



**Billing Code 4210-67**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**[Docket No. FR-5994-N-03]**

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

**AGENCY:** Office of Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** 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 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. This Operations Notice for the Expansion of the MTW Demonstration Program (Operations Notice) establishes requirements for the implementation and continued operation of the MTW demonstration program pursuant to the 2016 MTW Expansion Statute.

**DATES:** Comment Due Date: [INSERT DATE THAT IS 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

***Submission of Comments:***

**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 electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Comments submitted electronically through the [www.regulations.gov](http://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 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](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Marianne Nazzaro, Director, Moving to Work Demonstration Program, 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](mailto:mtw-info@hud.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Section 239 of the Fiscal Year 2016 Appropriations Act, P.L. 114-113 (2016 MTW Expansion Statute), signed by the President in December 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 published on January 23, 2017, in the Federal Register, 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. HUD took all comments received into consideration.

Changes to this Notice have been made to incorporate feedback from the two previous publications and to reflect policy decisions. The primary changes are as follows:

- The term of participation has been set at 12 years from the year of designation in response to public comments for the term to be at least 10 years from the year of designation.

- In response to public comments, the Department removed the General Waivers and Conditional Waivers categories and replaced them with a singular MTW Waivers category, which MTW agencies may implement without further approval from HUD.
  - In restructuring the MTW Waivers, the Notice now includes safe harbors, which are defined as the additional requirements, beyond those specified in the activity description, that the agency must follow in implementing activities without further HUD approval.
  - MTW Waivers now include specific guidance on impact analyses, hardship policies, and applicability of waivers to elderly/disabled families.
  - An additional MTW Waiver was added: “Increase Elderly Age,” which allows agencies to amend the definition of an elderly person to be an individual who is at least sixty-five.
  - The Homeownership Waiver was removed. Upon reviewing this waiver, the Department determined that the activities provided to agencies under the waiver were already available under the Section 32 Homeownership Program.
- The 90 percent voucher utilization requirement was removed. The MTW Housing Assistance Payment (HAP) Renewal Formula has been revised to use as a base, all prior-year MTW-eligible Housing Choice Voucher (HCV) funding expenses paid from HAP, including HAP expenses plus non-HAP expenses.
- For a prospective agency to be eligible for selection to the MTW demonstration, it must be a high performer in either the Public Housing Assessment System (PHAS) or the Section Eight Management Assessment Program (SEMAP).

- Regionalization was removed from the MTW Operations Notice and will be implemented through a separate forthcoming notice.
- Agencies will formalize their MTW status with an amendment to their Annual Contributions Contract.
- The monitoring of the requirement that an MTW agency designated pursuant to the 2016 MTW Expansion Statute continues to assist substantially the same number of families has been simplified. Compliance will be determined using a baseline ratio of total public housing and HCV HAP funding to families served.

### MTW Demonstration Program

The MTW demonstration program was first 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, 110 Stat. 1321–281; 42 U.S.C. 1437f note (1996 MTW Statute)<sup>1</sup> to provide statutory and regulatory flexibility<sup>2</sup> to participating PHAs under three statutory objectives. Those three statutory objectives are to:

- reduce cost and achieve greater cost effectiveness in Federal expenditures;
  - give incentives to families with children where the head of household is working, 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

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<sup>1</sup> PHAs currently operating an MTW demonstration program include PHAs with an active MTW agreement as of December 15, 2015. PHAs currently operating an MTW program do not include PHAs that previously participated in the MTW demonstration and later left the demonstration.

<sup>2</sup> The MTW demonstration program may only provide certain flexibilities under the 1937 Act. For more information on the history of the MTW demonstration program, please go to: [www.hud.gov/mtw](http://www.hud.gov/mtw).

- increase housing choices for eligible low-income families.

To achieve these objectives, PHAs selected for participation in the MTW demonstration are given exemptions from many existing public housing and HCV rules and offered more flexibility with how they use their Federal funds. MTW agencies use this opportunity presented by the MTW demonstration to better address local housing needs. HUD learns from the experience of MTW agencies to develop new housing policy recommendations that can positively impact assisted housing delivery for PHAs nationwide.

In addition to statutory and regulatory relief,<sup>3</sup> 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) – hereinafter referred to as “MTW Funding.”<sup>4</sup> These flexibilities do not negate the need for both the PHA and HUD to be able to account for the funding from its original source to the date of its ultimate eligible use<sup>5</sup> by the PHA, to comply with Federal grant and financial management requirements, and to use funds effectively and efficiently for their eligible purposes. As the Department continues to implement program-specific financial management policies in its core housing programs, MTW agencies will be subject to the same requirements and procedures as non-MTW agencies. Therefore, the requirements and procedures described in this Notice may change as new financial management policies are implemented over time.

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<sup>3</sup> For more information about the MTW demonstration program and the specific activities of existing MTW agencies, please refer to the MTW website at [www.hud.gov/mtw](http://www.hud.gov/mtw).

<sup>4</sup> Funds awarded under Sections 8(o), 9(d), and 9(e) of the 1937 Act are eligible for expanded uses pursuant to MTW fungibility, with the exception of funds provided for specific non-MTW HCV sub-programs. Other funds a PHA may receive (i.e., grant funds under another obligating document) are likewise not covered by MTW flexibilities and must be tracked and reported under the applicable rules and requirements.

<sup>5</sup> The date of the “ultimate eligible use” means the date of disbursement by the PHA for an eligible purpose, which would remove the funding from the PHA’s account and the PHA’s control.

Throughout participation in the MTW demonstration program, MTW agencies must continue to meet five statutory requirements established under the 1996 MTW Statute. The five statutory requirements are:

- at least 75 percent of the families assisted by participating demonstration public housing authorities shall be very low-income families, as defined in section 3(b)(2) of the United States Housing Act of 1937;
- establishing a reasonable rent policy, which shall be designed to encourage employment and self-sufficiency by participating families, consistent with the purpose of this demonstration, such as by excluding some or all of a family's earned income for purposes of determining rent;
- continuing to assist substantially the same total number of eligible low-income families as would have been served had the amounts not been combined;
- maintaining a comparable mix of families (by family size) as would have been provided had the amounts not been used under the demonstration; and
- assuring that housing assisted under the demonstration program meets housing quality standards established or approved by the Secretary.

Currently, there are 39 agencies<sup>6</sup> participating in the MTW demonstration program. The administrative structure for these 39 agencies is outlined in the Standard MTW Agreement, a contract between each existing MTW agency and HUD. The 2016 MTW Expansion Statute extended the term of the Standard MTW Agreement through each of the existing MTW agencies' 2028 fiscal year.

#### 2016 Expansion of the MTW Demonstration Program

As the 2016 MTW Expansion Statute directs, HUD is authorized to expand the MTW demonstration program from the current level of 39 agencies to an additional 100 agencies over a period of 7 years, ending in 2023. In expanding the MTW demonstration, HUD intends to build on the successes and lessons learned from the demonstration thus far. The vision for the MTW expansion is to learn from MTW interventions to improve the delivery of Federally assisted housing and promote self-sufficiency for low-income families across the Nation. Through the expansion, HUD will extend flexibility to a broader range of PHAs both in terms of size and geographic diversity and will balance the flexibility inherent in MTW with the need for measurement, evaluation, and prudent oversight.

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<sup>6</sup> The 39 agencies are: Alaska Housing Finance Corporation; Atlanta Housing Authority; Housing Authority of the City of Baltimore; Boulder Housing Partners; Cambridge Housing Authority; Housing Authority of Champaign County; Charlotte Housing Authority; Chicago Housing Authority; Housing Authority of Columbus, Georgia; District of Columbia Housing Authority; Delaware State Housing Authority; Fairfax County Redevelopment and Housing Authority; Holyoke Housing Authority; Keene Housing; King County Housing Authority; Lawrence-Douglas County Housing Authority; Lexington-Fayette Urban County Housing Authority; Lincoln Housing Authority; Louisville Metropolitan Housing Authority; Massachusetts Department of Housing and Community Development; Minneapolis Public Housing Authority; Housing Authority of the City of New Haven; Oakland Housing Authority; Orlando Housing Authority; Philadelphia Housing Authority; Housing Authority of the City of Pittsburgh; Portage Metropolitan Housing Authority; Home Forward (Portland, OR); Housing Authority of the City of Reno; San Antonio Housing Authority; Housing Authority of the County of San Bernardino; San Diego Housing Commission; Housing Authority of the County of San Mateo; Housing Authority of the County of Santa Clara/City of San Jose; Seattle Housing Authority; Tacoma Housing Authority; Housing Authority of Tulare County; and Vancouver Housing Authority.

HUD will select the additional 100 PHAs in cohorts, with applications for each cohort to be sought via PIH Notice. For each cohort of agencies selected, the 2016 MTW Expansion Statute requires HUD to direct all the agencies within the cohort to implement one specific policy change, which HUD will evaluate rigorously. MTW agencies may implement policy changes in addition to the policy change directed by HUD as long as those policy changes do not conflict or interfere with the cohort study. As required by the 2016 MTW Expansion Statute, the HUD-appointed MTW Research Advisory Committee, described further below, advised HUD on the policy changes to be tested through the new cohorts of MTW agencies and the methods of research and evaluation.

The 2016 MTW Expansion Statute also includes a provision allowing the Secretary to designate an MTW agency as a regional MTW agency – at the request of said agency – should the Secretary determine that unified administration of assistance “under sections 8 and 9 of the United States Housing Act of 1937 (42 U.S.C. 1437f and g)” by that agency across multiple jurisdictions will lead to a) efficiencies and to b) greater housing choice for low-income persons in the region. HUD will issue separate guidance regarding how an MTW agency may be designated as a regional MTW agency.

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

The 2016 MTW Expansion Statute provides that the 100 MTW agencies selected must be high performers in either HUD’s Public Housing Assessment System (PHAS) or its Section Eight Management Assessment Program (SEMAP) at the time of application to the demonstration, and represent geographic diversity across the country. Further, the 2016 MTW Expansion Statute states that of these 100 PHAs:

- no less than 50 PHAs shall administer 1,000 or fewer aggregate housing voucher and public housing units;

- no less than 47 PHAs shall administer 1,001-6,000 aggregate housing voucher and public housing units;
- no more than 3 PHAs shall administer 6,001-27,000 aggregate housing voucher and public housing units;
- no PHA shall be granted MTW designation if it administers more than 27,000 aggregate housing voucher and public housing units; and
- five of the PHAs selected shall be agencies with a Rental Assistance Demonstration (RAD) portfolio award.

HUD will issue separate PIH Notices, by cohort, soliciting applications from eligible PHAs for participation in the MTW demonstration. These Notices, when issued, will outline the specific application submission requirements, evaluation criteria, and process HUD will use when selecting PHAs for MTW designation.

The PHA sizes eligible for participation in the MTW demonstration are statutory and were defined by Congress; therefore, HUD is unable to waive or modify those size restrictions.

#### MTW Research Advisory Committee

The 2016 MTW Expansion Statute required HUD to form and consult with a Federal MTW Research Advisory Committee (the Committee), established in May 2016. The Committee is governed by the Federal Advisory Committee Act (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees. The purpose of the Committee is to provide independent advice with respect to the policies to be studied through the MTW expansion and the related methods of research and evaluation. The Committee is charged with advising HUD on the following:

- policy proposals and evaluation methods for the MTW demonstration to inform the one specific policy change required for each cohort of agencies;
- rigorous research methodologies to measure the impact of policy changes studied;
- policy changes adopted by MTW agencies that have proven successful and can be applied more broadly to all PHAs; and
- statutory and/or regulatory changes (specific waivers and associated activities, and program and policy flexibility) necessary to implement policy changes for all PHAs.

The Committee has no role in reviewing or selecting the 100 PHAs to participate in the expansion of the MTW demonstration.

The Committee members were appointed to a two-year term in June 2016 by the HUD Secretary and chosen to ensure balance, diversity, and a broad representation of ideas.<sup>7</sup> In May 2018, HUD extended the Committee and the members' appointments for another two-year term. As required by the 2016 MTW Expansion Statute, the Committee includes program and research experts from HUD; a representation of MTW agencies, including current and former residents; and independent subject matter experts in housing policy research.

Based on the advice of the Committee, HUD will study, by cohort of MTW agencies, the following four policies (which are in no particular order except for the first two cohorts):

- *Impact of MTW Flexibility on Small and Medium PHAs*: In this first cohort, HUD will evaluate the overall effects of MTW flexibility on a PHA and the residents it serves. The

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<sup>7</sup> For more information on the establishment, purpose, members, and meeting content of the MTW Research Advisory Committee, please go to: [https://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph/mtw/expansion/rac](https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/mtw/expansion/rac).

Committee recommended that PHAs with under 1,000 aggregate public housing and voucher units be included in this cohort. To date, only one of the existing MTW agencies has less than 1,000 aggregate units, while the majority of PHAs nationwide fit into this size category.

- *Rent Reform*: In this second cohort, HUD will evaluate different rent reform models. Rent reform models may be income based and may include tiered rents and/or stepped-up rents.
- *Work Requirements*: In this cohort, HUD will evaluate work requirements for residents/participants who are non-elderly, non-disabled, and at least 18 years old.
- *Landlord Incentives*: In this cohort, HUD will evaluate how to improve landlord participation in the HCV program through incentives such as participation payments, vacancy payments, alternate inspection schedules and other methods.

#### Operations Notice for the Expansion of the MTW Demonstration

Through the MTW expansion, HUD seeks to design and test new approaches to providing and administering housing assistance and then to apply the lessons-learned nationwide, all within a framework of simplifying program administration. This is laid out in HUD's guiding principles for the expansion, which are: 1) simplify; 2) learn; and 3) apply. The Operations Notice is an embodiment of this vision. The Operations Notice describes a framework for the MTW demonstration that streamlines and simplifies HUD's implementation of MTW status and the associated flexibilities of participating MTW agencies while providing for the rigorous evaluation of specific policy changes. This framework would apply to all PHAs designated as an MTW agency pursuant to the 2016 MTW Expansion Statute and to any previously-designated MTW agencies that agree to operate under the framework of the Operations Notice. These PHAs are referred to in the Operations Notice as "MTW agencies." Participation in the MTW Expansion will be formalized by

an amendment to the PHA's Consolidated Annual Contributions Contract, which is called the MTW CACC Amendment.<sup>8</sup>

The Operations Notice is organized into 11 sections as follows:

1. Purpose and Applicability
2. Waivers
  - a. MTW Waivers
  - b. Agency-Specific Waiver Requests
  - c. Cohort-Specific Waivers
3. Term of Participation
4. MTW Funding Flexibilities and Financial Reporting
  - a. MTW Funding Flexibility
  - b. Calculation of Funding
  - c. Financial Reporting and Auditing
5. Evaluation
  - a. Program-wide Evaluation
  - b. Cohort-Specific Evaluation
  - c. Ad-hoc Evaluation
6. Program Administration and Oversight
  - a. Planning and Reporting
  - b. Performance Assessment
  - c. Monitoring and Oversight

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<sup>8</sup> The MTW Consolidated ACC Amendment amends the ACCs and the CACCs for the Public Housing and Section 8 Voucher programs.

7. Rental Assistance Demonstration Program
8. Applying MTW Flexibilities to Special Purpose Vouchers
  - a. HUD-Veterans Affairs Supportive Housing
  - b. Family Unification Program
  - c. Non-Elderly Persons with Disabilities Vouchers
  - d. Enhanced Vouchers and Tenant Protection Vouchers
9. Applicability of Other Federal, State, and Local Requirements
10. MTW Agencies Admitted Prior to 2016 MTW Expansion Statute
11. Sanctions, Terminations, and Default

## **II. Operations Notice**

### 1. Purpose and Applicability

The Operations Notice establishes requirements for the implementation and continued operation of the expansion of the MTW demonstration program pursuant to the 2016 MTW Expansion Statute. The Operations Notice also applies to all PHAs designated as MTW pursuant to the 2016 MTW Expansion Statute and to any previously-designated MTW agency that elects to operate under the terms of this Notice.

Through the MTW CACC Amendment, an MTW agency agrees to abide by the program structure, flexibilities, and terms and conditions detailed in the Operations Notice for the term of the agency's participation in MTW demonstration. Any significant updates to the Operations Notice by HUD will be preceded by a public comment period. HUD may supplement the Operations Notice with PIH Notices providing more detailed guidance, including with respect to implementing future appropriations act provisions and revisions to financial policies and procedures. Additionally, HUD will develop informational materials to address various program elements, which HUD will post on

the MTW website.

Unless otherwise provided in the Operations Notice, an agency's MTW program applies to all of the agency's public housing units (including agency-owned properties and units comprising a part of mixed-income, mixed finance communities, tenant-based HCV assistance, project-based HCV assistance under Section 8(o), and Homeownership units developed using Section 8(y) HCV assistance. This Operations Notice *does not* apply to HCV assistance that is required: i) to make payments to other PHAs under HCV portability billing procedures; ii) to meet particular purposes for which HUD has expressly committed the assistance to the agency;<sup>9</sup> or iii) to meet existing contractual obligations of the agency to a third party (such as Housing Assistance Payment (HAP) contracts with owners under the agency's HCV program), unless a third party agrees to Project-Based Voucher (PBV) activities implemented under the MTW program with the agency.

PHAs are reminded that the MTW demonstration program does not permit waivers related to statutes outside of the 1937 Act or regulations promulgated under authority outside of the 1937 Act, including any waivers to fair housing, nondiscrimination, labor standards, or environmental requirements. Other subject matter prohibited from waivers or restricted with respect to waivers is discussed elsewhere in this Notice.

## 2. Waivers

Pursuant to the 1996 MTW Statute and 2016 MTW Expansion Statute, the Appendix of this Notice provides waivers of certain provisions of the 1937 Act as well as the implementing requirements and regulations. These waivers and associated activities afford MTW agencies the

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<sup>9</sup> Mainstream Vouchers, Moderate Rehabilitation Renewals, HUD-Veterans Affairs Supportive Housing (HUD-VASH) Vouchers, Non-Elderly Disabled (NED) Vouchers, and Family Unification Program (FUP) Vouchers are not part of the MTW demonstration program.

opportunity to use their MTW authority to pursue locally-driven policies, procedures, and programs in order to further the goals of the demonstration. In implementing MTW activities, agencies will ensure assisted families are made aware of the impacts the activity(s) may have to their tenancy. The following are the three categories of waivers that MTW agencies may pursue: a) MTW Waivers; b) Agency-Specific Waiver Requests; and c) Cohort-Specific Waivers. MTW agencies may conduct any permissible activity in the MTW Waivers category within the provided safe harbors, as detailed in the Appendix, without additional approval from HUD. Agencies may make an Agency-Specific Waiver Request to implement additional activities not contained in the MTW Waivers, request to waive a statutory or regulatory requirement not waived in the MTW Waivers, and/or request to expand the safe harbors of an MTW Waivers activity. Agencies may also be provided with Cohort-Specific Waivers if they are necessary to allow for the implementation of the required cohort study.

a. MTW Waivers

The Appendix contains the available waivers and associated activities that MTW agencies may implement after they have been included in the MTW Supplement (described in Section 6 of this Notice) of an approved PHA Plan. The Appendix includes the waiver name, waiver description, statutes and regulations waived, permissible activities, and safe harbors. The waiver description defines the authorization provided to the MTW agency, subject to the terms of this Notice. The list of statutes and regulations waived details the citations of the 1937 Act requirements that may be waived by an MTW agency in order to implement an activity. The list of waivers and list of activities are organized by program type. The safe harbors section contains the additional requirements (beyond those specified in the activity description) that the agency must satisfy in implementing activities without further HUD approval. If an MTW agency wishes to implement

additional activities not contained in the MTW Waivers, request to waive a statutory or regulatory requirement, and/or request the ability to go beyond an MTW activity's safe harbor(s), the MTW agency must submit an Agency-Specific Waiver Request for approval from HUD as explained further in Section 2.b of this Notice.

MTW agencies may implement any activity contained in the Appendix as long as it is included in the MTW Supplement of an approved PHA Plan and implemented within the associated safe harbor(s). The MTW agency will update the MTW Supplement annually, as described in Section 6 of this Notice, to reflect the new activities it plans to implement in the coming fiscal year and ongoing activities it has implemented in the prior year, which includes estimated costs/savings for planned activities that have a cost implication. While MTW activities are listed by specific waiver name, MTW agencies may use the MTW Supplement to combine activities together to create more comprehensive initiatives at the local level.

The MTW Waivers only waive certain provisions of the 1937 Act and its implementing regulations. The five statutory requirements established under the 1996 MTW Statute cannot be waived. Other applicable Federal, state, and local requirements shall continue to apply even in the event of a conflict between such a requirement and a waiver or activity granted by this Notice. Accordingly, HUD and the MTW agencies may not waive or otherwise deviate from compliance with Fair Housing and Civil Rights laws and regulations. Additionally, in implementing activities, MTW agencies remain subject to all other terms, conditions, and obligations under this Notice, and all other Federal requirements applicable to the public housing program, the HCV program, Federal funds, and PHAs. To the extent any MTW activity conflicts with any of the five statutory requirements or other applicable requirements, HUD reserves the right to require the MTW agency to discontinue the activity or to revise the activity to comply with this Notice, and the other

applicable Federal requirements. HUD also reserves the right to require an MTW agency to discontinue any activity derived from a waiver should it have significant negative impacts on families or the agency's operation of its assisted housing programs using Section 8 and 9 funds, as determined by HUD.

b. Agency-Specific Waiver Requests

Pursuant to the exceptions in Section 9 of this Notice, HUD understands that MTW agencies may wish to request Agency-Specific Waivers to implement activities, waive statutory or regulatory requirements that are not in the Appendix, and/or expand the safe harbor(s) of an activity included in the MTW Waivers. There are two categories of Agency-Specific Waiver Requests: 1) a request to waive a statutory or regulatory requirement, or to implement an activity, not provided for in the Appendix; and 2) a request to expand an activity that is in the Appendix outside of the listed safe harbor (or multiple safe harbors). The MTW agency must obtain explicit written approval from HUD for each Agency-Specific Waiver Request prior to implementation. Agency-Specific Waiver Requests are optional and made at the discretion of the MTW agency.

To submit an Agency-Specific Waiver Request(s), an MTW agency will first share the specifics and details of the proposed waiver in the MTW Supplement to the Annual PHA Plan, indicating which of the two categories of Agency-Specific Waiver Requests is being sought. The MTW Supplement form, when finalized, will provide a comprehensive explanation of the elements required to submit an Agency-Specific Waiver Request.

The approval of the Annual PHA Plan and MTW Supplement during this stage does not constitute an approval of the Agency-Specific Waiver Request. Rather, the public comment and review period affords the MTW agency's Resident Advisory Board (RAB), community, and residents the opportunity to provide input on the proposed waiver prior to its submission to HUD.

Once the MTW agency obtains approval of its Annual PHA Plan and MTW Supplement containing the Agency-Specific Waiver Request information, the agency will then submit a letter to its local HUD field office requesting final approval of the Agency-Specific Waiver Request(s). This letter is sent and reviewed outside of the Annual PHA Plan and MTW Supplement process. It must include: a good cause justification that relates to one or more of the three MTW statutory objectives; the statute, regulation, and/or MTW Waiver safe harbor which the MTW agency seeks to waive and its justification for doing so; a copy of the approval letter for the Annual PHA Plan and MTW Supplement containing the proposed waiver; a description of the initiative; the implementation timeline; and any other information requested by HUD. Depending on the nature of the request, HUD may ask for an associated hardship policy, impact analysis, and/or other information necessary to understand the waiver and its possible effects. Agency-Specific Waiver Requests may not conflict with the agency's cohort-specific evaluation.

If the Agency-Specific Waiver is approved by HUD and the changes between the Agency-Specific Waiver Request and the Waiver that HUD ultimately approves do not constitute a "significant amendment" to the Annual PHA Plan, as defined by the agency, then the Agency-Specific Waiver may be implemented once the MTW Agency receives HUD's explicit written approval. The MTW Agency will need to submit a narrative description of the Agency Specific Waiver in its subsequent MTW Supplement.

If the Agency-Specific Waiver is approved by HUD with changes between the Agency-Specific Waiver Request and the Waiver that HUD ultimately approves that constitute a "significant amendment" to the Annual PHA Plan, as defined by the agency, then the MTW agency must re-submit the Agency-Specific Waiver Request through the Annual PHA Plan and MTW Supplement public comment process a second time. Once the Annual PHA Plan and MTW Supplement are

approved this second time, the MTW agency may implement its Agency-Specific Waiver.

To the extent a policy in an Agency-Specific Waiver Request conflicts with any of the five statutory requirements, the cohort-specific evaluation, or other applicable requirements, HUD shall require the MTW agency to discontinue the policy or to revise the policy to comply with this Notice and the other applicable federal requirements. HUD also reserves the right to require an MTW agency to discontinue any policy derived from a waiver should it have significant negative impacts on families or the agency's operation of its assisted housing programs using Section 8 and 9 funds, as determined by HUD.

c. Cohort-Specific Waivers

Pursuant to the 2016 MTW Expansion Statute, at the time of designation as an MTW agency, each agency will be selected into an evaluative cohort that seeks to test a specific policy change, as specified in that cohort's Selection Notice. Cohort-Specific Waivers include statutory and/or regulatory waivers and associated activities that are unique to a specific cohort to allow them to complete their required cohort study. Depending upon the cohort's study, there is a possibility that HUD restricts certain activities within the MTW Waivers or provides additional waivers that are not included in the Appendix. It is also possible that the specific policy changes to be tested through a given cohort would not need any Cohort-Specific Waivers. Any MTW activities that would impact or conflict with the cohort-specific policy change will be identified in the respective Selection Notice so that the MTW agency is aware of this potential restriction on its use of waivers before it enters the MTW demonstration program. Cohort-Specific Waivers and the associated MTW activities may only be used to the extent allowed under the applicable evaluative framework provided by HUD in the applicable Selection Notice.

In determining the Cohort-Specific Waivers that will be included in the Selection Notices,

HUD will remove and/or add waivers and associated activities based on whether a waiver and its associated activity would impact or conflict with the specific policy(s) to be studied in the MTW agency's cohort group. The addition or removal of any waivers and associated activities would only apply within the confines of the cohort study. For instance, if the study focuses on rent models as it relates to the voucher program, then an agency's public housing program would not be affected by the addition or removal of any such waivers and associated activities. If the MTW Waiver(s) and associated activity(s) are not provided to a cohort, or some portion of the agency's portfolio within the cohort, to allow the cohort to test a specific policy change, the agencies within that cohort study will not be able to conduct that activity(s) until the evaluation of the specific policy change has concluded.

### 3. Term of Participation

The term of each agency's MTW designation will be 12 years (PHA Fiscal Years) starting from the time of its designation as an MTW agency. All waivers and associated activities provided through the Operations Notice expire at the end of the agency's term of participation. However, Cohort-Specific Waivers provided to enable a cohort-specific policy change may be extended beyond the agency's term of participation with HUD's specific approval if HUD determines that additional time is needed to evaluate the policy change, subject to continued statutory authority for the MTW demonstration.

Once an MTW agency has implemented an activity pursuant to the authority of the Operations Notice, the agency may continue to implement that activity throughout the term of its participation in the demonstration, subject to the other terms and conditions of this Notice. The MTW agency must end all activities requiring MTW-specific waivers upon expiration of MTW participation, as HUD cannot guarantee that it will be able to extend any waivers and associated

activities beyond that point. For this reason, when entering into contracts with third-parties that draw upon MTW flexibility, the agency should disclose that such flexibility is only available during the term of the agency's participation in the MTW demonstration as permitted in this Notice. An exception is third-party contracts that relate to the cohort-specific policy change and associated waiver(s). If HUD determines that additional time beyond the end of the agency's MTW term is needed to evaluate a cohort-specific policy change, HUD may approve an extension of any cohort-specific waiver(s).

#### 4. MTW Funding Flexibility and Financial Reporting

During the term of the demonstration, subject to appropriations, HUD will provide an MTW agency with public housing Operating Fund Program grants, public housing Capital Fund Program (CFP) grants, and/or HCV HAP and Administrative Fee assistance as detailed in this Notice. CFP grants may include Formula grants; Demolition or Disposition Transitional Funding (DDTF), which are included in regular Formula grants; and/or funds from older Replacement Housing Factor (RHF) grants (a program later superseded by DDTF). The funding amount for MTW agencies may be increased by additional allocations of vouchers that the agency is awarded over the term of its participation in the MTW demonstration. MTW Funding provided to an MTW agency, including public housing Operating Fund Program grants, public housing CFP grants, and HCV HAP and Administrative Fee assistance, is subject to any future laws and appropriations. If a future law or appropriations bill conflicts with this Operations Notice, the law or appropriations bill shall be implemented, and no breach of contract claim, or any claim for monetary damages, may result from the conflict or implementation of the conflicting law or regulation.

##### a. MTW Funding Flexibility

MTW agencies will have the flexibility to apply fungibility among public housing Operating Fund, public housing Capital Fund, and HCV HAP and Administrative Fee assistance. These flexibilities expand the eligible uses of each covered funding stream, but do not negate the need for both the PHA and HUD to be able to account for the funding from its original source to the date of its ultimate eligible use<sup>10</sup> by the PHA, comply with Federal grant and financial management requirements, and use funds effectively and efficiently for their eligible purposes. As the Department continues to implement program-specific financial management policies in its core housing programs, MTW agencies will be subject to the same requirements and procedures as non-MTW agencies. Therefore, the requirements and procedures described in this Notice may change as new financial management policies are implemented over time. HUD will update existing guidance and issue new reporting requirements, as appropriate, to allow HUD to meet its monitoring and oversight responsibilities while ensuring MTW agencies fully utilize and benefit from the flexibilities established by Congress for these funds pursuant to the MTW demonstration and the 2016 MTW expansion. HUD will also update existing guidance and issue new reporting requirements, as appropriate, to ensure compliance with 2 CFR Part 200, including with respect to Federal financial management.

An agency participating in the MTW demonstration program may flexibly use public housing Operating and Capital Funds provided under Sections 9(d) and 9(e) of the 1937 Act and HCV HAP and Administrative Fee program funds provided under Section 8 of the 1937 Act, referred to collectively as MTW Funding. Certain provisions of Sections 8 and 9 of the 1937 Act and 24 CFR 982 are waived as necessary to implement this flexibility. Once the agency receives its MTW

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<sup>10</sup> The date of the “ultimate eligible use” means the date of disbursement by the PHA for an eligible purpose, which would remove the funding from the PHA’s account and the PHA’s control.

designation through the execution of the MTW CACC Amendment, this flexibility in the use of MTW Funding does not require prior HUD approval.

The agency may use MTW Funding covered by MTW flexibility for any eligible activity under Sections 9(d)(1), 9(e)(1) and Section 8(o) of the 1937 Act and for the local, non-traditional activities specified in this Notice, including in the Appendix. Any reserves the MTW agency has accumulated prior to signing an MTW CACC Amendment (including public housing Operating and Capital Reserves and HCV HAP and Administrative Fee Reserves) must be used for their originally appropriated purposes and may not be used flexibly for any eligible MTW activity described in the Appendix. All MTW PHA expenditures, including for local, non-traditional activities, must be consistent with the PHA's charter, approved 5-Year and Annual PHA Plans, and the approved MTW Supplement to the Annual PHA Plan.

i. Calculation of Funding

(a) Public Housing Operating Grants

- (1) The calculation of an MTW agency's Operating Fund subsidy grant eligibility will continue in accordance with operating subsidy formula law, regulations, and appropriations act requirements. As these programmatic and financial requirements are updated, MTW agencies will be affected by and shall comply with these changes.
- (2) The agency may use these funds for any eligible activity permissible under Section 9(e)(1) of the 1937 Act or, if the agency proposes to use the funding under its MTW flexibility, it may also use these funds for any eligible activity

permissible under Section 8(o), Section 9(d)(1), and for the local, non-traditional activities specified in this Notice, including in the Appendix.

- (3) For Operating Fund grant funding, the MTW agency has accumulated prior to signing an MTW CACC Amendment, the agency may not use such funds for eligible MTW purposes other than the originally appropriated purpose of the funds (i.e., these funds may not be used as flexible MTW Funding).

(b) Public Housing Capital Fund Formula and Grants

- (1) The agency's public housing Capital Fund formula characteristics and grant amounts, including DDTF and Replacement Housing Factor (RHF), will continue to be calculated in accordance with public housing law, regulations, and appropriations act requirements.
- (2) MTW agencies must continue to follow the immediate need requirements applicable to all Capital funds and may not accelerate their drawdown of Capital funds for the purpose of funding reserves or for any other purpose. All Capital funds, including funds in BLI 1410 (Administrative Costs) and Budget Line Item (BLI) 1492 (MTW), must be drawn down only when funds are due and payable.
- (3) The agency may use these funds for any eligible activity permissible under Section 9(d)(1) of the 1937 Act or, if the agency proposes to use the funding under its MTW flexibility, it may also use these funds for any eligible activity permissible under Section 8(o), Section 9(e)(1), and for the local, non-traditional activities specified in this Notice, including in the Appendix. Capital Fund Program (CFP) funds used for activities under section 9(d)(1) are subject to all

requirements relevant to non-MTW agency CFP funding, including eligible activities and cost limits.

- (4) For Capital Funds the MTW agency has accumulated prior to signing an MTW CACC Amendment, the agency may not use such funds for eligible MTW purposes other than the originally appropriated purpose of the funds (i.e., these funds may not be used as flexible MTW Funding).
- (5) In requisitioning Capital Fund grant funds, the MTW agency will request funds using traditional Capital Fund Budget Line Items (BLIs) for funds to be used for activities under section 9(d) and using the available MTW Budget Line (BLI 1492) items for activities under section 9(e), section 8(o), or local, non-traditional activities. MTW agencies shall not use the Transfer to Operations Budget Line (BLI 1406) since funds for all non-section 9 activities shall be included in the MTW Budget Line (BLI 1492). The agency will provide to HUD information on all capital activities funded by the MTW Funding as necessary to ensure compliance with requirements outside the scope of MTW, including environmental review requirements and Energy and Performance Information Center (EPIC) reporting requirements.
- (6) The agency remains subject to the requirements of Section 9(j) of the 1937 Act with respect to Capital Fund grants. Section 9(d) funds remain subject to the obligation and expenditure deadlines and requirements provided in Section 9(j) despite the fact that they may be in the MTW Single Fund. Capital Funds awarded to MTW agencies must be obligated within 2 years and expended within 4 years of award. Funds not obligated or expended within those timeframes will

be subject to recapture. As with all agencies, an MTW agency may requisition CFP funds from HUD only when such funds are due and payable, unless HUD approves another payment schedule.

(c) Housing Choice Voucher Funding.

- (1) Funding for the Initial MTW Year. For the calendar year (CY) after the MTW agency joins the MTW demonstration (the “Initial MTW Year”), the MTW agency’s HCV HAP renewal funding will be calculated in accordance with the same HAP renewal funding formula used for non-MTW HCV agencies in the applicable FY appropriations act. The HAP renewal formula is customarily based on the previous CY’s HAP expenses reported in the Voucher Management System (VMS), adjusted by any applicable inflation factor and national proration.

Example:

- If an MTW Agency signs its MTW CACC Amendment in July 2018, CY 2019 will be the Initial Year in the MTW demonstration. The MTW Agency’s CY 2019 HAP renewal funding will be calculated based on the Agency’s CY 2018 HAP expenses, adjusted by inflation and proration (assuming this is the formula in the 2019 Appropriations Act).

- (2) Funding for Subsequent MTW Years. As is the case for non-MTW PHAs under current appropriations law, the HAP renewal funding eligibility for subsequent MTW years will be calculated based on the MTW agency’s actual expenses for the previous calendar year (known as the re-benchmark year). Unique to MTW agencies, however, the MTW agency’s actual expenses are: (i) the previous CY’s

HAP expenses reported in Voucher Management System (VMS,) and (ii) the previous CY's eligible non-HAP MTW expenses reported in VMS. For both HAP and non-HAP MTW expenses, the reported expenses must have been paid from an eligible source of funds as described in section 4(c) below in order to be included in the HAP renewal funding formula. In addition, MTW HAP renewal funding is subject to an MTW Renewal Eligibility Cap derived from the number of units authorized under the agency's ACC, as described in paragraph (d) on the following page. The lower of the total combined HAP/non-HAP expenses or the MTW Renewal Eligibility Cap will then be adjusted by an applicable inflation factor and any national proration that applies to the HCV renewal appropriation to determine the MTW agency's actual CY HAP renewal funding.

Example:

- In CY 2019, an MTW Agency expended \$3,600,000 on HAP and \$400,000 on eligible non-HAP MTW expenses. The agency's HCV HAP renewal funding for CY 2020 will be \$4 million (assuming the HAP Renewal Eligibility Cap is greater than \$4 million), adjusted by an inflation factor and any applicable national proration.

(3) HAP Renewal Sources of Funds. The only HAP and non-HAP MTW expenses that will be included in the MTW HAP renewal formula are those paid for with the same sources of funds that would be included in the non-MTW HAP renewal formula for a non-MTW agency (see PIH Notice 2013-28 and any future successor notices). Accordingly, HAP expenses and non-HAP MTW expenses must be paid from the following sources of funds to be included in the HAP

renewal formula calculation:

- Housing Choice Voucher (HCV) budget authority,
- HUD-held HAP reserves (undisbursed budget authority),
- PHA-held HAP reserves (i.e., Restricted Net Position (RNP)),
- Any funds from the HAP Set-aside (if available after PHA application and approval), and
- Administrative Fee reserves (i.e., Unrestricted Net Position (UNP)).

HAP expenses or non-HAP MTW expenses that were covered by any other funding source (for example, public housing Operating Funds and Capital Funds, and current year HCV Administrative Fee funds) will not be included in the MTW PHA's HCV renewal funding calculation.

(4) HAP Renewal Eligibility Cap. The MTW PHA's renewal eligibility for all MTW Years will be limited by the HAP Renewal Eligibility Cap. The calculation multiplies (1) the MTW PHA's total number of MTW-eligible ACC authorized units<sup>11</sup> in the re-benchmark year (the CY immediately preceding the CY for which the PHA's renewal eligibility is being calculated)<sup>12</sup> by (2) the PHA's pre-MTW monthly per-unit cost (PUC) inflated to the re-benchmark year.

- For (1), the number of MTW-eligible ACC authorized units is measured in

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<sup>11</sup> "MTW-eligible ACC authorized units" means the PHA's number of ACC authorized units, regardless of whether the units are leased, after excluding the number of authorized units that would not be subject to the MTW renewal formula. In other words, special purpose vouchers that are renewed separately and are not part of the MTW HAP renewal formula are not included in the formula used to calculate the HAP Renewal Eligibility Cap. See Section 8 of this Notice for further information on these special purpose vouchers that are renewed separately outside the MTW renewal formula.

<sup>12</sup> As noted above, the re-benchmark year is also the source year for the actual expense data used in the MTW PHA's HAP renewal formula.

unit months available (UMAs).<sup>13</sup>

- For (2), the inflated pre-MTW PUC is projected using, as a base, the monthly PUC for the CY in which the agency signed its MTW CACC Amendment. HUD applies an inflation factor to this base PUC to estimate what the PHA's HCV PUC would be, had the PHA not joined the MTW program, as of the re-benchmark year.

After the calculation of the HAP Renewal Eligibility Cap, it is compared with the MTW PHA's actual total combined HAP/non-HAP expenses. The lower of these two amounts – (1) the HAP Renewal Eligibility Cap or (2) the MTW PHA's actual total combined HAP/non-HAP expenses – is then adjusted by the inflation factor and any national proration factor to determine the MTW PHA's CY renewal funding.

Example:

- If an MTW Agency signs its MTW CACC Amendment in July 2018, CY 2019 will be the Initial Year in the MTW demonstration. In the Initial CY (CY 2019) the MTW Agency's renewal formula is the same formula that is used for non-MTW PHAs. In calculating the MTW Agency's HCV renewal funding for CY 2020, the following information applies:
  - The MTW PHA's average monthly PUC for CY 2018 was \$700.
  - The CY 2019 inflation rate is 2 percent.

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<sup>13</sup> Authorized units in the HCV program context are measured in terms of unit months available. For example, if an authorized unit is under CACC as of January 1, the authorized unit equals 12 unit months available for that CY. On the other hand, if the authorized unit was added to the CACC under a new funding increment effective July 1, the authorized unit is equal to 6 unit months available for that CY.

- The number of MTW-eligible ACC authorized units during CY 2019 is 800 units. (In this example all units were under ACC as of January 1, 2019, so the number of unit months available (UMAs) is simply 800 units multiplied by 12 months, or 9,600 UMAs).
- The HAP Renewal Eligibility Cap for CY 2020 is calculated by first determining the estimated PUC for CY 2019, which is \$714 (the monthly PUC for CY 2018 inflated for CY 2019, or  $\$700 \times 1.02$ ). The estimated PUC for CY 2019 is then multiplied by the MTW PHA's CY 2019 MTW-eligible ACC authorized UMAs<sup>14</sup> ( $\$714 \times 9,600$  UMAs) to determine the HAP Renewal Eligibility Cap, which is \$6,854,400.
- The HAP Renewal Eligibility Cap (\$6,854,400) is then compared to the MTW Agency's total combined HAP/non-HAP expenses for the re-benchmark year that originated from the eligible funding sources described earlier in this Notice. If the total combined HAP/non-HAP expenses do not exceed \$6,854,400, the MTW Agency's CY 2020 renewal funding will be the total combined HAP/non-HAP expenses adjusted by an inflation factor and any national proration. If the total combined HAP/non-HAP expenses exceed \$6,854,400, the MTW Agency's CY 2020 renewal funding will be \$6,854,400, adjusted by an inflation factor and any national proration.

(5) Financial Management Requirements Apply. The same financial management

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<sup>14</sup> As noted earlier, these are the MTW PHA's CY 2019 UMAs that are subject to the MTW renewal formula. UMAs attributable to special purpose vouchers such as HUD-VASH and FUP that are renewed separately are not included in this count.

requirements that apply to non-MTW agencies also apply to MTW agencies. Accordingly, all undisbursed HAP funds, including HAP-originated reserve funds, will be retained as HUD-held reserves per Office of Management and Budget cash management requirements and can be requested by the MTW agency when immediate need exceeds the scheduled HAP monthly disbursements, but only after consideration of available MTW agency-held Restricted Net Position (RNP).

(6) Administrative Fees. The Administrative Fee rates used to calculate fee eligibility for MTW agencies shall be established according to the same methodology used to establish Administrative Fee rates for all agencies, including non-MTW agencies. As is the case for all agencies under current appropriations law, administrative fees will be calculated on the basis of units leased as of the first day of each month; this data will be extracted from Voucher Management System (VMS) at the close of each reporting cycle. Administrative fees for MTW agencies are also subject to the national proration factor and any other appropriations act requirements.

(7) Adjustments for the First-Time Renewal of Certain Vouchers. If the MTW agency receives incremental HCV vouchers and funding (including tenant protection vouchers) other than special purpose vouchers, renewal funding for those vouchers will be included in the MTW HCV renewal funding eligibility calculation for the following year. (See Section 8 of this Notice for further discussion of tenant protection and other special purpose vouchers.) The renewal amount for the following year is based on HAP costs reported for these

increments in VMS in the prior year, which will be adjusted by the inflation factor. Should the initial increment(s) be funded for less than 12 months due to lack of appropriations, HUD will adjust for the missing months upon renewal, by selecting the higher of the funded PUC for the initial increment, or the MTW per unit cost (PUC) times the number of units,<sup>15</sup> then adjusted by the inflation factor. The aggregate renewal eligibility is always subject to the national proration factor.

- (8) Applicable Inflation Factor and Proration. The same applicable inflation factor that applies to non-MTW agencies will be applied each CY to determine the MTW agency's HAP funding renewal eligibility. Likewise, the MTW agency's HAP funding renewal eligibility is subject to the same national proration as non-MTW agencies' renewal eligibility.
- (9) Prior Year Reserves. For HCV HAP and Administrative Fee funding provided in years prior to the designation of the agency as an MTW agency, the agency may not use any accumulated HCV reserves for eligible MTW purposes other than the originally appropriated purpose of the funds (i.e., these funds may not be used as flexible MTW Funding).
- (10) Rental Assistance Demonstration (RAD). Any vouchers received as part of a RAD Component I conversion shall be added to the ACC for the remainder of the CY in which they are awarded. HUD will issue a new increment of voucher

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<sup>15</sup> The MTW PUC is equal to MTW HAP expenses divided by the number of MTW units leased. (Non-HAP MTW expenses are not included in the MTW PUC calculation). HUD may further adjust the MTW PUC calculation for PHAs administering RAD project-based vouchers to exclude RAD Rehab payments so the MTW PUC only reflects expenses attributable to actual housing assistance payments.

funding in support of those vouchers for the first full CY following a RAD Component I conversion. In subsequent years, voucher funding for RAD-converted units will be renewed under the MTW HCV renewal funding calculation, plus inflation factor and the applicable proration factor. Tenant protection vouchers provided for RAD Component II conversions are renewed in accordance with section 4.v, Adjustment for the first-time renewal of certain vouchers, above. Administrative fees for RAD vouchers will be calculated based on the same methodology used to establish administrative fees for non-MTW agencies. Fees for RAD vouchers will be prorated at the same level that applies to all non-MTW agencies.

- (11) Voucher Programs Not Included in MTW Program. Vouchers and funding provided for the following special purpose vouchers, or any new special purpose vouchers provided in future appropriations acts, whether for new allocations or renewal of existing increments, shall not be included in the HCV MTW renewal calculation: Mainstream, HUD-Veterans Affairs Supportive Housing (HUD-VASH), Non-Elderly Disabled (NED), and Family Unification Program (FUP). These vouchers will be renewed under the regular voucher renewal requirements as provided under the appropriations acts. Special purpose vouchers are discussed in more detail in Section 8 of this Notice. In addition, funding provided for the Section 8 Moderate Rehabilitation Program is not part of the MTW program and may not be used for MTW activities.

b. Financial Reporting and Auditing

MTW agencies must submit year-end unaudited financial information to the Department no

later than 2 months after their fiscal year end using the Financial Data Schedule (FDS) contained in the Real Estate Assessment Center's (REAC) Financial Assessment Subsystem (FASS-PH), or its successor system. Current financial reporting requirements for MTW agencies are posted on the REAC website at [https://www.hud.gov/sites/documents/DOC\\_11833.PDF](https://www.hud.gov/sites/documents/DOC_11833.PDF). These requirements may be updated in the future.

MTW agencies are also required to electronically submit their audited financial information, if applicable, to the Department no later than 9 months after their fiscal year end. MTW agencies must include public housing project level financial information in the FDS and must follow the Asset Management guidelines established in Public and Indian Housing (PIH) Notice 2007-9 Supplement to Financial Management Handbook Office of Public and Indian Housing (PIH) Revised April 2007, and any subsequent updates to this Handbook or PIH Notice. MTW agencies will conform to the cost requirements of 2 CFR Part 200 and any HUD implementation thereof.

MTW agencies must procure an Independent Public Accountant (IPA) to perform an annual audit pursuant to Federal requirements at 2 CFR Part 200 and 24 CFR 990.190, or successor, as well as any audit compliance supplements developed specifically for use with the MTW demonstration.

Completed IPA audits must be submitted to HUD in accordance with current HUD regulations. HUD will review IPA audits of MTW agencies to determine appropriate action relative to any findings, prepare recommendations for audit finding resolution, and follow up with MTW agencies to assure finding closure. If there are audit findings related to the MTW program itself, HUD will monitor the resolution of all audit findings.

## 5. Evaluation

As a condition of participating in the MTW demonstration, MTW agencies agree to cooperate fully with HUD and its contractors in the monitoring and evaluation of the MTW demonstration. MTW agencies shall keep records and submit reports and other information as required by HUD. This includes any data collection required for the use of waivers and associated activities, for the uses of MTW funds within and across funding streams, and any evaluation efforts that HUD undertakes for the cohort-specific policy changes.

MTW is a demonstration that provides PHAs flexibilities to innovate and try different approaches to housing assistance in order to achieve at least one of the three statutory objectives laid out in the 1996 MTW Statute. At its core, the demonstration is an opportunity for PHAs, participants, HUD, stakeholders, and the general public to learn from different approaches to providing Federal housing assistance to low-income families. This includes learning from approaches that are effective and produce desired outcomes, and from approaches that are less effective than anticipated and where results may have unintended consequences.

Because MTW agencies can use different flexibilities calling on multiple activities within the MTW Waivers to serve local populations in various parts of the country, interpreting PHA-reported performance data on the effects of an individual MTW activity can be challenging. Consequently, and while adhering to the guiding principles for the expansion – to simplify, learn, and apply – HUD will create and develop an evaluation system that will document and consider the MTW demonstration through the lens of the three statutory objectives relating to cost effectiveness, self-sufficiency, and housing choice.

HUD envisions three types of evaluation: program-wide evaluation, cohort-specific evaluation, and ad hoc evaluation.

a. Program-wide Evaluation

Program-wide evaluation would seek to assess whether or not, and to what extent, MTW agencies use Federal dollars more efficiently, help residents find employment and become self-sufficient, and/or increase housing choices for low-income families. HUD intends to develop a method for program-wide evaluation that is based, to the extent possible, on information already being collected through existing HUD administrative data systems. HUD may determine and require that additional reporting is necessary to effectively evaluate MTW.

b. Cohort-specific Evaluation

The 2016 MTW Expansion Statute requires HUD to direct all the agencies in a cohort to implement one specific policy change and to conduct a rigorous evaluation of the one specific policy change. The MTW Research Advisory Committee has considered input from the public and advised HUD on the policy changes to be tested through the new cohorts of MTW agencies and on the methods of research and evaluation.

The cohort-specific policy change and evaluation methods will be described in the applicable Selection Notice so that the MTW agency is aware, in advance of application to the MTW demonstration program, of the policy it will be required to implement and the evaluation requirements. The specific evaluation methods and requirements for participating MTW agencies will vary based on the policy changes to be tested. For example, some cohorts of MTW agencies may be required to participate in randomized control trials, while others may be required to participate in detailed process studies or ethnographic research. HUD's Office of Policy Development and Research (PD&R) will take the lead on evaluating cohort-specific policy changes, and funds have been appropriated by Congress for this evaluation. In all cases, the purpose of the evaluation will be to measure the outcomes associated with the specific policy change(s) in order to

offer policy recommendations for implementing the policy change(s) across all PHAs.

HUD will determine the length and timeframe for the evaluation, which will be informed by feedback provided by the MTW Research Advisory Committee. In some cases, the evaluation timeframe may extend beyond the agency's term of MTW participation. The MTW agency is required to participate in the evaluation for the full timeframe designated by HUD. HUD may extend waivers and associated activities beyond the agency's term of participation to the extent that those waivers and associated activities are needed to support the evaluation of the specific policy change and HUD determines whether additional time is needed to evaluate the policy change.

c. Ad Hoc Evaluation

HUD reserves the right to request, and the MTW agency agrees to provide, any additional information required by law or required for the sound administration or evaluation of the MTW agency.

6. Program Administration and Oversight

In general, MTW agencies will be subject to the same planning and reporting protocols as non-MTW agencies, including the PHA Plan (5-Year Plan and Annual PHA Plan) and Capital Fund planning. MTW agencies must also report data into HUD data systems, as required.

New protocols and instruments will be developed for assessing an MTW agency's performance and will be incorporated into PHAS and SEMAP, or successor assessment systems, or an alternative assessment system developed by HUD, explained further in Section 6.b. of this Operations Notice. In addition, HUD will employ standard program compliance and monitoring approaches including assessment of relative risk and on-site monitoring conducted by HUD or by entities contracted by HUD.

a. Planning and Reporting

i. The Annual PHA Plan

MTW agencies must adhere to Annual PHA Plan regulations at 24 CFR Part 903, any implementing HUD Notices and guidance, as well as any succeeding regulations. The Annual PHA Plan consists of the 5-Year Plan that a PHA must submit to HUD once every five PHA fiscal years and the Annual PHA Plan that the PHA must submit to HUD for each PHA fiscal year. Any HUD assistance that the agency is authorized to use under the MTW demonstration must be used in accordance with the Annual PHA Plan, as applicable.

Annual and 5-Year Plans must be submitted in a format prescribed by HUD. Currently, submission format requirements are outlined in Notice PIH 2015-18 (HA), issued October 23, 2015, which is effective until amended, superseded, or rescinded.

ii. MTW Supplement to the Annual PHA Plan (under development)

As an MTW agency, all Annual PHA Plan information must be provided in the context of the agency's participation in the MTW demonstration. This includes taking into account the MTW Waiver(s) and associated activity(s) afforded to the MTW agency. To this end, the MTW agency will submit an MTW Supplement to the Annual PHA Plan, in a format to be developed by HUD. Prior to submitting to HUD, the MTW Supplement must go through a public process along with the Annual PHA Plan. This will allow the agency to inform the community of any programmatic changes and give the public an opportunity to comment. Details about this requirement are elaborated later in this section. New MTW agencies will not be required to submit the Annual MTW Plan or Annual MTW Report (i.e., Form 50900), which are required for existing MTW agencies.

The MTW Supplement form has not been finalized at the time of publishing of this

Operations Notice. The MTW Supplement will be made available for public review and comment, per Paperwork Reduction Act requirements, prior to finalizing the form. At this time, HUD plans to require MTW agencies to use the MTW Supplement to the Annual PHA Plan to:

- Describe how the MTW agency seeks to address the three MTW statutory objectives during the coming fiscal year, in a narrative format;
- Indicate the MTW activities that the agency plans to implement in the Annual PHA Plan year that utilize the activities contained in the MTW Waivers (Appendix), and ongoing activities the agency has implemented in the prior year, using a check-box or other simple format;
- Indicate the estimated costs/savings per year for planned activities that have a cost implication;
- Indicate the reason(s) why any previously approved MTW activities were not implemented in the previous year;
- Indicate any changes in the MTW activities and associated waivers, including safe harbors, that have changed from the previous Annual PHA Plan year;
- Describe any Agency-Specific Waiver Requests that the MTW agency seeks to implement in PHA fiscal year, if applicable;
- Indicate the MTW activities that the agency will undertake in the Annual PHA Plan year that require Cohort-Specific Waivers (as applicable and identified in each cohort's Selection Notice), and the Cohort-Specific Waivers to be used, using a check-box or other simple, non-narrative format;
- Certify to HUD that all MTW activities being implemented by the agency fall within the safe

harbors outlined in the Appendix;

- Submit data or information required for the ongoing use of any activities within the MTW Waivers; and
- Submit data required for HUD's verification of the MTW agency's compliance with the five statutory requirements established under the 1996 MTW Statute.

Non-MTW PHAs that are qualified under 24 CFR 903.3(c) and that are not designated as troubled under PHAS and that do not have a failing score under SEMAP are exempt from the requirement to submit the Annual PHA Plan. Per this Operations Notice, while MTW agencies that are qualified under 24 CFR 903.3(c) are not required to submit the Annual PHA Plan, they are required to submit the MTW Supplement to the Annual PHA Plan on an annual basis.

During the agency's initial year of participation in the MTW demonstration, an agency may implement MTW activities once they have been included in an approved MTW Supplement, either during the next regularly scheduled submission of the Annual PHA Plan and MTW Supplement or through an amendment to the Annual PHA Plan, which would include the MTW Supplement. Agency-Specific Waiver Requests and activities may only be implemented after explicit written approval from HUD.

MTW agencies must submit to HUD the Annual PHA Plan, including any required attachments, and the MTW Supplement no later than seventy-five (75) days prior to the start of the agency's fiscal year. Before submission to HUD, the agency must have at least a 45-day public review period of its plan, after publishing a notice informing the public of its availability and conducting reasonable outreach to encourage participation in the plan process, followed by a public hearing. MTW agencies must consider, in consultation with the RABs, all of the comments received

at the public hearing. The recommendations received by the public and RABs must be submitted by the agency as a required attachment to the Plan. MTW agencies must also include a narrative describing their analysis of the recommendations and the decisions made on these recommendations. Agencies must also obtain the proper signed certifications and board certification.

HUD will notify the MTW agency in writing if HUD objects to any provisions or information in the Annual PHA Plan or the MTW Supplement. When the MTW agency submits its Plan seventy-five (75) days in advance of its fiscal year, HUD will respond to the MTW agency within 75 days.

Reviews of the Annual PHA Plan and the MTW Supplement will be conducted by the local field office, in consultation with the MTW Office.

iii. Admissions and Continued Occupancy Policy (ACOP) and Administrative Plan

The MTW agency must update its ACOP and Administrative Plan to be consistent with the MTW activities and related waivers that it implements. The agency may not implement an MTW activity or waiver until the relevant sections of the ACOP and/or Administrative Plan are updated. MTW agencies must provide HUD with electronic versions of the ACOP and Administrative Plan upon request. If the MTW agency implements an activity using the local, non-traditional uses of funds waiver, the MTW agency must create and update an implementing document specifically for such activity.

iv. Capital Planning and Reporting

MTW agencies must adhere to CFP regulations at 24 CFR Part 905, any implementing HUD Notices and guidance, as well as any successor regulations. As noted previously, MTW agencies are funded in accordance with CFP regulations and formula funds are calculated and distributed in the

same manner as non-MTW agencies.

MTW agencies have the authority and flexibility to utilize their CFP funds for expanded uses as part of their MTW funding flexibility. HUD will award Capital Fund grants to MTW agencies in keeping with the standard process for all PHAs. The Field Office will distribute funds in Line of Credit Control System (LOCCS) to the MTW agencies in accordance with the standard process. As with all PHAs, an MTW agency may draw down Capital Funds from HUD only when such funds are due and payable, unless HUD approves another payment schedule. To the extent that the MTW agency plans to use CFP funding for other MTW-eligible (non-CFP) activities, the CFP funding would be recorded on BLI 1492 (Moving to Work) on Form HUD-50075.1. CFP funds entered on BLI 1492 would not need to be broken out and itemized in the part II supporting pages of the HUD-50075.1. However, regardless of the BLI utilized, funds may not be drawn down until the PHA has an immediate need for the funds. An MTW agency may not accelerate drawdowns of funds in order to fund reserves or to otherwise increase locally held amounts, as discussed in 4(a)(i)(b)(2) of this Notice.

An MTW agency is not required to use all or any portion of its CFP grant for non-CFP activities. To the extent that the MTW agency wishes to dedicate all or a portion of its CFP grant to specific capital improvements, the agency shall record CFP funding on the appropriate BLI(s) on Form HUD-50075.1 (other than BLI 1492) as in the standard program.

v. Inventory Management System/PIH Information Center Reporting

Data from HUD's Inventory Management System (IMS) and Public and Indian Housing (PIH) Information Center (PIC), or successor systems, is critical to all aspects of program administration, including HUD monitoring and tracking of MTW agency progress in meeting the MTW statutory objectives. IMS/PIC data is used to establish funding eligibility levels for both

Operating Subsidy Fund and Capital Fund grants. Further, HUD relies on IMS/PIC data to provide a thorough and comprehensive view of PHA program performance and compliance.

MTW agencies are required to submit the following information to HUD via IMS/PIC (or its successor system):

- Family data to IMS/PIC using Form HUD-50058 MTW (or successor forms) or Form HUD-50058 and in compliance with HUD's 50058 MTW or standard 50058 submission requirements for MTW agencies. MTW agencies must report information on all families receiving some form of tenant-based or project-based housing assistance, either directly or indirectly, as well as all public housing families, to be current to at least a 95 percent level.
- Current building and unit information in the development module of IMS/PIC (or successor system).
- Basic data about the PHA (address, phone number, e-mail address, etc.).

HUD will monitor MTW agency reporting to IMS/PIC (or successor system) to ensure compliance and provide technical assistance to MTW agencies as needed.

vi. Voucher Management System Reporting

MTW agencies are required to report voucher utilization in the Voucher Management System (VMS), or its successor system. There are several areas in which VMS reporting is different for MTW agencies. These areas are highlighted in the VMS User's Manual (<http://portal.hud.gov/hudportal/documents/huddoc?id=instructions.pdf>), which details the VMS reporting requirements.

HUD will monitor each MTW agency's VMS reporting to ensure compliance and provide

technical assistance to MTW agencies as needed.

vii. General Reporting Requirement

In addition to the reporting requirements outlined in this Operations Notice, MTW agencies are required to comply with any and all HUD reporting requirements not specifically waived by HUD for participation in the MTW demonstration program, including the requirement (discussed in Section 5) to comply with HUD's evaluation of the specific-policy changes being implemented by cohort.

b. Performance Assessment

Assessing the performance of PHAs (both MTW and non-MTW) helps with the delivery of services in the public housing and voucher programs and enhances trust among PHAs, public housing participants, HUD, and the general public. To facilitate this effort, HUD will provide management tools for effectively and fairly assessing the performance of a PHA in essential housing operations and program administration.

Currently, HUD uses PHAS and SEMAP to assess risk and identify underperforming PHAs in the traditional public housing and voucher programs. However, since some of the MTW flexibilities make it difficult to accurately assess the performance of MTW agencies under the existing systems, HUD will develop an alternative, MTW-specific assessment system, which may be incorporated into PHAS and SEMAP (or successor assessment system(s)). MTW agencies may not opt out of the MTW-specific successor system(s). Until the successor system is implemented, HUD will monitor MTW agency performance through PHAS sub-scores.

i. Public Housing Assessment System

MTW agencies are scored in PHAS, however, agencies can elect not to receive the overall

score (MTW agencies continue to receive PHAS sub-scores even if they elect not to receive the overall score). If an MTW agency elects to receive its overall PHAS score, the agency must continue to be scored for the duration of the demonstration, or until the agency is assessed under the alternative, MTW-specific assessment system(s), whichever comes first. Once developed, all MTW agencies, including MTW agencies that elect not to receive an overall PHAS score, must be assessed under the MTW-specific assessment system(s).

Per the 1996 MTW statute, when providing public housing, the MTW agency must ensure that the housing is safe, decent, sanitary, and in good repair, according to the physical inspection protocols established and approved by HUD. Thus, MTW agencies continue to be subject to HUD physical inspections. To the extent that HUD physical inspections reveal deficiencies, the MTW agency must continue to address these deficiencies in accordance with existing physical inspection requirements. If an MTW agency does not maintain public housing adequately, as evidenced by the physical inspection performed by HUD and is determined to be troubled in this area, HUD will determine appropriate remedial actions. The actions to be taken by HUD and the agency will include actions statutorily required and such other actions as may be determined appropriate by HUD. These actions may include developing and executing a Memorandum of Agreement (MOA) with the MTW agency, suspension or termination of the MTW CACC Amendment in accordance with the provisions therein, or such other actions legally available to the Department.

MTW agencies must continue to submit year-end financial information into the Financial Data System (FDS) or successor system, as discussed earlier.

ii. Section 8 Management Assessment Program

MTW agencies are not scored in SEMAP but they can elect to be scored if they choose to opt in. If an MTW agency elects to receive its overall SEMAP score, the agency must continue to be

scored for the duration of the demonstration, or until the agency is assessed under the MTW-specific assessment system, whichever comes first. Once developed, all MTW agencies, including MTW agencies that opt out of SEMAP, must be assessed under the MTW-specific assessment system(s).

c. Monitoring and Oversight

MTW agencies remain subject to the full range of HUD monitoring and oversight efforts including, but not limited to, annual risk assessments, on-site monitoring reviews, monitoring reviews relating to VMS reporting and rent reasonableness, review of the accuracy of data reported into HUD data systems, and use of HUD data systems to assess agency program performance, among other activities.

i. MTW Statutory Requirements

Throughout participation in the MTW demonstration program, all MTW agencies must continue to meet five statutory requirements established under the 1996 MTW Statute. Implementation, monitoring and enforcement of the five statutory requirements will be discussed in greater detail in the final version of this Operations Notice, and specific enforcement processes will be included in the MTW CACC Amendment (see also, section 11 of this Notice). HUD will monitor and determine MTW agencies' compliance with these five requirements as follows:

(a) MTW agencies must ensure that at least 75 percent of the families assisted are very low-income families, in each fiscal year, as defined in section 3(b)(2) of the 1937 Act.

(i) HUD Verification Approach: Initial household certification data recorded in PIC will be used for both the public housing and HCV programs for compliance monitoring purposes. The initial certification is comprised only of new admissions in the

agency's given fiscal year. Initial household certification data for families housed through local, non-traditional activities (in accordance with the Appendix) will be provided in a manner specified by the Department. An agency's portfolio will then be weighted with respect to the number of households being served by each housing program type (i.e., PH, HCV, Local, Non-Traditional).

(b) MTW agencies must establish a reasonable rent policy which shall be designed to encourage employment and self-sufficiency by participating families, consistent with the purpose of this demonstration, such as by excluding some or all of a family's earned income for purposes of determining rent.

(i) HUD Verification Approach: HUD defines rent reform as any change in the regulations on how rent is calculated for a household. Upon designation into the MTW demonstration, agencies are to submit their planned policy to implement a reasonable rent policy in the MTW Supplement. All activities falling under the Tenant Rent Policies category, detailed in the Appendix, meet the definition of a reasonable rent policy. An MTW agency must implement one or multiple reasonable rent policies during the term of its MTW designation (MTW agencies in the rent reform cohort may have prescribed deadlines to implement their reasonable rent policies).

(c) MTW agencies must continue to assist substantially the same total number of eligible low-income families as would have been served had the amounts not been combined.

(i) HUD Verification Approach: HUD continues to consider the best approach to monitor the MTW statutory requirement that MTW agencies serve substantially the same number of families absent the demonstration. The main themes and principles

for this effort include a Substantially the Same (STS) methodology that: ensures substantially the same number of families are housed; allows for local flexibility; is responsive to changing budgetary climates; is feasible for HUD to administer; is easy for MTW agencies to predict compliance; is straight forward to understand; is calculated each year; and has publicly available results. First, the STS methodology would establish a baseline ratio of dollars the agency expends and families housed. Before an agency enters the MTW demonstration, the public housing funding and the HCV HAP funding spent by the agency in the prior CY would be divided by the current number of families housed in each program. This calculation would yield how many families the agency houses per \$100,000 of funding in both the public housing and HCV programs. Each year during an agency's participation in the MTW demonstration, the baseline number of total families housed per \$100,000 of funding in both the public housing and HCV programs would be applied to the agency's actual funding for that calendar year. So, for example, the agency would know that if it is appropriated "x number of dollars," it would be required to house "y number of families." Depending on the specific circumstances of the agency, a dip below the baseline year number would be allowed. HUD is exploring methods to ensure that the ratio of families housed per \$100,000 in the baseline year continues to be an accurate measure of "substantially the same" service levels in future years of the MTW designation. There would also be opportunities for PHAs to request adjustments of the baseline ratio to account for changes in costs due to special circumstances.

The following is an example of the STS baseline ratio calculation:

Baseline Year (calendar year before agency enters MTW)

- Agency expends \$800,000 in HCV HAP funds and houses 100 HCV families. Agency then houses 12.5 HCV families per \$100,000 of HCV funds.
- Agency expends \$500,000 in public housing funds and houses 75 public housing families. Agency then houses 15 public housing families per \$100,000 public housing funds.

First Year in MTW Demonstration

- MTW agency receives \$900,000 in HCV HAP funds and \$300,000 in public housing funds.
- MTW agency must house 112.5 families for the HCV share and 45 families for the public housing share. Therefore, in this example, the MTW agency is required to house 157 total families flexibly with its MTW funds (this may be in the public housing program, the HCV program, a local, non-traditional rental subsidy program, or a local, non-traditional development program<sup>16</sup>).

(d) MTW agencies must maintain a comparable mix of families (by family size) as would have been provided had the amounts not been used under the demonstration.

- (i) HUD Verification Approach: In order to establish a comparable mix baseline, the Department will pull data, by family size, for occupied public housing units and

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<sup>16</sup> MTW agencies may use their MTW Funding to develop affordable housing units that are outside of the traditional public housing and HCV programs. Such local, non-traditional development allows for the creation of important affordable housing resources, which 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 agency's total available MTW Funding investment to the number of affordable units developed. To that end, HUD will divide the MTW agency's total available MTW Funding in the local, non-traditional development by the HUD-published Total Development Cost (TDC). The resulting number of units would then count as families housed for the length of time the units remained affordable.

leased vouchers at the time of entry into the demonstration. The Department will rely upon agency-reported data into HUD systems (i.e., PIC, VMS). This information will be used to establish baseline percentages, by family size, to which the agency is measured by for the remainder of participation. Following entry into the demonstration, agencies will provide comparable mix data and, if applicable, associated justifications in the MTW Supplement. The Department deems an acceptable level of variation to be no more than 5 percent from the baseline. Justifications or explanations for fluctuations greater than 5 percent are required and subject to the Department's review.

(e) MTW agencies must ensure that housing assisted under the demonstration meets housing quality standards established or approved by the Secretary.

(i) HUD Verification Approach: In order to demonstrate that the MTW agency meets housing quality standards, HUD will verify compliance for each housing program type as follows:

- HCV – Program regulations at 24 CFR Part 982 set forth basic housing quality standards (HQS) for housing assisted under the HCV program. These housing quality standards, or its successor regulations, are the standards used to determine if the agency is fulfilling its responsibilities to ensure owners are maintaining the units in accordance with HQS in the evaluation of an agency. Agencies with an HCV program must certify in the MTW Supplement that they have fulfilled their responsibilities to comply with and ensure enforcement of HQS under this requirement.

- Public Housing – HUD will verify this requirement through its review of PHAS Physical Assessment Subsystem (PASS) scores, or successor assessment system. Scores falling below 24 out of 40 will be identified as non-compliant with the statutory requirement.
- Local, Non-Traditional – In the MTW Supplement, MTW Agencies must certify that local, non-traditional units meet housing quality standards as required in PIH Notice 2011-45, or successor notice.

ii. Income Integrity and Enterprise Income Verification System (EIV) Reviews

MTW agencies are required to comply with the final rule regarding EIV issued December 29, 2009, and utilize EIV for all income verifications. EIV has been modified for MTW agencies so that family information submitted in PIC will not expire for 40 months, in order to accommodate agencies choosing to extend recertification periods for up to three years.

MTW agencies are subject to HUD review to ensure compliance with EIV requirements as well as monitor the accuracy and integrity of the MTW agencies' income and rent determination policies, procedures, and outcomes.

iii. MTW Site Visit

HUD will periodically conduct site visits to provide guidance, discuss the MTW agency's MTW activities, and offer any needed technical assistance regarding its program. The purpose of a site visit will be to confirm reported agency MTW activities, to review the status and effectiveness of the agency's MTW strategies, provide technical assistance, and to identify and resolve outstanding MTW related issues.

The MTW agency shall give HUD access, at reasonable times and places, to all requested sources of information, including access to files, access to units, and an opportunity to interview agency staff and assisted participants.

Where travel funding or staff resources are not available to facilitate in-person site visits, HUD may exercise the option to conduct remote site visits via telephone, videoconference, or webinar.

To the extent possible, HUD will coordinate the MTW site visit with other site visits to be conducted by HUD.

iv. Housing Choice Voucher Utilization

HUD will monitor HCV utilization at MTW agencies and will ensure that HCV funds are utilized in accordance with Section 4(a)(i)(c) and Section 6(c)(i)(c) of this Notice. Where leasing levels are inconsistent with the requirements of this Notice, HUD may take appropriate actions to work with the MTW agency to increase leasing and utilization.

v. Public Housing Occupancy

HUD will monitor public housing occupancy rates for MTW agencies. In instances where the MTW agency's public housing occupancy rate falls below 96 percent, HUD may require, at its discretion, that the MTW agency enter into an Occupancy Action Plan to address the occupancy issues. The Occupancy Action Plan will include the cause of the occupancy issue, the intended solution, and reasonable timeframes to address the cause of the occupancy issue.

vi. Additional Monitoring and Oversight

HUD may, based on the MTW agency's risks and at HUD's discretion, conduct management, programmatic, financial, or other reviews of the MTW agency. The MTW agency

shall respond to any findings with appropriate corrective action(s).

In addition, HUD will make use of all HUD data systems and available information to conduct ongoing remote monitoring and oversight actions for MTW agencies, consistent with the results of the PIH risk assessment.

#### 7. Rental Assistance Demonstration Program

MTW agencies converting public housing program units to Section 8 assistance under the Rental Assistance Demonstration (RAD) program are able to retain MTW regulatory and statutory flexibilities in the management of those units, subject to RAD requirements, if the conversion is to Project Based Voucher (PBV) assistance. MTW agencies converting projects under RAD to PBV may continue to undertake flexibilities except to the extent limited by RAD, as described in the RAD Notice, PIH 2012-32, REV-3, or its successor Notice.<sup>17</sup>

#### 8. Applying MTW Flexibilities to Special Purpose Vouchers

Special Purpose Vouchers (SPVs) are specifically provided for by Congress in line item appropriations, which distinguish them from regular vouchers. Except for enhanced vouchers and tenant-protection vouchers (described below), SPVs are not part of the MTW demonstration and are not part of the MTW agency's total available flexible MTW Funding. The funding is renewed outside of the MTW HAP renewal formula and the funding (both the initial increment and renewal funding) for the SPVs may only be used for eligible SPV purposes. There are no additional MTW flexibilities around using MTW funds to cover SPV shortfalls. MTW PHAs may use non-HAP sources to cover shortfalls, following the procedures outlined in Notice PIH 2013-28. PHAs already have the ability to use HAP reserve funds to address SPV instances of shortfalls, where the SPVs are

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<sup>17</sup> Notices and laws related to RAD can be found at <http://portal.hud.gov/hudportal/HUD?src=/RAD/library/notices>

under the same appropriations allocation for renewal as their Section 8 vouchers<sup>18</sup>.

a. HUD-Veterans Affairs Supportive Housing

HUD-Veterans Affairs Supportive Housing (HUD-VASH) vouchers have separate operating requirements and must be administered in accordance with the requirements listed at [www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/vash](http://www.hud.gov/program_offices/public_indian_housing/programs/hcv/vash). The operating requirements waive and alter many of the standard HCV statutes and regulations at 24 CFR Part 982. Unless stated in the HUD-VASH operating requirements, however, the regulatory requirements at 24 CFR Part 982 and all other HUD directives for the HCV program are applicable to HUD-VASH vouchers. Agencies may submit a request to HUD to operate HUD-VASH vouchers in accordance with MTW administrative flexibilities.

b. Family Unification Program

The Family Unification Program (FUP) NOFA language allows vouchers to be administered in accordance with MTW operations, unless MTW provisions are inconsistent with the appropriations act or requirements of the FUP NOFA. In the event of a conflict between the Operations Notice and the appropriations act or FUP NOFA language, the act and NOFA govern.

c. Non-elderly Persons with Disabilities Vouchers

The Non-Elderly Persons with Disabilities (NED) NOFA language allows vouchers to be administered in accordance with MTW operations unless MTW provisions are inconsistent with the appropriations act or requirements of the NED NOFA. In the event of a conflict between the Operations Notice and the appropriations act or FUP NOFA language, the act and NOFA govern.

d. Enhanced Vouchers and Tenant Protection Vouchers

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<sup>18</sup> [https://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_10495.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10495.pdf)

Enhanced and tenant protection voucher funds become fungible once the initial funding increment is renewed. The agency must continue to provide rental assistance to enhanced voucher families and tenant protection voucher families after the initial funding increment is renewed.

The statutory enhanced voucher requirements under Section 8(t) of the 1937 Act (e.g., the HAP calculation) apply to an enhanced voucher family until the family either moves from the project or leaves the HCV tenant-based program for any reason. MTW agencies must follow the procedures described in Notice PIH 2013-27, or its successor Notice, for a recipient of an enhanced voucher to voluntarily agree to relinquish their tenant-based assistance in exchange for PBV assistance. When an enhanced voucher family moves from the project, either after initially receiving the voucher or anytime thereafter, the Section 8(t) enhanced voucher requirements no longer apply. The voucher is then administered in accordance with the regular HCV program requirements, as modified by the agency's individual MTW waivers and MTW policies for its tenant-based HCV program.

Regular tenant protection vouchers (i.e., tenant protection vouchers that are not enhanced vouchers) are always administered in accordance with the normally applicable HCV program requirements, as modified by the agency's individual MTW waivers and MTW policies for its tenant-based HCV program, regardless of whether the family stays or moves from the project.

#### 9. Applicability of Other Federal, State, and Local Requirements

Notwithstanding the MTW Waivers and associated activities provided in this Operations Notice, the following provisions of the 1937 Act continue to apply to MTW agencies and the assistance received pursuant to the 1937 Act:

- i. The terms "low-income families" and "very low-income families" shall continue to be defined by reference to Section 3(b)(2) of the 1937 Act (42 U.S.C. §1437a(b)(2));

- ii. Section 12 of the 1937 Act (42 U.S.C. § 1437j), as amended, shall apply to housing assisted under the demonstration, other than housing assisted solely due to occupancy by families receiving tenant-based assistance;
- iii. Section 18 of the 1937 Act (42 U.S.C. § 1437p, as amended by Section 1002(d) of Public Law 104-19, Section 201(b)(1) of Public Law 104-134, and Section 201(b) of Public Law 104-202), governing demolition and disposition, shall continue to apply to public housing notwithstanding any use of the housing under MTW; and
- iv. Section 8(r)(1) of the 1937 Act on HCV portability shall continue to apply unless provided as a cohort-specific waiver and associated activity(s) in an evaluative cohort as necessary to implement comprehensive rent reform and occupancy policies. Such a cohort-specific waiver and associated activity(s) would contain, at a minimum, exceptions for requests to port due to employment, education, health and safety, and reasonable accommodation.

Notwithstanding any requirement contained in this Notice or any MTW Waiver and associated activity granted herein, other Federal, state and local requirements applicable to public housing or HCV assistance will continue to apply. The MTW CACC Amendment will place in HUD the authority to determine if any future law or future regulation conflicts with any MTW-related agreement or Notice. If a future law conflicts, the law shall be implemented, and no breach of contract claim, or any claim for monetary damages, may result from the conflict or implementation of the conflicting law or regulation.

If any non-1937 Act requirement applicable to PHAs, public housing, or HCV assistance contains a provision that conflicts or is inconsistent with any MTW Waiver and associated activity granted by HUD, the agency remains subject to the terms of that non-1937 Act requirement. Such

requirements include, but are not limited to:

- Requirements for Federal Funds: Notwithstanding the flexibilities described in this Notice, the public housing and voucher funding provided to MTW agencies remain Federal funds and are subject to any and all other Federal requirements outside of the 1937 Act (e.g., including, but not limited to, competitive HUD NOFAs under which the MTW agency has received an award, state and local laws, Federal statutes other than the 1937 Act (including appropriations acts), and OMB Circulars and requirements), as modified from time to time. The MTW agency's expenditures must comply with 2 CFR Part 200 and other applicable Federal requirements, which provide basic guidelines for the use of Federal funds, including the requirements of this Notice.
- National Environmental Policy Act (NEPA): MTW agencies must comply with NEPA, 24 CFR Part 50 or Part 58, as applicable, and other related Federal laws and authorities identified in 24 CFR. Part 50 or Part 58, as applicable. Information and guidance on the environmental review process and requirements is provided in PIH Notice 2016-22, or successor notice.
- Fair Housing and Equal Opportunity: As with the administration of all HUD programs and all HUD-assisted activities, fair housing, and civil rights issues apply to the administration of MTW demonstration programs. This includes actions and policies that may have a discriminatory effect on the basis of race, color, sex, national origin, religion, disability, or familial status (see 24 CFR Part 1 and Part 100 subpart G) or that may impede, obstruct, prevent, or undermine efforts to affirmatively further fair housing. Annual PHA Plans must include a civil rights certification required by Section 5A of the 1937 Act and implemented by regulation at 24 CFR 903.7(o) and 903.15, as well as a

statement of the PHA's strategies and actions to achieve fair housing goals outlined in an approved Assessment of Fair Housing (AFH) consistent with 24 CFR 5.154. If the PHA does not have a HUD-accepted AFH, it must still provide a civil rights certification and statement of the PHA's fair housing strategies, which would be informed by the corresponding jurisdiction's AFH and the PHA's assessment of its own operations.

All PHAs, including MTW agencies, are obligated to comply with non-discrimination and equal opportunity laws and implementing regulation, including those in 24 CFR 5.105. Specific laws and regulations must be viewed in their entirety for full compliance, as this Operations Notice does not incorporate a complete discussion of all legal authorities. For example, PHAs, including MTW agencies, are required to comply with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Architectural Barriers Act of 1968, Executive Order 11063: Equal Opportunity in Housing, Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency, HUD's Equal Access Rule (24 CFR 5.105(a)(2)), Age Discrimination Act of 1975, and Title IX of the Education Amendments Act of 1972, as well as HUD and government-wide regulations implementing these authorities. PHAs should review PIH Notice 2011-31 for more details.

- **Court Orders and Voluntary Compliance Agreements:** MTW agencies must comply with the terms of any applicable court orders or Voluntary Compliance Agreements that are in existence or may come into existence during the term of the MTW CACC Amendment. The PHA must cooperate fully with any investigation by the HUD Office of Inspector General or any other investigative and law enforcement agencies of the U.S.

Government.

10. MTW Agencies Admitted Prior to 2016 MTW Expansion Statute

The 39 MTW agencies that entered the MTW demonstration prior to the 2016 MTW Expansion Statute adhere to an administrative structure outlined in the Standard MTW Agreement, a contract between each current agency and HUD. The 2016 MTW Expansion Statute extended the term of the Standard MTW Agreement for these existing MTW agencies through each agency's 2028 fiscal year.

Some agencies that entered the MTW demonstration prior to the 2016 MTW Expansion Statute may wish to opt out of their Standard MTW Agreement and administer their MTW program pursuant to the MTW Expansion and the requirements in this MTW Operations Notice. HUD will support an existing MTW agency's request to join the MTW Expansion provided that the agency:

- makes the change at the end of its fiscal year, so that it does not have part of a fiscal year under the Standard Agreement and part under the Operations Notice;
- follows the same public comment and Board resolution process as would be required for amending the Standard MTW Agreement;
- executes its MTW CACC Amendment to authorize participation in the MTW demonstration consistent with the Operations Notice; and
- agrees to all the terms and conditions that apply to MTW agencies admitted pursuant to the 2016 MTW Expansion Statute, including all of the provisions of this Operations Notice and the accompanying MTW CACC Amendment.

Should an existing MTW agency elect to administer its MTW program pursuant to the

framework described in this Operations Notice, it will not be required to implement the cohort-specific policy change associated with any of the MTW cohorts and it will not be required to participate in the evaluation of that specific policy change. All other requirements in this

Operations Notice will apply.

#### 11. Sanctions, Terminations, and Default

If the MTW agency violates any of the requirements outlined in this Notice, HUD is authorized to take any corrective or remedial action permitted by law. Sanctions, terminations, and default are covered in the agency's MTW CACC Amendment.

### **III. Environmental Impact**

#### 1. Purpose and Applicability

A Finding of No Significant Impact (FONSI) with respect to the environment was made for a previous version of this Notice 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 applicable to the current version of the Notice because there were no significant changes to the provisions of the Notice. The FONSI will be available for public inspection on [www.regulations.gov](http://www.regulations.gov).

Date: August 24 2018

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Robert E. Mulderig, Acting Deputy Assistant  
Secretary for Public Housing Investments

**[FR-5994-N-03]**

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