



November 22, 2017

Colette Pollard, Reports Management Officer  
QMAC, Department of Housing and Urban Development  
451 7<sup>th</sup> Street SW.  
Washington DC 20410-5000

Re: Docket No. 82 FR 49416: “30-Day Notice of Proposed Information Collection: Form 50900: Elements for the Annual Moving to Work Plan and Annual Moving to Work Report” (OMB Approval Number 2577-0216)

Dear Ms. Pollard:

The following comments are submitted on behalf of the National Housing Law Project (NHLP) and the Housing Justice Network (HJN) regarding the 30-Day Notice of Proposed Information Collection published on October 25, 2017, “Form 50900: Elements for the Annual Moving to Work Plan and Annual Moving to Work Report.”<sup>1</sup> NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income tenants and homeowners; and increasing housing opportunities for protected classes. In addition, NHLP hosts the national Housing Justice Network, a vast field network of over 1,000 community-level housing advocates and tenant leaders, many of whom practice in Moving to Work jurisdictions. HJN member organizations are committed to protecting affordable housing and housing rights for low-income families and individuals nationwide. Meaningful tenant involvement is fundamental to all supported and public housing decisions, and the following comments draw on NHLP and HJN’s extensive experience working for decades with advocates, residents, and Public Housing Authorities (PHAs).

The collection of data is an essential component of the MTW Demonstration program. Congress, when it created and recently expanded the program, directed HUD to identify policies that would provide cost-savings to PHAs, assist families in obtaining self-sufficiency, and increase housing choice. As noted in the 2013 Office of Inspector General report,<sup>2</sup> due to inadequate oversight since the program’s inception, little is known about how MTW agencies design programs to meet these statutory goals or how PHAs have changed their programs over time.

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<sup>1</sup> 30-Day Notice of Proposed Information Collection: Form 50900: Elements for the Annual Moving to Work Plan and Annual Moving to Work Report, 82 Fed. Reg. 49416 (Oct. 27, 2017).

<sup>2</sup> Audit Report on the Moving to Work Demonstration Program, Office of Inspector General, Number 2013-PH-0004, Sept. 27, 2013.

Form 50900 is the primary source of data that HUD receives to evaluate a PHA's participation in MTW and its compliance and success in meeting its stated objectives. Substituting for the PHA's Annual Plan, it is also the only way that tenants, advocates, and other stakeholders can provide input into and monitor MTW agency activities. To date, Form 50900 has not provided sufficient information to HUD, residents, or advocates to properly assess MTW activities.

We recommend adopting the following amendments to Form 50900 that will allow for stronger oversight and foster more meaningful resident participation. Nearly all of these comments echo our recommendations submitted in response to FR 5916-N-02 on April 22, 2016. We are particularly troubled by the elimination of Affirmatively Furthering Fair Housing (AFFH) reporting requirements from the August 2016 draft of form 50900,<sup>3</sup> as we feel inclusion of these reporting requirements is needed for successful implementation of PHAs' fair housing goals and priorities identified in the Assessment of Fair Housing (AFH) process. We note that while this language has been removed in this most recent version of Form 50900, in the Federal Register Notice announcing this information collection, HUD states that the "form is also being updated also to implement provisions of the Department's affirmatively furthering fair housing (AFFH) rule (24 CFR 5.150-5.180)."<sup>4</sup> As discussed in more detail below, we respectfully request that HUD put the AFFH reporting requirements back in the form, and that HUD collect additional information that would facilitate assessment of the fair housing implications of PHA strategies and actions.

## **I. Financial Reporting Requirements**

HUD should take steps to require transparency in all financial reporting by de-regulated PHAs. It is no secret that several MTW PHAs have used single-fund flexibility to divert significant resources into cash reserves or excessive executive compensation. The following suggestions will help HUD provide meaningful oversight of MTW programs while making financial information easier to understand at a local level. In addition, we urge HUD to review the Cambridge Housing Authority's Annual MTW Report,<sup>5</sup> which provides a model for financial reporting that meets both of these goals.

### **Revise Section (V) *Sources and Uses of MTW Funds* to Require PHAs to Report Data in a Format Other Than the Financial Data Schedule in Both Annual Plans and Annual Reports**

HUD currently requires MTW PHAs to report the sources and uses of MTW funds in Section (V) of Form 50900 but only requires PHAs to report information in the prescribed Financial Data Schedule (FDS) format. The FDS format is meaningless to tenants, advocates and most other stakeholders. Using the FDS format makes it incredibly difficult

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<sup>3</sup> See August 2016 revision of HUD Form 50900, Section I.C, pgs. 2, 6.

<sup>4</sup> 30-Day Notice of Proposed Information Collection: Form 50900: Elements for the Annual Moving to Work Plan and Annual Moving to Work Report, 82 Fed. Reg. 49,416, 49,417 (Oct. 25, 2017).

<sup>5</sup> The Cambridge Housing Authority FY2015 Report can be found here: <http://cambridge-housing.org/civicax/filebank/blobdload.aspx?BlobID=23404>

for residents to comment on the MTW Plan and evaluate an agency's MTW activities. Line items are not defined in the plan and therefore understanding what is in the table requires consulting the FDS line definition guide. Financial information reported per the FDS format also cannot be compared to budgets from prior years, making it difficult to understand financial trends. HUD should revise Section (V) to require reports in a plain format that the public can analyze and understand.

An additional concern with the existing FDS format is that when advocates request "translated" financial information, PHAs refuse to provide it, arguing that they are in compliance with HUD so no additional information need be made available. This greatly impedes residents and advocates in evaluating MTW programs and prevents them from providing meaningful comments during the public participation process. HUD should require PHAs to report data in a format other than, or in addition to, the FDS.

At the very least, HUD should require MTW PHAs to report financial information in the same format in both the MTW Plan and MTW Report. Currently, participating PHAs can exclude FDS data from MTW Reports making it incredibly difficult for residents and advocates to analyze financial data.

#### **Revise Section (V) A. *Estimated Sources and Uses of MTW Funds* to Clarify Certain Items**

Certain line items in Section (V) A. of the Annual MTW Plan, such as depreciation, are for non-cash outlays and do not constitute actual expenditures. Including them in Section (V) A makes it difficult for tenants and advocates to evaluate PHAs' annual budgets because ostensive expenditures actually involve no drawdown of funding. HUD should revise this section of the form to distinguish between actual estimated expenditures in the plan year and non-cash outlays. This change will provide tenants and advocates with a more realistic snapshot of how MTW agencies are spending their annual federal subsidies.

#### **Revise Section (V) *Sources and Uses of Funds* to Clearly Link Sources to Uses of Funds in the Annual MTW Report**

The current format of Section (V) of the MTW Report does not allow tenants or advocates to comprehensively evaluate where funding is coming from and how it is being used. The use of voucher funds for other purposes, for example, has been a core issue for tenant advocates monitoring MTW program activity. HUD should revise Form 50900 to account directly for what funds were allocated to each program. HUD should do this in two ways:

- Require PHAs to report sources and uses in a chart format that explicitly tracks the source of funding to the program expense.
- Expand the Required Narrative in Section (V) A.iii. Describe Actual Use of MTW Single Fund Flexibility of the Annual MTW Report. Advocates say that the current narratives are vague and uninformative. HUD should require PHAs to explain each use of the demonstration program's single fund flexibility that results in a reallocation of funds from the original federal revenue stream to a different PHA

cost center, which will clearly show how de-regulated PHAs spend their money differently under MTW than they otherwise would.

The failure of HUD to require this information also makes it difficult for tenants and advocates to analyze the “substantially the same” requirement, as explained in more detail below.

### **Retain Section (V) 5. A. C. MTW Report: Commitment of Unspent Funds and Require MTW PHAs to Report on Reserves**

The version of Form 50900 currently in use requires MTW agencies to include in their Annual MTW Report the commitment of unspent funds but only once HUD issues a methodology for defining reserves, including a definition of obligations and commitments. HUD should issue this methodology, if it has not already, and maintain the requirement that PHAs report any commitment of unspent funds in Section (V) of Form 50900. This will provide much-needed transparency regarding de-regulated agencies use of reserves and will help avoid situations in Baltimore and Chicago,<sup>6</sup> where only after close scrutiny of the PHA’s internal financial documents was it discovered that the PHAs had used reserves to pay debt obligations off early.

In addition, HUD should revise the table in Section (V) A. i. of the Annual MTW Plan to include a line item on reserves. As a result of this information being omitted from the table, in some cases a significant portion of a housing authority’s budget is missing, making it impossible to fully analyze spending in the “Uses” table as designated in the Annual MTW Report.

## **II. Requirements Regarding Resident Participation**

Given that Form 50900 acts as an MTW agency’s Annual Plan, it is imperative that HUD require a robust resident participation process. We suggest the following revisions to Form 50900 that will improve the resident participation procedures for MTW PHAs.

### **HUD Must Include Additional Reporting Requirements in Section (VI) B. Documentation of Public Process**

HUD requires limited documentation of the public process in Section (VI) of the Annual MTW Plan. This section should require PHAs to report on additional information such as:

- A description of how the public was notified of the MTW Plan process (see below for more details on this requirement).
- A summary of public comments.

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<sup>6</sup> News coverage on the Housing Authority of Baltimore City: <http://www.citypaper.com/news/features/bcp-112515-housing-money-20151125-story.html> and on the Chicago Housing Authority: <http://progressillinois.com/posts/content/2014/08/04/report-cha-failed-spend-millions-federal-housing-voucher-money-video>

- A summary of the PHA's response to those comments including but not limited to listing those that were accepted without modification, accepted with modification, and not accepted.
- Any changes that were made to the MTW Plan or MTW Report specifically in response to required comments/revisions by HUD.

Form 50900 explicitly states that HUD reserves the right to request additional information to verify that the PHA has complied with the public participation requirements in the MTW Standard Agreement. HUD should take resident participation requirements seriously and invoke this right if a PHA provides insufficient information regarding the process.

### **HUD Should Include Resident Participation Requirements in the General Instructions to Form 50900**

HUD should add a new box under the "General Instructions" Section: *Submission Requirements (resident participation)* of Form 50900. The instructions should set forth the minimum resident participation requirements for the MTW PHA Annual Plan and Report process including:

- Notice to residents and the community that the PHA Plan process has been initiated and that the Plan is available both in-person and on the PHA's website. The notice should include any upcoming hearing dates and their times and location.
- An explicit requirement to notify advocacy organizations in the local community of the planning process by (1) direct email or (2) an email to a listserv administered by the PHA that consists of housing advocacy organizations.
- The 30-day comment period should not commence until 2 days after the first formal notice has been delivered.
- Copies of the draft MTW Annual Plan and/or MTW Annual Report should be available (1) at each development, (2) at the PHA's central office and (3) on the PHA's website.
- Public hearings must be at times and locations convenient for residents.
- Public notices and hearings must address residents with Limited English Proficiency.
- Public notices and hearings must be accessible for people with disabilities.
- The final MTW Plan and Report must be made available once approved by HUD.

As HUD does with other planning documents, the instructions should encourage public involvement in the PHA Plan process, particularly among minorities, non-English speaking people, and people with disabilities.

Last, HUD should post final approved MTW Reports and Plans (as well as unapproved submitted plans if it anticipates a significant delay before approval) on its website to ensure that these are available to advocates in all communities.

### **III. Reporting on the "Substantially the Same" Requirement**

Advocates report that it has been extremely difficult to determine whether PHAs are meeting the requirement to assist substantially the same total number of eligible low-income families as would have been served without single-fund flexibility. Although the updated Form 50900 goes some of the way to improving this situation by specifying which units count as assisted and by making clear that only families that receive substantial on-going MTW-funded housing assistance should be counted, more changes are needed.

**HUD should add a required chart to Section (II) B. of the MTW Report that would reflect whether the PHA served substantially the same number of families with MTW flexibility.** The chart would require PHAs to calculate and report how many families they would be able to assist absent MTW status with the funding they receive for both the voucher and public housing programs, assuming a reasonable public housing occupancy rate and per-voucher subsidy cost. This would provide a baseline for analysis regarding the number of households that would have been served had the funds not been combined. The PHA should then be required to compare the baseline with the number of families actually assisted to determine whether it served substantially the same number of families. HUD should also establish a quantitative standard for “substantially the same” (for example, a difference of less than 5 percent) so that agencies can make their certifications in a consistent manner.

In addition, in their reports of number of families assisted, agencies should be required to identify which specific “local, non-traditional” tenant-based, property-based, or homeownership program families are assisted through, and they should be required to report the actual number of families assisted for all types of assistance rather than estimates.

**HUD should also revise Section (II) D. i. 75% of Families Assisted are Very low Income to reflect additional data that would help HUD and advocates determine whether the PHA is meeting the “substantially the same” requirement.** HUD should:

- Restore the historical data previously required in Form 50900 that shows income levels of participants for previous years.
- Require PHAs to report the income of families broken down by public housing and the voucher program.
- Require PHAs to report on the income of families broken down by bedroom size.

HUD should also require PHAs to include in their report data on the incomes of families assisted through public housing and vouchers (not just local non-traditional programs) so that these data are available to the public — or alternatively HUD should extract these data for MTW agencies from its databases and make them available online in an easily accessible format. This would provide HUD and local stakeholders the data to analyze not only whether the PHA is serving the same number of families, but also the same types of families that would otherwise be served by the PHA, absent MTW status.

#### **IV. Reporting Requirements for Housing Choice Vouchers**

MTW PHAs should be required to report additional information about their voucher programs. **HUD should add an additional chart to Section (II) A. Housing Stock Information that would require PHAs to report on:**

- Voucher utilization rates
- Voucher success rates by month
- Average time for a voucher family to lease up
- Average cost per voucher

Requiring this information will make it easier for tenants and advocates to analyze MTW voucher activities and provide meaningful insight into the programs created as a result of single-fund flexibility.

## **V. Information and Data Related to Fair Housing Reporting**

**HUD should reinstate and expand upon the fair housing information required in Section (I) C. Introduction in the August 2016 draft of Form 50900, while also collecting fair housing information in other relevant sections of the Annual MTW Report.** MTW agencies are required to Affirmatively Further Fair Housing (AFFH),<sup>7</sup> and agencies must certify compliance with AFFH obligations in the Certification of Compliance.<sup>8</sup> As part of their AFFH obligations, PHAs, including MTW agencies, must develop and submit an Assessment of Fair Housing (AFH) consistent with HUD's 2015 Affirmatively Furthering Fair Housing regulation.<sup>9</sup> The AFFH regulation states that in order to "implement goals and priorities in an AFH, strategies and actions shall be included in program participants' consolidated plans, Annual Action Plans, and PHA Plans (including any plans incorporated therein), and need not be reflected in their AFH."<sup>10</sup> Because MTW PHAs must complete an AFH, in order for the MTW PHA's goals and priorities to be appropriately implemented, this requirement should also apply to the Annual MTW Report.<sup>11</sup> As PHAs do not have to include strategies and actions implementing goals and priorities in the AFH itself, subsequent planning documents are crucial in the execution of these strategies and actions. The August 2016 version of 50900 requires MTW PHAs to "[p]rovide a statement of the MTW PHA's strategies and actions

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<sup>7</sup> See 42 U.S.C. § 3608(e)(5); 24 C.F.R. § 5.154(b)(2) (requirement for PHAs to develop and submit an Assessment of Fair Housing); Affirmatively Furthering Fair Housing, Final Rule, 80 Fed. Reg. 42,272, 42,308 (July 16, 2015) ("The duty to affirmatively further fair housing and the requirement to conduct an AFH applies to all PHAs, regardless of the HUD program or initiative in which they are participating.").

<sup>8</sup> We note that the AFFH obligation is still referenced in the Certifications of Compliance Section, beginning on page 24 of the recent Form 50900. We also note that paragraph 6 only references the Analysis of Impediments process, but not the Assessment of Fair Housing process.

<sup>9</sup> 24 C.F.R. § 5.154(b)(2) (requirement for PHAs "receiving assistance under sections 8 or 9 of the United States Housing Act of 1937" to develop and submit an Assessment of Fair Housing).

<sup>10</sup> 24 C.F.R. § 5.154(d)(5) (also noting that "Strategies and actions must affirmatively further fair housing and may include, but are not limited to, enhancing mobility strategies and encouraging development of new affordable housing in areas of opportunity, as well as place-based strategies to encourage community revitalization, including preservation of existing affordable housing, including HUD-assisted housing.").

<sup>11</sup> 80 Fed. Reg. at 42,308 ("The duty to affirmatively further fair housing and the requirement to conduct an AFH applies to all PHAs, regardless of the HUD program or initiative in which they are participating.").

to achieve fair housing goals outlined in an approved Assessment of Fair Housing,” with space for PHAs to include their fair housing goals, with an explanation of strategies and actions.<sup>12</sup> Additionally, the instructions for Section I.C. of the August 2016 version of the form, includes language from 24 C.F.R. § 5.154(d)(5), as well as instructions for PHAs that will not yet have an accepted AFH.<sup>13</sup> Because the Annual MTW Plan assumes the function of the PHA Annual Plan, including a discussion of strategies and actions is necessary to ensure that the MTW PHA is actually following through with its AFH fair housing goals and priorities, with an opportunity for public input. In the August 2016 version of Form 50900, HUD took some positive steps in integrating AFFH information into MTW reporting requirements. Although we recommend a more detailed data collection (as outlined below), the inclusion of a statement describing strategies and actions undertaken to advance fair housing goals included within the PHA’s AFH was an important step in the right direction. Including that information would allow tenants, advocates, and the general public to assess PHA progress on their AFH at annual intervals. HUD should reinstate this reporting requirement. At minimum, we urge HUD to include the language from the August 2016 version back in Form 50900.

Form 50900 also presents an opportunity for MTW PHAs to compile and report information (particularly demographic information) that would further facilitate examining the fair housing impacts of PHA policies and practices. The proposed MTW Report form collects no demographics by which to evaluate whether policies and practices undertaken by MTW PHAs are effectively reducing, or in fact perpetuating, residential segregation. The lack of information also makes it more difficult to assess whether policies and practices pursued by the PHA have a disparate impact on protected classes.<sup>14</sup> Such impacts should be measured by numerical data describing demographics (e.g., race/ethnicity, disability, national origin, etc.) of households served separated out by program and by project, and tracked over time. Demographic data on neighborhoods where new assisted housing units are sited, as well as neighborhood demographics and opportunity indicators for all Section 8 voucher families should be collected in this form. This data should also include impacts of loss of units, if any, on protected classes, and the location of replacement housing and locations of relocated families. To assess the impacts of admissions policies and practices, data on the racial and ethnic characteristics of families on the waitlist, and families recently admitted, are also important. All data should be separated by program and by project, and tracked over time.

One of three statutory goals of the MTW demonstration is to increase housing choice for families, but there is no data requested in this collection to demonstrate if this goal is met. The type of data that would be helpful is a comparison of the number, unit size and type of housing (elderly or family, rental or homeownership) by location such as by zip code or census tract and income and racial and ethnic composition of the housing pre-MTW and to

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<sup>12</sup> August 2016 revision of HUD Form 50900, Section I.C, pg. 6

<sup>13</sup> *Id.* at 2.

<sup>14</sup> The Fair Housing Act protected classes include race, color, national origin, disability, religion, sex, and familial status.

date. Similar information should be reported for the location, census tract and household demographics of HCV families.

## **VI. Collect Data about Characteristics of Households on the Waitlist**

**HUD should require PHAs to report additional information in Section (II) C. *Waiting List Information*.** Waitlist data should include metrics describing the income levels and protected-class status of households on each waitlist and the cumulative total for the waitlists of the PHA and any affiliates receiving MTW capital or operating assistance. The data should include applicants' ethnicity, race, income bracket, and, for each of the programs, the bedroom size the applicant needs.

Where there are site-based waitlists maintained by a PHA, it should include these demographics by site. For non-MTW housing authorities, 24 CFR § 903(b)(2)(v) requires those with site-based waitlists to assess changes in demographics of the housing by race, ethnicity, and disability based on MTCS occupancy data. It also requires the use of testers every three years and requires PHAs to correct problems that arise in the review. MTW sites ought to conduct similar reviews and report similar information as HUD does not have authority under MTW to waive civil rights related statutes, regulations or program requirements.

## **VII. Section 3 Reporting Requirement**

One of the statutory goals of MTW is to promote economic self-sufficiency. PHAs could go a long way toward achieving this goal by fulfilling their Section 3 obligations.<sup>15</sup> ***Section (VI) Administrative should include a section for reporting on compliance with Section 3.*** Alternatively, the Annual Report should include a reference to relevant form HUD 60002 with a copy attached, so that residents and the public will know the outcomes of complying with Section 3. Cross referencing to the form HUD 60002 would also facilitate HUD's enforcement of Section 3.

## **VIII. Reporting Requirements around the Rental Assistance Demonstration (RAD)**

A sizeable portion of the public housing stock in the United States is converting to project-based vouchers (PBVs) or project-based rental assistance (PBRAs) through the Rental Assistance Demonstration (RAD) program. We submitted extensive comments to the Secretary on the overall implementation of RAD and urged HUD to provide additional oversight of RAD conversions due to the negative impact of RAD on tenants and other ongoing issues.<sup>16</sup> Ongoing monitoring and evaluation is especially important for MTW PHAs that are undergoing RAD given the financial flexibility of MTW and the complicated nature of the public housing disposition.

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<sup>15</sup> Section 3 of the Housing and Urban Development Act of 1968, as amended, codified at 12 U.S.C. § 1701u.

<sup>16</sup> See Shamus Roller, National Housing Law Project, "Concerns with the Rental Assistance Demonstration Program" October 11, 2017.

Successful RAD implementation requires careful reporting standards. **HUD should expand the reporting requirements under *Section (V) Annual MTW Plan C* and require MTW PHAs to report any RAD-related waivers that they have requested to HUD.** In addition, MTW PHAs should be required, as part of *Section (V)*, to provide more detailed information on the PHA's financial position in relation to RAD properties. **Specifically, HUD should require PHAs to report the structure of ownership after RAD conversion, how the PHA will retain an interest in the RAD-converted property, and anticipated changes in per-unit funding levels as the result of conversion.**

Thank you for your consideration of our comments and recommendations. We look forward to working with HUD and are happy to further discuss our suggestions. Please contact Deborah Thrope ([dthrope@nhlp.org](mailto:dthrope@nhlp.org)) should you wish to talk with NHLP and/or HJN members to clarify our position on these important issues.

Sincerely,

Deborah Thrope, National Housing Law Project

On behalf of HJN:

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Eric Dunn, Virginia Poverty Law Center

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