Increase PBV Housing Assistance Payment (HAP) Contract Length (HCV)
- c. Limit Portability for PBV Units (HCV)
- The Moving On Policies waiver and associated activities were added to allow agencies to implement streamlined policies for operating a Moving On or similar strategy.
- Public Housing as an Incentive for Economic Progress (PH)
- Acquisition without Prior HUD Approval (PH)
- Deconcentration of Poverty Policy (PH)
- Incentives for Underutilized Developments as a Local, non-Traditional Activity (PH)

IV. Solicitation of public comments

HUD has engaged in extensive public engagement in formulating this final notice, including three prior Federal Register publications with opportunity for public comment. Nonetheless, HUD is providing an additional opportunity to comment on the activities and waivers that are implemented in section III of this notice under the subheading “*Additional activities and waivers.*” This additional opportunity for public comment does not delay the effective date of this final notice. HUD will consider any additional comments submitted going forward and will notify the public if there are any changes to the activities and waivers as a result. HUD will allow 60 days for additional public comment on the new items. HUD will provide a further Federal Register Notice if additional changes are made to the “*Additional activities and waivers.*” If there are no changes, the additional items will be implemented without further notice.

V. Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C)

of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection on www.regulations.gov.