



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

November 26, 2018

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Regulations Division
Office of General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

**Re: Operations Notice for the Expansion of the Moving to Work Demonstration
Program: Republication and Extension of Comment Period [Docket No. FR-5994-N-04]**

To Whom It May Concern:

Thank you for the opportunity to comment on the Department of Housing and Urban Development (HUD) "Operations Notice for the Expansion of the Moving to Work Demonstration Program: Republication and Extension of Comment" [Docket No. FR-5994-N-04] published on October 11, 2018.

Please accept this letter as the comments of the Co-Chairs of the Consortium for Citizens with Disabilities (CCD) Housing Task Force. CCD is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of the over 57 million children and adults with disabilities and their families living in the United States. CCD advocates for national public policy that ensures full equality, self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

We are deeply concerned that the draft revised Operations Notice republished on October 11, 2018 makes major changes to the prior proposed Operations Notice (published May 4, 2017) that would fail to advance the statutory goals of the Moving to Work (MTW) program and would lead to significant harm to many tenants, including people with disabilities. We share the concerns of the National Housing Law Project and Housing Justice Network regarding the potential provision of general MTW waivers to all 100 agencies without HUD approval, and with no apparent plan for HUD oversight or formal study including for some of the most potentially harmful changes.

In addition to these broad concerns with the structure and scope of the republished Operations Notice, our comments below highlight specific changes that we believe would be particularly problematic for people with disabilities and their families.

Despite Safe Harbors, People with Disabilities will be Impacted

For each MTW activity, the draft republished Operations Notice identifies “safe harbors,” which provide additional requirements that a Public Housing Agency (PHA) must follow to implement the activity without additional HUD approval. Agencies may also seek HUD approval to implement additional activities or to go beyond the safe harbors.

The draft Operations Notice provides safe harbors for PHAs that exempt “disabled families” (under the Notice, “...as defined in 24 CFR 5.403 or the MTW agency’s approved definition under its MTW program”) from: term limits; work requirements; income bands; stepped rents; imputed rents; and, alternative income exclusions or inclusions. Despite these provisions, we believe that people with disabilities will be impacted and harmed by many of the proposed MTW activities, even when PHAs use safe harbors.

For example, the safe harbor for maximum rents will itself impose significant new rent burdens on “disabled families,” allowing agencies to set a maximum of \$100 per month for disabled families. This is a 100% increase from the current minimum rents of \$50 per month. “Disabled families” will also be subject to multiple MTW waivers that are likely to pose hardship, including:

- Initial rent burden (1.o.) – PHAs are allowed to impose a rent burden greater than 40% of adjusted income for a family when they initially occupy a home using a voucher.
- Elimination of Deductions (1.r., 1.s.) and Standard Deductions (1.5., 1.u.) – PHAs are allowed to eliminate deductions from income or establish standard deductions that might be less than current available deductions.
- Establish Community Rules and Reasonable Fees through Local Lease (6.a., 6.b.) – PHAs may impose fees that could add cost burdens.
- Fixed Rents/Subsidies (1.k, 1.l.) – The Notice provides waivers that allow total tenant payment (TTP) to be calculated as a percentage of gross income and that allow fixed rents/subsidies cap rent for disabled families at 30% of gross income. Currently the TTP for these households is the maximum of 10% of gross income or 30% of adjusted income; these waivers could lead to significant rent increases for people with extremely limited incomes.

In addition, exemptions will inevitably be complex to administer and fundamentally flawed, leaving out many families and people with disabilities who do not meet the definitions of “disabled family” or “person with disabilities” provided in 24 CFR 5.403:

“Disabled family means a family whose head (including co-head), spouse, or sole member is a person with a disability. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.”

“Person with disabilities:

(1) Means a person who:

(i) Has a disability, as defined in 42 U.S.C. 423;

(ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:

(A) Is expected to be of long-continued and indefinite duration;

(B) Substantially impedes his or her ability to live independently, and

(C) Is of such a nature that the ability to live independently could be improved by more

- suitable housing conditions; or
- (iii) Has a developmental disability as defined in 42 U.S.C. 6001.
- (2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;
- (3) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and
- (4) Means “individual with handicaps”, as defined in § 8.3 of this title, for purposes of reasonable accommodation and program accessibility for persons with disabilities.”

These definitions were established for the purpose of targeting scarce federal Section 8 and public housing assistance. This is a very different purpose from determining whether an individual or family has health- or disability-related barriers to complying with new MTW agencies’ work and reporting requirements, whether a family or would face financial hardship under MTW waivers. Many people with chronic illnesses and disabilities do not meet the statutory definitions in 24 CFR Part 5.403. Many want to work and be more economically self-sufficient, but need additional supports and services to obtain and keep jobs, in addition to facing discrimination and misconceptions about their ability to work. MTW incentives alone are unlikely to be sufficient to create employment opportunities for many people with disabilities. Additionally, experiences in other programs – including the Temporary Assistance for Needy Families program, the Supplemental Nutrition Assistance Program, and more recently, Medicaid – have found that people with chronic illness and disabilities are among those more likely to lose benefits under work requirements and to experience difficulty navigating reporting and exemption processes.¹

Adding to the potential complexity and confusion for PHAs and people with disabilities, the draft Operations Notice offers three different definitions of disability. The final page of the Appendix (p. 51499) states that for the purpose of meeting a safe harbor, an MTW activity must not apply to “disabled families” (1) as defined in 24 CFR Part 5.403, or (2) the MTW agency’s approved definition under its MTW program. The third definition is provided under work requirement waivers (9.a., 9.b.) and includes “disabled families” as well as families that include people with disabilities.

The Notice provides these different definitions but neither explains why a single definition does not suffice nor why these definitions are appropriate for the purpose of MTW and the particular section(s) in which they are included. The Notice allows MTW agencies to develop their own definition but provides no guidance or parameters, i.e., what must or must not be included in such a definition to receive HUD approval as part of the agency’s MTW program, and why. The CCD Housing Task Force does not believe that HUD should allow PHAs to independently redefine disability. It does not make sense for HUD to allow members of a protected class to be treated differently at different PHAs, in different communities, in different parts of the country.

Impact Analysis

¹ See, for example, LaDonna Pavetti, Ph.D., TANF Studies Show Work Requirement Proposals for Other Programs Would Harm Millions, Do Little to Increase Work, November 13, 2018, <https://www.cbpp.org/research/family-income-support/tanf-studies-show-work-requirement-proposals-for-other-programs-would>; Consortium for Citizens with Disabilities, Comments on Advanced Notice of Proposed Rulemaking, “Supplemental Nutrition Assistance Program: Requirements and Services for Able-Bodied Adults Without Dependents”, April 9, 2018, <http://c-c-d.org/fichiers/CCD-SNAP-ANPR-Comments-FINAL-04.09.18.pdf>; Consortium for Citizens with Disabilities, Letter to Secretary Azar, February 7, 2018, http://c-c-d.org/fichiers/Work-Requirements-Letter_DM-Edits_1-31-18_CLEAN.pdf.

The draft republished Operations Notice requires PHAs to conduct an Impact Analysis for a number of the waivers. The Appendix provides eight factors that must be considered as part of the impact analysis. The CCD Housing Task Force recommends the Notice include impact on covered protected classes including disabled families and families include a person with a disability as a ninth factor. The Notice currently only appears to require the impact on protected classes be determined as part of the first seven factors; the CCD Housing Task Force recommends this impact also be assessed more generally.

Clarification of Treatment of NED and Mainstream Vouchers

In the draft republished Operations Notice, HUD takes the position that Non-Elderly Disabled (NED) voucher Notice of Funding Availability (NOFA) language allows NED vouchers to be administered in accordance with operations unless the MTW provisions are inconsistent with the appropriation act or requirement of the NED NOFA. [We note that the Federal Register Notice incorrectly references the FUP NOFA under section 8(c) rather than the NED NOFA.]

The Operations Notice should reference PIH Notice 2011-32 which makes it clear that PHAs must track all NED vouchers and ensure that when these vouchers “turnover”, they are reissued to a household headed by a person with a disability. The Notice provides citations to this effect:

“The Consolidated Appropriations Act, 2004 provided that incremental vouchers previously made available under this heading (Housing Certificate Fund) for NED families shall, to the extent practicable, continue to be provided to NED families upon turnover. This requirement applies to all NED special purpose vouchers awarded since 1997. In addition, the 2008 appropriations Act stated that amounts available under this Act or previous appropriations acts for tenant-based rental assistance and used for NED families shall, to the extent practicable, remain available for its purpose upon turnover. The 2009 Appropriations Act removed the words, “to the extent practicable” and stated that assistance made available under the Act shall continue to remain available for NED families upon turnover. In accordance with section 6 of PIH Notice, 2005-5 (further extended by PIH Letter 2007-1), to the “extent practicable,” meant that PHAs were required to issue turnover vouchers to NED families on their waiting lists, and conduct outreach efforts specifically to NED families to obtain eligible applicants if there were none on the waiting list.

In addition, Section 2(a)(4)(C) of the Frank Melville Supportive Housing Investment Act of 2010, states that upon turnover, all HCVs for NED families received pursuant to appropriation Acts for fiscal years 1997 through 2002, or any other subsequent appropriations, remain with NED families to the maximum extent possible.”

Proposed Funding Formula and Local, Non-Traditional Activities

The CCD Housing Task Force joins the National Housing Law Project and Housing Justice Network in their support for basing voucher renewal funding on an agency’s previous year’s Housing Assistance Payment (HAP) expenses because (1) it provides an incentive for PHAs to utilize all of their authorized vouchers, and (2) there is more PHA accountability to HUD using the proposed formula (versus a block grant structure). The original Operations Notice, however, included an important safeguard that would have required PHAs to use, at a minimum, 90% of HAP funds on vouchers because scarce housing resources should be used for rental housing and not other “local, non-traditional” housing services. In its current Operations Notice, HUD removed the 90% requirement. HUD should reinstate the 90% requirement because it preserves HUD funding for its intended use to provide housing to low-income families. Indeed,

absent regulation, MTW PHAs have historically diverted funds away from the voucher program.² HUD should include safeguards in the current Operations Notice from future potential diversions. In an era when rental assistance resources are shrinking, it is critical to preserve these funds for their core purpose of providing tenant and project based assistance to extremely low and very low-income households.

Conclusion

Thank you again for the opportunity to comment on “Operations Notice for the Expansion of the Moving to Work Demonstration Program: Republication and Extension of Comment” [Docket No. FR-5994-N-04] published on October 11, 2018.

Sincerely,

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² Center for Tax and Budget Accountability, *A Fiscal Review of the Chicago Housing Authority* (July 2014).