



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5994-N-02]

**Operations Notice for the Expansion of the Moving to Work Demonstration Program Solicitation of Comment; Waiver
Revision and Reopening of Comment Period**

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice.

Summary: This notice revises the parameters of three waiver provisions and reopens the comment period for HUD's January 23, 2017 Federal Register notice entitled "Operations Notice for the Expansion of the Moving To Work Demonstration Program Solicitation of Comment."

DATES: Comment due date: The comment deadline for the January 23, 2017 notice, as revised by this notice, is **[Insert Date that is 30 Days from the Date of Publication]**.

FOR FURTHER INFORMATION CONTACT: Marianne Nazzaro, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4130, Washington, DC 20410; email address mtw-info@hud.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The MTW demonstration program was established under Section 204 of Title II of section 101(e) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104-134 (approved April 26, 1996). The demonstration was significantly expanded under the 2016 MTW expansion statute, Section 239 of Division L, Title IV of the Consolidated Appropriations Act, 2016, Public Law 114-113 (approved December 18, 2015) (2016 MTW expansion). The 2016 MTW expansion authorizes HUD to expand the MTW demonstration program from the current level of 39 PHAs to an additional 100 PHAs over a period of seven years.

On January 23, 2017 (82 FR 8056), HUD published in the Federal Register a notice that sought comment on the proposed methods of operations for PHAs joining the MTW demonstration through the 2016 MTW expansion. Included in that notice are appendices that list available waivers, and the parameters of those waivers. These include Appendix A, “General Waivers” (82 FR 8071 et seq.), and Appendix B, “Conditional Waivers” (82 FR 8076 et seq.). General waivers are those that will be granted without HUD review beyond the MTW application review. Conditional waivers are those waivers that will be granted following additional HUD review and approval.

This notice makes a revision to one of the Appendix A waivers, and two of the Appendix B waivers.

II. Revisions to Parameters of Waivers

A. Appendix A: General Waivers.

For the waiver entitled “Authorizations Related to Family Self Sufficiency,” one of the available activities listed in the fourth column is: “The Agency is authorized to develop its own recruitment and selection procedures for its FSS program(s).” In the fifth column, “Parameters,” the corresponding statement as originally published (82 FR 8072 (January 23, 2017)) reads:

Recruitment, eligibility, and selection policies and procedures must be consistent with the Department’s nondiscrimination and equal opportunity requirements. Agency may not require families to participate in the program as a condition of receiving housing assistance. Agency may not include current work status, work history and/or source of income as part of the selection criteria. “Family” is not limited to families with a member who is able to work full time, but is defined broadly so as not to exclude families with a member who is disabled but able to work, disabled but unable to work, or working as a caregiver for a family member with a disability.

This statement is revised by this notice to remove the second sentence and add two new sentences in its place, so that the statement reads (emphasis added):

Recruitment, eligibility, and selection policies and procedures must be consistent with the Department’s nondiscrimination and equal opportunity requirements. A PHA may make FSS participation mandatory by waiving the statutory and regulatory definition of FSS family or participating family which is “a family that resides in public housing or receives assistance under the rental certificate or rental voucher programs, and that elects to participate in the FSS program” (24 CFR 984.103(b)). The Agency may not make FSS participation mandatory for individuals that do not meet the definition of an eligible family at Section 23(n)(3) of the U.S. Housing Act of 1937 (1937 Act), 42 U.S.C. 1437u(n)(3), and those exempted from the Community Service Requirement under Section 12(c)(2)(A), (B), (D) and (E) of the 1937 Act, 42 U.S.C. 1437j(c)(2)(A), (B), (D), and (E). If the Agency requires FSS participation as a condition for housing subsidy, the Agency must develop and adopt a non-compliance policy and a hardship exemption policy and conduct an impact analysis in accordance with MTW guidance prior to the implementation of the activity. If an Agency terminates the housing subsidy or tenancy of a family for alleged violation of mandatory FSS participation, it will provide a notice at least 60 days prior to the date of termination informing the family that it is entitled to a hearing under the procedures stated in the Agency’s Grievance Procedure (24 CFR part 966, subpart B). Any resulting termination of assistance or tenancy must be based on the noncompliance policy, and there shall be no termination of tenancy or assistance if such action would result in hardship for the family under the hardship policy. The noncompliance policy may not include minor infractions of FSS as a basis for termination of tenancy or subsidy. An

Agency may not include current work status, work history and/or source of income as part of the selection criteria. “Family” is not limited to families with a member who is able to work full time, but is defined broadly so as not to exclude families with a member who is disabled but able to work, disabled but unable to work, or working as a caregiver for a family member with a disability.

B. Appendix B: Conditional Waivers.

For waiver 3 under the “Activities Related to Public Housing” heading, entitled “PH—Work Requirements,” the first sentence of the “Available Activities” statement as originally published (82 FR 8079 (January 23, 2017)) reads:

Work Requirement (PH): The Agency may implement a work requirement for public housing residents between the ages of 18 and 54.

This sentence is revised to read:

Work Requirement (PH): The Agency may implement a work requirement for public housing residents between the ages of 18 and 61.

For waiver 6 under the “Activities Related to Housing Choice Vouchers” heading, entitled “HCV & PBV—Work Requirements,” the first sentence of the “Available Activities” statement as originally published (82 FR 8079 (January 23, 2017)) reads:

Work Requirement (HCV & PBV): The Agency may implement a work requirement for HCV and PBV residents between the ages of 18 and 54.

This sentence is revised to read:

Work Requirement (HCV & PBV): The Agency may implement a work requirement for HCV and PBV residents between the ages of 18 and 61.

Dated: May 2, 2017

Jemine A. Bryon
General Deputy Assistant Secretary for
Public and Indian Housing

[FR-5994-N-02]

APPENDIX A EXCERPT

(Note: Comments are being accepted on the original notice and appendices published at 82 FR 8056 (January 23, 2017) until the comment deadline in this notice. These excerpts from Appendices A and B are provided to show the context of the changes described in this notice)

#	Waiver Name	Waiver Description	Regulations Waived	Available Activities	Parameters
ACTIVITIES RELATED TO PUBLIC HOUSING AND HOUSING CHOICE VOUCHERS					
3	Authorizations Related to Family Self Sufficiency	The Agency is authorized to operate any of its existing self-sufficiency and training programs, including its Family Self-Sufficiency (FSS) Program and any successor programs exempt from certain HUD program requirements. If the Agency receives dedicated funding for an FSS coordinator, such funds must be used to employ a self-sufficiency coordinator. In developing and operating such programs, the Agency is authorized to establish strategic relationships and partnerships with local private and public agencies and service providers to leverage expertise and funding. In implementing this waiver, the Agency must execute a contract of participation, or other locally developed agreement, that is at least 5 years but no more than 10 years. However, notwithstanding the above,	Certain provisions of Section 23 of the 1937 Act and 24 C.F.R. 984	<u>Waive Operating a Required FSS Program (Both):</u> The Agency is authorized to waive its requirement to operate the traditional FSS program.	
				<u>Alternative to Program Coordinating Committee (Both):</u> The Agency is authorized to create an alternative structure for securing local resources to support an FSS program.	
				<u>Alternative Family Selection Procedures (Both):</u> The Agency is authorized to develop its own recruitment and selection procedures for its FSS program(s).	Recruitment, eligibility, and selection policies and procedures must be consistent with the Department's nondiscrimination and equal opportunity requirements. A PHA may

#	Waiver Name	Waiver Description	Regulations Waived	Available Activities	Parameters
	<p>Authorizations Related to Family Self Sufficiency (continued)</p>	<p>any funds granted pursuant to a competition must be used in accordance with the NOFA and the approved application and work plan.</p>			<p>make FSS participation mandatory by waiving the statutory and regulatory definition of FSS family or participating family which is “a family that resides in public housing or receives assistance under the rental certificate or rental voucher programs, and that elects to participate in the FSS program” (24 CFR 984.103(b)). The Agency may not make FSS participation mandatory for individuals that do not meet the definition of an eligible family at Section 23(n)(3) of the U.S. Housing Act of 1937 (1937 Act) (42 U.S.C. 1437u(n)(3)), and those exempted from the Community Service Requirement under Section 12(c)(2)(A), (B), (D) and (E) of the 1937 Act, 42 U.S.C. 1437j(c)(2)(A), (B), (D), and (E). If the Agency requires FSS participation as a condition for housing subsidy, a hardship policy and impact analysis must be developed and adopted in accordance with MTW guidance prior to the</p>

#	Waiver Name	Waiver Description	Regulations Waived	Available Activities	Parameters
	Authorizations Related to Family Self Sufficiency (continued)				<p>implementation of the activity. If an Agency terminates the housing subsidy or tenancy of a family for alleged violation of mandatory FSS participation, the family will be entitled to a hearing under the Agency's Grievance Procedure (24 CFR part 966, subpart B). An Agency may not include current work status, work history and/or source of income as part of the selection criteria. "Family" is not limited to families with a member who is able to work full time, but is defined broadly so as not to exclude families with a member who is disabled but able to work, disabled but unable to work, or working as a caregiver for a family member with a disability.</p>
				<p><u>Modify or Eliminate the Contract of Participation (Both):</u> The Agency is authorized to modify the terms of, or eliminate the contract of participation, in lieu of a local form.</p>	<p>The Agency may modify the terms of the contract of participation to align with adjustments made to its FSS program(s) using MTW flexibility. Further, the Agency may discontinue use of the contract of participation and instead</p>

#	Waiver Name	Waiver Description	Regulations Waived	Available Activities	Parameters
	<p data-bbox="239 542 449 667">Authorizations Related to Family Self Sufficiency (continued)</p> <p data-bbox="239 1182 449 1307">Authorizations Related to Family Self Sufficiency (continued)</p>			<p data-bbox="1148 573 1503 829"><u>Policies for Addressing Increases in Family Income</u> (Both): The Agency is authorized to set its own policies for addressing increases in family income during participation in the FSS program.</p> <p data-bbox="1148 1128 1482 1284"><u>Calculating FSS Credits</u> (Both): The Agency is authorized to create alternative methods for computing the family's FSS credit.</p>	<p data-bbox="1530 271 1831 363">employ a locally-developed agreement that codifies the terms of participation.</p> <p data-bbox="1530 391 1831 1008">Consistent with the goals and structure of its MTW FSS program, the Agency can set policies for whether income increases are recognized for purposes of increasing rent or changing the amount of funds moved to escrow/savings through the program. The Agency may not use income increases during participation in the FSS program to change a family's eligibility status for purposes of participation in the FSS program or for the receipt public housing or HCV assistance.</p> <p data-bbox="1530 1040 1831 1393">The Agency may set policies to defer income increases to savings OR to allow participants to earn savings deposits based on meeting certain program milestones. Such policies must be made clear to participants in writing prior to starting their participation in the</p>

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					<p>program.</p> <p><u>Disbursement of Savings</u> (Both): The Agency may set its own policies for when savings funds can be disbursed to participants.</p> <p>Consistent with the goals and structure of its MTW FSS program, the Agency can set policies for when savings are disbursed to participants. This could mean all funds are disbursed at once, or at certain key points of participation. Such policies must be made clear to participants in writing prior to starting their participation in the program.</p>

APPENDIX B EXCERPT

#	Waiver Name	Waiver Description	Regulations Waived	Available Activities	Parameters
ACTIVITIES RELATED TO PUBLIC HOUSING					
3	PH – Work Requirements	<p>The Agency is authorized to implement a requirement that a specified segment of its public housing residents work as a condition of tenancy subject to subject to all applicable Fair Housing Requirements and the mandatory admission and prohibition requirements imposed by sections 576-578 of the Quality Housing and Work Responsibility Act of 1998 and Section 428 of P.L. 105-276. Those individuals exempt from the Community Service Requirement in accordance with Section 12(c)(2)(A),(B), (D) and (E) of the 1937 Act are also exempt from the Agency’s work requirement.</p>	<p>Certain provisions of Section 3 of the 1937 Act and 24 C.F.R. 960.206</p>	<p><u>Work Requirement (PH):</u> The Agency may implement a work requirement for public housing residents between the ages of 18 and 61. The requirement shall be no less than 15 hours of work per week and no more than 30 hours of work per week. Work requirements shall not be applied to exclude, or have the effect of excluding, the admission of or participation by persons with disabilities or families that include persons with disabilities. Work requirements shall not apply to person with disabilities or families that include persons with disabilities. However, persons with disabilities and families that include persons with disabilities must have equal access to the full range of program services and other incentives.</p>	<p>Residents must have the opportunity to utilize the provisions of the Agency's Grievance Procedure to resolve a dispute regarding a determination that a resident has failed to comply with the work requirement. The Agency must update its ACOP to include a description of the circumstances in which residents shall be exempt for the requirement and hardship policies. The ACOP should include a description of what is considered work as well as other activities that shall be considered acceptable substitutes for work. Services, or referrals to services, must be provided by the Agency to support preparing families to comply with this requirement. The hardship policy in the</p>

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					<p>ACOP should apply to residents who are actively trying to comply with the Agency's work requirement, but are having difficulties obtaining work or an acceptable substitute. The ACOP should also describe the consequences of failure to comply with the work requirement. Agencies may not implement the PH-Work Requirements Waiver on individuals exempted from the Community Service Requirement under Section 12(c)(2)(A),(B), (D) and (E).</p> <p>While the work requirements do not apply to persons with disabilities or families that include a person with disabilities, such persons and families are not precluded from working or engaging in substitute activities (such as caring for a family member who is disabled). Regardless of the level of</p>

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					engagement with work or substitute activities, persons and families that include persons with disabilities must have equal access to services or referral to services to support their efforts to obtain work or an acceptable substitute, and any other services or other incentives associated with the program.
ACTIVITIES RELATED TO HOUSING CHOICE VOUCHERS					
6	<p>HCV & PBV – Work Requirements</p> <p>HCV & PBV – Work Requirements (continued)</p>	<p>The Agency is authorized to implement a requirement that a specified segment of its HCV and PBV residents work as a condition of tenancy subject to all applicable Fair Housing Requirements.</p>	<p>Certain provisions of Sections 8(o)(7)(a), 8(o)(13)(F), and 8(o)(13)(G) of the 1937 Act and 24 C.F.R. 982.303, 982.309 and 983 Support F</p>	<p><u>Work Requirement (HCV & PBV):</u> The Agency may implement a work requirement for HCV and PBV residents between the ages of 18 and 61. The requirement shall be no less than 15 hours of work per week and no more than 30 hours of work per week. The Agency shall provide supportive services to assist families obtain employment or an acceptable substitute. Work requirements shall not be applied to exclude, or have the effect of excluding, the admission of or participation by persons with disabilities or families that include persons with disabilities. Work requirements shall not apply to persons with disabilities or families that include persons with disabilities. However, persons</p>	<p>The Agency must update its Administrative Plan to include a description of the circumstances in which families shall be exempt from the requirement. The Administrative Plan must also include a hardship policy. The Administrative Plan should include a description of what is considered work as well as other activities that shall be considered acceptable substitutes for work. Services, or referrals to services, must be provided by the Agency to support</p>

#	Waiver Name	Waiver Description	Regulations Waived	Available Activities	Parameters
				with disabilities and families that include persons with disabilities must have equal access to the full range of program services and other incentives.	preparing families for the termination of assistance. The hardship policy in the Administrative Plan should apply to families who are actively trying to comply with the Agency's work requirement, but are having difficulties obtaining work or an acceptable substitute. The Administrative Plan should also describe the consequences of failure to comply with the work requirement.