

**FR-5994-N-04 - MTW Operations Notice for the Expansion of the  
Moving to Work Demonstration Program  
45-day Request for Comments**

**Summary of Changes from January/May 2017 Publications**

The Operations Notice for the Expansion of the Moving to Work (MTW) Demonstration Program was originally published in the Federal Register on January 23, 2017 for a 60-day public comment period. The public comment period was extended on May 4, 2017 with updates on the parameters of three waiver provisions. The January 2017 publication included questions for the public on specific sections of the MTW Operations Notice. Since the January 2017 publication HUD has: conducted listening sessions with the public, reviewed and considered all the comments received, convened the MTW Research Advisory Committee, and updated the MTW Operations Notice to reflect policy decisions that have been made. Below is a description of the revisions to the MTW Operations Notice:

**Term of Participation**

The revised Notice provides a 12-year term of participation for MTW agencies designated under Section 239 of the Fiscal Year 2016 Appropriations Act, P.L. 114-113 (2016 MTW Expansion Statute). Initially, HUD proposed that all participants in the MTW expansion would have a term ending in the Agency's FY 2028 and requested feedback from the public on how long the term of participation should be for MTW agencies. Comments varied, but most recommended a term of at least 10-years.

**Operations Notice Waivers for MTW Activities**

HUD has removed the previous general and conditional categories of waivers contained the Operations Notice and replaced them with one category – MTW Waivers.

In the January 2017 publication of the Operations Notice there were three categories of MTW waivers: 1) general waivers, which could simply be elected by an agency; 2) conditional waivers, which would require a proposal and HUD approval to use; and 3) agency requested waivers, which were waivers agencies could propose being granted to implement an activity that could not be done with either the conditional or general waivers available. This waivers format was intended to reduce the burden on both the Department and the MTW agencies by streamlining the process available for agencies to implement activities.

HUD received over two hundred comments from the public regarding the waivers format contained in the January 2017 publication of the MTW Operations Notice. Many comments focused on how the waivers appeared to be restrictive and prescriptive. In response to this and in consultation with other HUD offices, the notice now combines the general waivers and conditional waivers sections and replaces them with a single MTW Waivers section, which groups the waivers by their applicable activities. To ensure that no harm would come to residents because of activities related to time limits, work requirements, and significant rent reform, the notice requires impact analyses and hardship policies for these activities. In some cases, there are also additional safe harbors for more vulnerable populations: the elderly and disabled.

MTW agencies will complete the PHA Plan with an MTW Supplement. The supplement will include a list of all MTW Waivers from the Operations Notice, which agencies will select from to indicate what they will implement in the upcoming fiscal year. This will take the form of a checklist with additional brief descriptive information. The PHA Plan and MTW Supplement will require public review and comment prior to its submission to HUD. MTW agencies will be able to implement additional activities, request additional waivers, or request the ability to go beyond an MTW activity's safe harbor(s) by submitting an agency-specific waiver request for approval from HUD.

### **Housing Choice Voucher (HCV) Funding for MTW**

Both the public housing Capital Funds and Operating Funds will be allocated and made available in the same manner to MTW agencies as any non-MTW PHA; this remains unchanged from the January 2017 publication.

For the HCV funding, the Department received significant feedback on the 90% HAP utilization requirement and the 10% cap on non-HAP expenses in the HAP renewal eligibility. This 90% HAP utilization requirement has been removed. HAP renewal funding will instead be based on HAP expenses and non-HAP MTW expenses, subject to a HAP Renewal Eligibility Cap, which is the equivalent to the maximum amount of HAP renewal funding that the agency would have been eligible to receive under the over-leasing restrictions that apply to non-MTW PHAs. This formula was developed to comply with the 2016 MTW Expansion Statute requirement that states an MTW agency designated pursuant to the expansion cannot receive more HAP funding than the agency would have absent the MTW designation. MTW agencies will have flexibility to use HAP funding for either HAP and non-HAP eligible MTW expenses and to lease above its authorized units.

### **Existing Reserves**

Any reserves (including public housing Operating and Capital reserves and HCV HAP and Administrative Fee reserves) the MTW agency accumulated prior to signing an MTW ACC Amendment are not covered by the MTW funding flexibilities and retain their existing purpose limitations. This change was made to ensure that federal funds appropriated by Congress and allocated to a PHA before the PHA's designation as an MTW agency are used in accordance with the legal restrictions as to purpose that applied under the relevant appropriations Act under which the funds were allocated to the PHA. Accordingly, any such Federal funding unspent by the PHA that was appropriated and allocated to a PHA prior to the PHA's designation as an MTW agency must be expended in accordance with the purposes of the program to which the funds were appropriated.

### **Tracking Timing of Expenditure of Operating Subsidy**

Annual and multi-year Federal funds are available for expenditure for no more than five (5) years after the period of availability ("POA") for obligation expires. 31 U.S.C. § 1552 (commonly referred to as "the account closing law"). After this 5-year period, the account closes and the remaining funds (whether obligated or unobligated) are no longer available for any purpose. For public housing Operating Subsidy, the period of availability for obligation ends at the end of the second Federal fiscal year (i.e., the POA for obligation of FY 2017 funds ends 9/30/2018). Accordingly, PHAs must expend all Operating Subsidy grant amounts within five years of this date (i.e., for FY 2017 funds, the account will close and funds will no longer be legally available for any purpose on 9/30/2023). For public housing

Capital Funds, the period of availability for obligation ends at the end of the fourth Federal fiscal year (i.e., the POA for obligation of FY 2017 funds ends 9/30/2020). Accordingly, PHAs must expend all Capital Funds within five years of this date (i.e., for FY 2017 funds, the account will close and funds will no longer be legally available for any purpose on 9/30/2025).

HUD must monitor and track MTW expansion agencies' compliance with the Federal account closing law in the Operating Subsidy grant program and the Capital Fund grant program. Expansion MTW agencies will be required to include information in the MTW Supplement that documents the PHA's actual expenditure of Operating Fund grants by grant year. For the Capital Fund grant program, because no funds may be drawn by the PHA before they are due and payable (including Admin Fees on BLI 1410 and MTW Expenses on BLI 1492), any Capital Fund amounts remaining in LOCCS when the account closes will no longer be available to the PHA for any purpose. Thus, no additional MTW Supplement reporting is required for the Capital Fund program at this time.

### **Eligibility and Selection for the Expansion of the MTW Demonstration**

The Department has determined that, to be eligible for selection for the MTW Expansion, PHAs that have both public housing and vouchers must have high-performing status in either Public Housing Assessment System (PHAS) or its Section Eight Management Program (SEMAP) but are not required to have high-performing status in both.

### **Regionalization**

The January 2017 Operations Notice had a section requesting comments and feedback on how the regionalization provision in the 2016 MTW Expansion Statute might be implemented. While this process was helpful in developing regionalization, HUD has determined that guidance on regionalization will be issued in a separate notice, in part because that Notice will also address how regionalization may affect existing MTW agencies. The Operations Notice now simply acknowledges the applicable part of the Appropriations Act on regionalization and states that HUD will issue separate guidance.

### **Federal Advisory Committee Recommended Cohort Studies**

The January 2017 Operations Notice HUD explained the role of the Federal Advisory Committee to advise HUD on the Cohort studies that each group of onboarded agencies would be required to participate in. At the time that process was ongoing and so the Committee's recommendations, and the Department's final determinations, of what policies would be studied through the expansion were not presented. In this 30-day publication HUD details the Committee's recommendations, which the Department has accepted: the impact of MTW on small PHAs, rent reform policies that include stepped and/or tiered rent, work requirements, and landlord incentives for the HCV program.

### **New Vehicle for MTW Status**

In the previous publication HUD explained that a new MTW Agency would operate under the framework of the Operations Notice and that its participation in the MTW expansion would be formalized by an amendment to the PHA's Annual Contributions Contract (ACC amendment) or other agreement as determined by HUD. After additional consideration HUD has chosen an amendment to the ACC as the appropriate vehicle, so the "other agreement" clause has been removed.

### **MTW Annual Supplement**

In the January 2017 Operations Notice, the MTW Supplement to the Annual PHA Plan was described at a high level, and the Department requested feedback and recommendations on its form. The MTW Supplement will take the place of the MTW Plan/Report (i.e., Form 50900) for MTW Expansion PHAs and will be submitted once per year as part of the standard PHA Plan process. MTW Expansion PHAs will indicate the MTW activities they intend to implement from the list of MTW Waivers provided in the Operations Notice.

Greater detail has been added to this section. The Operations Notice now clarifies that the MTW supplement will be reviewed by the HUD Field Office. On October 9, 2018, the [MTW Supplement form](#) was published in the Federal Register for a 60-day comment period. We welcome any comments that you may have, which must be submitted on the [Federal Register webpage](#) by December 10, 2018.

### **Five MTW Statutory Requirements**

The verification requirements of four of the five MTW statutory requirements remain the same; the requirement that MTW agencies continue to assist substantially the same (STS) number of families has been revised for the expansion agencies. The STS methodology would establish a baseline ratio of dollars to families housed, which would then be applied to the agency's actual funding in each calendar year to ensure the agency is serving substantially the same number of families. Throughout participation in the MTW demonstration program, all MTW agencies must continue to meet five statutory requirements established under the 1996 MTW Statute. The January 2017 Operations Notice listed these requirements in a table with a brief description of HUD's verification approach for each. The table has been removed and the verification approach for each requirement has been expounded upon.