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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5958-N-01]

Request for Comments and Recommendations on a Revised Methodology to Track the Extent to which Moving to Work Agencies Continue to Serve Substantially the Same Number of Eligible Families

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This Notice solicits comments and recommendations on developing a revised methodology to be used to track the extent to which Public Housing Agencies (PHAs) in the Moving to Work (MTW) Demonstration Program are meeting the statutory requirement in Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, (1996 MTW Statute) to serve substantially the same number of families had they not combined their funds under the MTW Demonstration Program. This statutory requirement is further reinforced in the Standard MTW Agreements for all 39 current MTW PHAs.

DATES: *Comments Due Date:* **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: Interested persons are invited to submit comments and recommendations to the Moving to Work Office, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4130, Washington, DC 20410-0001 or email at mtw-info@hud.gov. HUD strongly encourages commenters to submit comments electronically. Communications must refer to the above docket number and title and should contain the information specified in the “Request for Public Comments” section.

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

Public Inspection of Public Comments. A summary of comments received by HUD will be made available on HUD's website at: <http://www.hud.gov/mtw>.

FOR FURTHER INFORMATION CONTACT: Questions concerning this Notice should be directed to the Moving to Work Office, Office of Public and Indian Housing, Department of Housing and Urban Development at: mtw-info@hud.gov. Communications must refer to the above docket number and title.

SUPPLEMENTARY INFORMATION

I. Background

The purpose of the MTW Demonstration Program, as provided in the 1996 MTW Statute (Pub. L. 104-134; 42 U.S.C. 1437f note), is to give PHAs and HUD the flexibility to design and test various approaches for providing and administering housing assistance that:

- reduce cost and achieve greater cost effectiveness in federal expenditures;
- give incentives to families with children where the head of household is working; is seeking work; or is preparing for work by participating in job training, educational programs, or programs that assist people to obtain employment and become economically self-sufficient; and
- increase housing choices for eligible low-income families.

In addition to the ability to request statutory and regulatory flexibility from certain public housing and Housing Choice Voucher (HCV) program rules under the U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437, *et seq.*, (1937 Act)¹ MTW PHAs combine public housing

¹ For more information about the MTW Demonstration Program and the specific programs of current MTW PHAs, please refer to the MTW website at: <http://www.hud.gov/mtw>.

operating, public housing capital, and HCV assistance into a single agency-wide funding source referred to as the “MTW Block Grant.”²

Throughout participation in the MTW Demonstration Program, MTW PHAs must continue to meet five statutory requirements. These five statutory requirements, also provided in the 1996 MTW Statute, are:

- *Statutory Requirement #1:* To ensure at least 75% of families assisted are very low-income as defined in Section 3(b)(2) of the 1937 Act;
- *Statutory Requirement #2:* To establish a reasonable rent policy that is designed to encourage employment and self-sufficiency;
- *Statutory Requirement #3:* To continue to assist substantially the same total number of eligible low-income families as would have been served had funds not been combined (herein after, the “STS requirement”);
- *Statutory Requirement #4:* To maintain a comparable mix of families (by family size) as would have been provided had the funds not been used under the MTW Demonstration Program; and
- *Statutory Requirement #5:* To ensure housing assisted under the MTW Demonstration Program meets housing quality standards established or approved by the Secretary.

HUD has processes in place to effectively monitor statutory requirements numbers 1, 2, 4, and 5. In 2013, HUD published PIH Notice 2013-02, detailing a process for monitoring and quantifying compliance with the STS Requirement, which was previously verified with only an annual certification by the MTW PHA. Since publishing PIH Notice 2013-02, HUD has determined that its methodology requires revision in order to more accurately ensure that an

² Funds awarded under Sections 8(o), 9(d), and 9(e) of the 1937 Act are eligible for inclusion in the MTW Block Grant, with the exception of funds provided for specific non-MTW HCV sub-programs.

MTW PHA is serving substantially the same number of families as would have been served had it not combined its funds under the MTW Demonstration Program.

PIH Notice 2013-02 currently utilizes a ratio that compares the number of families served annually by each MTW PHA (the numerator) to an approximation of how many families the MTW PHA would have served absent participation in the MTW Demonstration Program (the denominator). HUD then analyzes that ratio, represented as a percentage, and makes an annual determination of whether each MTW PHA is meeting the statutory requirement to serve substantially the same number of families. Through this Notice, HUD seeks to maintain the overall structure of the methodology described in PIH Notice 2013-02, but requests public feedback in revising some of the variables and how they are calculated in order to address areas identified as needing improvement.

Throughout calendar year 2015, HUD had numerous conversations with the existing 39 MTW PHAs on potential changes to improve the tracking of the STS Requirement. At that time, many points of agreement between HUD and the 39 MTW PHAs were reached, including: any tracking of the STS Requirement should be based on a combined look at public housing and HCV programs to account for an MTW PHA's available fungibility between these two programs; at a minimum, all families housed by an MTW PHA with Section 8 and Section 9 funds should be counted towards the STS Requirement in some way; and the statutory language of "substantially" indicates some flexibility below the full number of families to be served.

From these conversations between HUD and the existing 39 MTW PHAs, the following areas of feedback were developed. Specifically, the areas are:

- Connecting the number of families an MTW PHA must serve to funding received;
- Addressing the varied subsidy levels at which MTW PHAs serve families;

- Accounting for the development of affordable units with the MTW Block Grant that are outside of the public housing and HCV programs;
- Setting reasonable levels and categories of compliance;
- Adjusting for changes to the capacity of an MTW PHA to serve families and unforeseen effects; and
- Ensuring predictability under the STS Requirement for current and future MTW PHAs.

II. Request for Public Comments

HUD requests public comments and recommendations on how to revise the methodology to determine compliance with the STS Requirement in order to strengthen the areas identified for improvement. MTW and non-MTW PHAs, HUD-assisted housing residents, resident advocacy organizations, researchers, and HUD stakeholders are encouraged to submit comments. While all comments are welcome, HUD specifically requests comments in the following areas:

A. Connecting the Number of Families an MTW PHA Must Serve to Funding Received

The current methodology contained in PIH Notice 2013-02 relies on a historic snapshot of public housing occupancy and HCV utilization rates in order to set the number of families an MTW PHA is obligated to serve (the denominator of the ratio). In collecting these figures, issues related to availability and accuracy of historic data and anomalies associated with a “point-in-time” approach have arisen. Subsequent inventory adjustments affecting the denominator also rely on historic data, compounding these concerns. Further, historic public housing occupancy and HCV utilization figures do not necessarily correlate to the funding resources that MTW PHAs receive today.

Connecting the number of families an MTW PHA must serve to the MTW Block Grant funding it receives ensures equity between MTW PHAs that entered the MTW Demonstration

Program at differing levels of public housing occupancy and HCV utilization and ensures that the data upon which the STS Requirement methodology relies is accurate and verifiable by HUD systems. While the denominator will still be set as a snapshot at a point in time that is then adjusted up or down according to incremental changes in inventory, connecting the denominator to funding more directly ties the STS Requirement to an MTW PHA's capacity to house families (regardless of participation in the MTW Demonstration Program).

(1) HCV Denominator of STS Requirement Ratio

To connect the number of families an MTW PHA must serve to the funding it receives in the HCV program, HUD is considering starting with a snapshot of HCV funds received by the MTW PHA in the first calendar year the revised methodology is effective (excluding Administrative Fees and, to the extent feasible, funds provided for specific non-MTW HCV subprograms) and dividing that figure by the average agency cost to house a family in the HCV program.

One way to capture the average agency cost to house a family in the HCV program would be to take an annualized payment standard amount based on the MTW PHA's HUD-published Fair Market Rent³ and subtract an annualized average tenant contribution. This average cost to serve a family in the HCV program would need to be calculated and weighted to account for the different household sizes in each MTW PHA's locality.

- (a) How should the average agency cost to house a family in the HCV program for MTW PHAs be established to ensure it: is unaffected by MTW flexibilities already in place, is accurately weighted by household size, and reflects local market costs and factors?

³ Fair Market Rents are calculated by HUD annually and available at: www.huduser.gov/portal/datasets/fmr.html.

- (b) If payment standards are utilized in determining the average cost to house a family in the HCV program for MTW PHAs, what level of payment standard should be used?⁴
- (c) What other factors should HUD consider in establishing the number of families an MTW PHA must serve with HCV funds?

(2) Public Housing Denominator of STS Requirement Ratio

To connect the number of families an MTW PHA must serve to the funding it receives in the public housing program, HUD is considering starting with a snapshot of public housing operating funds received by the MTW PHA in the first calendar year the revised methodology is effective and dividing that figure by the average agency cost to operate a public housing unit.

One way to capture the average agency cost to operate a public housing unit would be to approximate the amount of public housing operating subsidy the MTW PHA would receive per unit under regulation for the MTW PHA's existing inventory of public housing units.

HUD seeks suggestions on other approaches that establish a public housing denominator that encourages the use of existing public housing units and ensures accountability for MTW PHAs that receive more public housing operating subsidy than other MTW and non-MTW PHAs.⁵

- (a) How should the average agency cost to operate a public housing unit for MTW PHAs be established to ensure it: is unaffected by MTW flexibilities already in place, accounts for local market costs and factors, and ensures accountability for MTW PHAs that receive higher levels of public housing operating subsidy?

⁴ Non-MTW PHAs may set payment standards between 90-110% of HUD-published Fair Market Rents. For non-MTW PHAs payment standards outside of this basic range must be approved by HUD.

⁵ While the public housing operating subsidy is calculated differently for some MTW PHAs, all MTW PHAs receive public housing capital funds in accordance with regulation (24 CFR part 905 or its successor).

- (b) What other factors should HUD consider in establishing the number of families an MTW PHA must serve with public housing funds?

B. Addressing the Varied Subsidy Levels at which MTW PHAs Serve Families

The MTW Demonstration Program allows MTW PHAs to design local programs that serve eligible families in unique ways to address local issues and needs. This may result in an MTW PHA creating a rental assistance structure that offers a lower level of subsidy than would be available to non-MTW PHAs in the traditional HCV and public housing programs. For example, an MTW PHA may lower its share of housing assistance, increasing the tenant share, to serve a larger number of families that do not require a high level of housing assistance. Such local programs in the MTW Demonstration Program are often referred to as “Shallow Subsidies.” In order to maintain the integrity of the STS Requirement and avoid allowing Shallow Subsidies to artificially inflate the numerator of the ratio, it is necessary to include families served in this manner, but also to count them in a modified way.

HUD is considering approaching Shallow Subsidies by identifying families receiving assistance from the MTW PHA with a rent burden of 50% or greater and counting those families with half a credit in the numerator of a ratio. For example, two households with a rent burden of 50% or greater would count as one full family served in the numerator of the ratio.

- (1) How should HUD define and address Shallow Subsidies in the STS Requirement methodology?
- (2) If the rent burden of the family receiving assistance is utilized in defining Shallow Subsidies, what level of rent burden should be used? How should the households meeting that level of rent burden be counted in the numerator of the STS Requirement methodology?

- (3) If the rent burden of the family receiving assistance is utilized in defining Shallow Subsidies, should certain exceptions be made for households paying minimum rent, zero income households, and/or households opting for a unit in an area of opportunity that is above the standard affordability threshold? Are there other households that should be included as exceptions, therefore receiving a full credit despite rent burden?
- (4) What other factors should HUD consider in addressing Shallow Subsidies?

C. Accounting for the Development of Affordable Units with the MTW Block Grant that are Outside of the Public Housing and HCV Programs

The MTW Demonstration Program allows MTW PHAs to use the MTW Block Grant to develop affordable housing units that are outside of the public housing and HCV programs. Such development allows for the creation of important affordable housing resources, but must be balanced with the existing and immediate needs of families waiting for housing assistance. It is therefore necessary to relate the amount of the MTW PHA's MTW Block Grant investment to the number of affordable units developed.

One way to accomplish this is to divide the MTW Block Grant investment in the development of affordable housing units outside the public housing and HCV programs by the HUD-published Total Development Cost (TDC).⁶ This number of units would then be credited annually in the numerator of the MTW PHA's STS Requirement calculation for the length of time the units remained affordable. There would be no effect on the denominator.

- (1) Does the MTW Block Grant investment amount divided by TDC approach appropriately capture this type of MTW flexibility?

⁶ Total Development Costs are calculated by HUD annually and available at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/capfund. HUD would use these and not any locally defined Total Development Costs, in this analysis.

- (2) Are there other suggestions for how the development of affordable housing units outside of the public housing and HCV programs can be included in the numerator of the ratio?

D. Setting Reasonable Levels and Categories of Compliance

PIH Notice 2013-02 currently measures compliance of the STS Requirement annually based the fiscal year of the MTW PHA. This annual assessment is important in ensuring ongoing monitoring, but as HUD seeks to connect the methodology of the STS Requirement to annual funding received (which is provided based on a calendar year), a transition to determinations being made each calendar year for all MTW PHAs is necessary.

In making annual determinations, PIH Notice 2013-02 established levels of compliance that allow for small or “nominal” dips below 100 percent and that recognize a variety of scenarios that may cause an MTW PHA to have lower percentages in a given year or years. With a revised methodology to track the STS Requirement, it is necessary to reexamine the levels and categories of compliance.

- (1) How should “Substantially the Same” be interpreted under the 1996 MTW Statute?
- (2) Should there be a percentage below 100% that is considered fully compliant with the STS Requirement without further justification by the MTW PHA? What should this level be and why?
- (3) Should there be a percentage below 100% that is considered fully compliant with the STS Requirement with further justification by the MTW PHA and approval by HUD? What should this level be and why? What justifications should be allowable?
- (4) What should be considered “non-compliance” under the STS Requirement? What enforcement actions should be taken by HUD and what opportunities for corrective actions should be available to MTW PHAs?

E. Adjusting for Changes to the Capacity of an MTW PHA to Serve Families and Unforeseen Effects

To determine the number of families an MTW PHA must serve under the STS Requirement, HUD envisions annually aggregating the HCV and public housing denominators (discussed in Section II.A(1) and (2) above) and then adjusting that figure up or down according to increases or decreases in an MTW PHA's capacity to serve families (incremental changes to the MTW PHA's inventory). This approach addresses standard inventory changes and is similar to that contained in the existing PIH Notice 2013-02.

In addition to annual adjustments for standard inventory changes, there may also be a need for limited adjustments to account for unforeseen effects caused by changes in markets and costs. As the revised STS methodology will likely rely on variables that include market and program costs, an opportunity to account for significant changes that occur to those costs after the denominator is established may be necessary. This would be separate from any of the standard incremental inventory increases or decreases contained in PIH Notice 2013-02.

- (1) The variables that result in standard, annual incremental increases or decreases to an MTW PHA's capacity to serve families are listed in PIH Notice 2013-02. Should HUD consider any changes to this list?
- (2) Should there be future adjustments of the denominator to account for cost changes outside the scope of the MTW Demonstration Program? If so should such adjustments be elective for each MTW PHA or applied at fixed points to all MTW PHAs? If applied at fixed points, at what intervals should such adjustments occur? What types and levels of changes to costs should be considered in such potential recalculations?

F. Ensuring Predictability under the STS Requirement for Current MTW PHAs

If a new methodology for tracking the STS Requirement for current MTW PHAs is put in place, sufficient transition and notification of such a change would be important. With this in mind:

- (1) What, if any, transition time should be made available to current MTW PHAs in moving from the existing methodology in PIH Notice 2013-02 to the revised methodology?
- (2) What testing and provisional data should be made available to MTW PHAs in moving from the existing methodology in PIH Notice 2013-02 to the revised methodology?
- (3) What are other suggestions to ensure predictability for MTW PHAs with regard to the STS Requirement?

G. Other Feedback

In addition to the specific areas above, the Department welcomes any feedback from the public on improvements that could be made to improve monitoring of the STS Requirement.

- (1) What are other suggestions to improve monitoring of the STS Requirement not covered in other portions of this Notice?
- (2) Should this revised methodology apply to both current MTW PHAs and PHAs that will be added to the MTW Demonstration Program through the MTW Expansion detailed in the 2016 Consolidated Appropriations Act, Pub. L. 114-113, Sec. 239?

Dated: December 14, 2016

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General Deputy Assistant Secretary for
Public and Indian Housing

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