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HUD Desk Officer
Office of Management and Budget
New Executive Office Building
Washington, DC 20503

Re: Revisions to MTW Reporting and Planning Process, Docket No. FR-5480-N-114, OMB
Control Number 2577-0216, Form HUD 50900

Dear Sir/Madam:

These comments are submitted by the Center on Budget and Policy Priorities. The Center is a non-partisan research organization and policy institute that conducts research and analysis on a range of government policies and programs affecting low- and moderate-income families and individuals.

Thank you for the opportunity to comment on the most recent draft of HUD's MTW Reporting and Planning proposal. These comments focus on reporting of data related to the requirements in the MTW statute that agencies assist substantially the same number of families as they would have had they not combined voucher and public housing funds, and that 75 percent of families assisted be very low-income (VLI) families.

Unfortunately, HUD's proposal would not bring about meaningful enforcement of these key requirements, despite some modest improvements from the version circulated in May. Indeed, under the proposal, the accountability agencies face in these areas would increase only modestly compared to the status quo, in which HUD does not monitor or enforce the requirements at all.

Most importantly, the proposal defines assisted families to include any family that receives even a dollar of housing assistance using MTW funds. This extremely broad definition would allow an agency to meet the "substantially the same" requirement simply by spreading minimal assistance across the required number of families. The agency could then opt to provide meaningful subsidies to far fewer families than it could support with available funds (as many MTW agencies do under the current system) and shift the unspent funds to other purposes.

Other loopholes would further undercut the validity of the data the proposal would collect. For example, the proposal directs agencies to count as assisted a family using an incoming portability voucher that the MTW agency has not absorbed. This makes little sense, since the subsidy for such a family would be paid by a different agency. In addition, the proposal's flawed requirements for reporting the share of families assisted that are VLI would unnecessarily permit diversion of resources away from the neediest families.

Strong enforcement of the substantially the same and VLI requirements not only would benefit many needy families, but also would contribute significantly to the Administration's goal of ending homelessness and HUD's high priority performance goal of providing rental assistance to a substantial number of additional families. HUD could readily develop standards that would permit agencies broad flexibility to implement non-traditional assistance, but still require substantive compliance with the MTW statute. HUD's current proposal, however, would serve mainly as a rationale for agencies to certify that their existing policies comply with the statute after at most modest adjustments — even if those policies leave many families that could be helped with available funds without meaningful assistance. Moreover, the data HUD collects regarding the number of families assisted would have little credibility.

OMB should withhold approval for HUD's proposal until HUD makes the revisions needed to effectively enforce the MTW statute. If necessary, OMB should provide a short-term extension for the existing MTW reporting and planning process while these revisions are made.

Number of Families Assisted

The MTW statute requires that agencies “assist substantially the same total number of eligible low-income families as would have been served had the amounts not been combined.” This language appears intended to constrain an agency's ability to reduce the level of assistance it provides below what it would have provided without MTW funding flexibility. Whether the requirement achieves this or not, however, depends on how “assist” is defined; the statute leaves this definition to HUD's discretion.

Unfortunately, HUD's proposal uses an extraordinarily loose definition of “assist” that would provide agencies broad leeway to scale back the subsidy provided per household and still get credit under this key metric. The November draft makes some improvements over the version of the proposal circulated in May (such as requiring agencies to use consistent time periods in reporting the number of families assisted) and would increase the amount of information available about assistance at MTW agencies. Because of the weak definition of assistance, however, the new draft would still fail to provide the data needed for a meaningful determination of whether agencies have complied with the “substantially the same” requirement.

On page 2 of the proposal, HUD directs agencies to count as assisted “all households who receive housing assistance directly or indirectly, using any amount of MTW funds; including through local, non-traditional MTW programs as long as they are designed to meet one of the three MTW statutory objectives.” On page 3, it specifies that this could include “low-income housing tax credit households if MTW funds were used for development costs or as a subsidy and households that benefit from MTW funds that are not direct rental subsidies but are used in the development of below-market rate units restricted to eligible households.” These instructions open up numerous options for agencies to count families that have received only very minor subsidies through MTW as assisted families. Agencies could, for example, use MTW funds to:

- Provide low-income homeowners small grants of \$100 or \$200 for repairs, and count the families as assisted for the full year;

- Pay 5 or 10 percent of the subsidy cost for an existing state or local rental assistance program, but count 100 percent of participants as assisted families; or
- Make small contributions to the development of an LIHTC or below-market project, and count all units in the development as assisted for as long as the project is subject to income and rent limitations. The potential for distortion here is particularly high, since an agency that makes small contributions to a substantial number of developments could reduce (or even eliminate) its obligation to use MTW funds to assist families for decades to come.

In each of these cases, agencies could sharply cut the number of families that receive meaningful rental assistance, shift funds to their administrative budgets or other purposes, and still comply with the “substantially the same” requirement. Given the budget pressures at the federal, state and local levels, agencies could face considerable pressure to make such shifts to fill gaps in their budgets.

MTW permits agencies to use housing assistance funds for a wide range of purposes, including development of affordable housing and shallow or short-term housing assistance. HUD should allow for these alternative uses of funds, but it should not permit such uses to artificially inflate the number of families reported assisted. Several changes to the reporting requirements are needed to prevent such evasion of the apparent statutory purpose and tighten the definition of assistance in other ways:

- **HUD should apply a proration when counting families assisted with a mix of MTW and other funds.** Sometimes agencies provide housing assistance using a mix of MTW funds and local, state, or other federal funds. Such assistance should count toward the substantially the same obligation, but it should not be equivalent to a voucher or public housing unit funded entirely with MTW funds. The fairest approach would be to prorate the number of families based on the share of funding provided by MTW funds. For example, four units where 25 percent of funding is provided through MTW could be counted as equivalent to one fully MTW-funded unit. Agencies should be required to report these pro-rations separately for each program.

HUD’s approach of counting 100 percent of families assisted in mixed programs deeply undercuts the validity of the requirement to assist substantially the same number of families as would have been assisted without MTW funding flexibility. After all, without MTW flexibility the state, local, and non-MTW federal funds would still typically have been used to assist families, either in the jurisdiction of the MTW agency or elsewhere. They are not, however, counted in an agency’s baseline number of families that would have been assisted without MTW funding flexibility, and they should not be used to inflate the number of families an agency is deemed to assist with MTW.

- **Agencies should receive credit only for families receiving a meaningful level of housing assistance.** Families should only be counted as assisted if MTW-funded subsidies actually reduce their housing costs substantially. HUD should exclude minor assistance by establishing a clear, quantitative floor. For example, HUD could direct agencies to count a family as assisted in a month only if MTW reduces its housing costs that month below the cost the family would have incurred without assistance by at least

the higher of (1) \$250 or (2) the gap between the applicable Fair Market Rent and 30 percent of the income of a VLI family. (Agencies could be permitted to average these figures across all families receiving a particular type of assistance.)

In the case of units developed with MTW funds in a prior year, HUD should direct agencies to count as assisted only families that receive a meaningful reduction in their housing costs in the current year as a result of the investment of MTW funds. For this calculation, the cost a family in an LIHTC unit would have incurred without MTW assistance should be the maximum LIHTC rent (or the rent charged to other families in the LIHTC development that do not have MTW assistance).

- **Non-absorbed port-in vouchers should not be counted as families assisted.** HUD's table on page 13 specifically directs agencies to count "Port-in Vouchers (not absorbed)" in determining the total number of families assisted. This appears to refer to vouchers issued by another agency and used in the MTW agency's jurisdiction, but that the MTW agency has not yet opted to absorb. MTW agencies do not pay the subsidies for such vouchers. The MTW agency carries out some administrative tasks such as inspections and receives added administrative fees as compensation – but the MTW agency does not provide any actual housing assistance to these families and should not be permitted to count them as assisted. In addition to being methodologically faulty, counting these families as receiving housing assistance through MTW would provide a strong incentive for MTW agencies to decline to absorb vouchers (since this would be a low-cost way for the agency to meet its substantially-the-same requirement).
- **Agencies should report only actual households assisted, not estimates.** In the note under the households served table, HUD states that "when a Local, Non-Traditional program provides a certain subsidy level but does not specify a number of units/Households Served, the agency should estimate the number of Households served." But it seems fundamental to enforcement of the requirement to assist substantially the same number of families that agencies count the number of families they assist, and that if they make grants to other entities they require those entities to count the number of families assisted. Moreover, it seems likely that if an agency does not even know how many families a program assists, it would have difficulty determining what share of those families are VLI or what their demographic make-up is, or overseeing the effectiveness of the program more generally. If agencies do not wish to keep track of how many families they assist through a local, non-traditional program, HUD should not permit them to claim credit for providing assistance to the families.
- **Agencies should report each non-traditional assistance program separately.** Non-traditional programs could vary widely in the amount and nature of the assistance they provide. As a result, HUD's proposal that agencies lump all non-traditional assistance into two categories – "tenant-based" and "property-based" — could produce data that are of little use to the public or HUD. Agencies should be required to report data separately for each program.

Number of Very-Low Income Families

The November draft of the reporting form contains a table on page 13 showing the number of households admitted to housing assistance each year and the share of those households with incomes below 50 percent of the local median. This is an advance over HUD's initial draft, since it at least requires submission and public disclosure of the data HUD will use to determine compliance with the VLI targeting requirement. (The new draft also significantly increases reporting of data related to a requirement mandating that agencies continue to serve a mix of families by size comparable to the mix they would have assisted without MTW.) In two key respects, however, HUD appears to fall far short of correctly implementing the MTW statute's VLI requirement.

- **The statutory MTW VLI requirement applies to all types of MTW housing assistance, not just “federal housing assistance.”** The note below HUD's table directs agencies to determine the number of families newly admitted to assistance by totaling “all households that have been admitted to federal housing assistance during the fiscal year in question.” By contrast, for purposes of determining compliance with the requirement to maintain the number of families assisted, HUD directed agencies to total the households served through “Federal” public housing and voucher units and two types of “Local Non-Traditional” programs. This suggests that in determining compliance with the VLI targeting requirement, agencies do not need to report data from all of the assistance types that they used to show compliance with the requirement to maintain the number of families assisted.

If this is HUD's intent, it violates the MTW statute, which gives no indication that the terms “assist” and “assisted” can be read differently for the two requirements. This approach would greatly weaken the VLI targeting requirement, since it would allow agencies to meet the VLI requirement by providing deep public housing and voucher assistance to a small number of predominantly VLI households while using “local” programs to assist a larger number of families that would be exempt from the VLI requirement. *HUD should explicitly prohibit agencies from including assistance types in the number of families assisted calculation that they do not include in the VLI calculation.*

- **The statutory VLI requirement applies to all assisted families, not just families at the time they are admitted to assistance.** As noted, HUD's table interprets the VLI requirement as applying only to “newly admitted” families. The MTW statute, however, appears to refer to all assisted families, stating merely that “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.”

In limiting the VLI requirement to newly admitted families, HUD's draft follows the approach used in the voucher and public housing extremely low-income (ELI) targeting requirements in Section 16 of the USHA, enacted under QHWRA in 1998. Those requirements, however, have very different statutory language, which specifies that “Of the families initially provided tenant-based assistance under section 8 by a public housing agency in any fiscal year, not less than 75 percent” must be ELI, and that “of

the public housing dwelling units of a public housing agency made available for occupancy in any fiscal year by eligible families, not less than 40 percent shall be occupied by families whose incomes at the time of commencement of occupancy” are below the ELI level. On its face, the MTW provision appears to use a higher targeting threshold but apply it to all families, while the QHWRRA requirement uses a lower threshold but applies it only at the time of admittance.

Even if HUD concludes that the MTW statute permits limitation of the VLI targeting requirement to newly admitted families, the statute certainly does not require this. As a result, HUD could clearly choose to apply the requirement to all assisted families. This would seem advisable. MTW agencies have broad flexibility to alter rent rules and other policies in ways that could make it harder for very-low-income families to retain assistance over time, and applying an ongoing VLI targeting requirement would provide a key check on that flexibility. Moreover, applying on-going VLI targeting would seem more consistent with other HUD and administration priorities, such as the goal of ending homelessness.

Number of Families that Would Have Been Assisted Had Funds Not Been Combined

To permit consistent determination of whether agencies complied with the “substantially the same” requirement, it will also be necessary for HUD to establish criteria for estimating the number of families that agencies would have assisted had funds not been combined. We understand that HUD is separately developing such a “baseline” measure. HUD should make this important measure available for public comment.

Some housing agencies (and HUD in some statements) have suggested that the proper “baseline” is the number of families the agency assisted upon entering MTW, or the number of families it assisted on entry plus new incremental or tenant protection vouchers added later. Either approach is seriously flawed, since many MTW agencies receive sufficient funds to assist many more families than they did when they entered the program, even when the new vouchers are added to the baseline. At many agencies admitted early in the demonstration, this is in part because their initial funding level was set based on the full number of vouchers the agency was authorized to administer, but the number of vouchers actually in use assisting families was considerable smaller.

One alternative would be to calculate the baseline using the number of families *taken into consideration in determining the agency’s funding* on entry to the program, plus any new vouchers. For some early MTW agencies, the number of families considered in determining the agency’s voucher funding on entry would be its authorized voucher total at the time, while for recently admitted agencies it would typically be the number of vouchers in use shortly before entry. This approach would avoid making the faulty assumption that agencies with low utilization on entry would continue to have low utilization today — more than a decade later in some cases — even though they have long had sufficient resources to assist more families and if they had not been in MTW the voucher funding formula would have placed strong pressure on them to do so.

A second approach would be to use the number of families an agency could assist with its *current* funding level (which at some agencies would be substantially higher than the number for which they were originally funded) as the starting point for the substantially the same analysis. In

the voucher program, the number of families an agency could assist could be estimated by dividing the agency's voucher funding level by its average per voucher cost, while in the public housing program it would be based on the number of units for which the agency receives operating funds (with certain adjustments in both programs).

Either of these suggested standards would require some current agencies to increase the number of families they serve significantly. HUD could allow a reasonable transition period after a new standard is established for agencies to improve performance before sanctions are triggered.

Definition of “Substantially the Same” and Enforcement of Requirement

Finally, HUD should establish an objective definition of how large a divergence in the number of families assisted would constitute a violation of the “substantially the same” requirement, and a plan for how the requirement will be enforced. HUD could, for example, consider an agency in violation if it assists fewer than 98 percent as many families as it would have had funds not been combined. HUD then could put agencies that fall below that threshold on warning, and impose sanctions if they do not come into compliance within a fixed period (perhaps 1 or 2 years).

Because of the importance of the substantially the same requirement, sanctions should be strong. At a minimum, agencies in violation that do not come back into compliance within the specified period should see their funding level permanently reduced in proportion to the percentage by which they fell short of meeting the standard.

Thank you for considering these comments.

Sincerely,

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