

Form 50900 (Attachment B): Regarding Re-approval of Ongoing MTW Activities

Regarding draft revisions to Form 50900 published for public comment on May 16, 2011

Joint comments from:

- Housing Authority of the County of San Mateo
- Oakland Housing Authority
- San Antonio Housing Authority
- San Diego Housing Commission
- Seattle Housing Authority
- Tacoma Housing Authority
- Vancouver Housing Authority

We are writing regarding the language in HUD's draft revisions to Form 50900 that requires re-approval for previously approved and ongoing Moving to Work (MTW) activities if there is a "significant change" in the agency's implementation of the activity. HUD's proposed definition of a "significant change" is either a change in the cited authorization or any change with the potential to differently impact a tenant. This proposed definition of a significant change and resulting re-approval requirement is so broad that it could easily include the types of adjustments that MTW agencies regularly make and are encouraged to make in response to changes in local conditions or in response to data that shows opportunities for improvement. If Form 50900 is implemented with the currently proposed language, it will create a new bureaucratic burden that could greatly constrain MTW agencies' ability to try new approaches, learn from their results, and make improvements to more effectively serve households.

The proposed language conflicts with the intent of MTW and deviates significantly from current requirements.

The new language that is proposed represents a dramatic change in requirements and deals a major blow to MTW agencies' ability to create innovative and effective programs. Under the current Form 50900, MTW agencies are not required to seek re-approval for previously approved activities. In fact, the current language in Attachment B specifically states that "failure to cite to the correct or entire statute or regulation will not be grounds for disapproval of such initiative in an Annual Plan nor will such failure invalidate the use of the MTW authority necessary to implement and support the initiative." In contrast to the new proposed language, current Attachment B instructions encourage agencies that are not meeting their benchmarks to identify changes in strategies to better pursue their goals, without a re-approval process.

Current requirements encourage agencies to identify and discuss changes in implementation of ongoing MTW activities as a learning opportunity for all agencies and for HUD.

The current requirements in Form 50900 already provide HUD and MTW agencies with a plethora of tools to monitor the impacts and effectiveness of MTW activities, including detailed benchmarks, metrics, annual results, and hardship requests that agencies report each year. With these safeguards already in place to monitor any negative impacts as they arise, an additional re-approval process for ongoing activities is hardly needed.

The proposed language redefines the roles and responsibilities of agencies and HUD in proposing and approving MTW activities.

The proposed re-approval requirement presents a major shift in the way that MTW activities are proposed, approved, and monitored and undercuts the agreements that HUD has made with MTW agencies. Currently, a MTW agency identifies the areas of law that it is waiving in order to propose a new MTW activity, but requires no additional authorization from HUD to proceed with the activities that it describes in its Annual Plan. Rather, it is HUD's role to confirm that the proposed new activities are permissible under MTW authority and consistent with requirements outside the 1937 Act. HUD's responsibility in no way extends to approving agency modifications in its implementation of previously approved activities, which instead are properly reported on by the agency in its Annual Reports.

The Statement of Authorizations in Attachment C makes these roles clear, as it states that the purpose of the authorizations is for HUD to "delegate to the Agency the authority to pursue locally driven policies, procedures and programs with the aim of developing better, more efficient ways to provide housing assistance and incentives to self-sufficiency to low, very-low, and extremely low-income families. The authorizations listed in this Attachment C are granted fully without requiring any additional HUD authorizations, as necessary to implement the activities described in the Annual MTW Plan."

The proposed new language for Attachment B conflicts with the authorizations stated in Attachment C. However, Attachment B is an inappropriate vehicle to introduce new regulations or redefine responsibilities, as its purpose is instead to define Annual Plan and Annual Report components in order to collect information needed for program evaluation.

Ongoing and successful MTW activities that have been in place for years could require repeated re-proposal and re-approval processes.

While we understand the importance and are committed to reporting to HUD and the public any planned changes in the implementation of MTW activities, requiring us to re-request authorization is unduly onerous and in conflict with the commitments that have been made by

HUD. For example, Seattle Housing Authority, like many MTW agencies, has received HUD approval to adopt a local inspection protocol as an MTW activity. In 2003 the agency began conducting inspections biennially in selected properties. In the future, the agency might consider experimenting with triennial inspections to see if a less frequent schedule could reduce costs while safeguarding housing quality. As the proposed language in the draft 50900 reads, HUD could require a re-approval process if the agency decides to pursue triennial inspections. However, no re-approval should be required, as the previous authorization gives the agency the authority to implement a local inspection protocol – which includes, but is not limited to, biennial inspections. This type of a change represents a change in implementation strategy rather than a fundamentally different MTW activity.

If implemented, the proposed new language regarding re-approval will have the unintended effect of derailing the implementation of permissible MTW activities. The Annual Plan presents an agency's best effort to describe the intent and direction of a new MTW activity and provides the public and HUD an opportunity to learn about and comment on the initiative. However, an agency is unable to flesh out an initiative's every detail until it begins implementation. Suspending an initiative because HUD deems revisions "significant changes" could potentially halt valuable services to residents, derail development deals, destroy partnerships, and damage an agency's credibility with partners, funders, and community members.

The proposed language is vague and potentially far-reaching.

In the most recent version of the Form 50900 HUD states that it will require agencies to re-propose activities that require "significant changes." HUD proposes the following definition:

A "significant change" occurs when the nature of the activity has changed such that an additional MTW authorization is needed or when an agency fundamentally changes the nature and scope of an activity to the extent that there is the potential for a different impact on residents (for example changing the calculation of rent).

HUD does not include a threshold for the potential of a different impact on residents. It is unclear where HUD would draw the line – for example, would an increase of \$1 a year in rent, the removal of a form, or the collection of new tenant information require re-approval of the entire MTW activity? Further, HUD "reserves the right to determine on a case-by-case basis if the change made to an activity crosses this threshold and therefore requires the activity to be re-proposed," raising further concerns about this vaguely defined and yet highly burdensome new requirement for MTW agencies.

Conclusion

With the proposed new re-approval requirement, HUD appears to be making an effort to more tightly regulate MTW agencies. The rationale for HUD's concern in this area is unclear, as MTW agencies already undergo a thorough public process for each new MTW activity proposed in the Annual Plan and monitor the impacts of each ongoing MTW activity in the Annual Report. Creating a new role for HUD in re-approving ongoing and previously approved MTW activities will result in a cumbersome central bureaucracy that is antithetical to experimentation and innovation. This type of approach would mimic how HUD manages traditional housing authorities and render useless the value of the MTW program in identifying new strategies to improve housing and service delivery.

We strongly recommend that HUD remove the proposed new language regarding the definition of significant changes that would require re-approval of previously approved MTW activities. This onerous new requirement will stifle MTW agencies' ability to try new approaches, evaluate the effectiveness of different strategies, and adjust implementation strategies to accommodate the local environment and to improve the effectiveness of our programs over time.