Public Housing Authorities (PHAs) rely on the Annual Contributions Contract (ACC) as the governing document to administer the Public Housing program as dictated by the U.S. Housing Act of 1937. Earlier this year, HUD unilaterally modified the ACC without properly following the required notification and communication process. By doing so, HUD failed to comply with the U.S. Housing Act of 1937, failed to comply with Paperwork Reduction Act and Administrative Procedures Act requirements, and failed to comply with the terms of the existing ACC. In light of HUD’s failure to properly follow the required process in amending the ACC, we ask Congress to require HUD to rescind and withdraw the amended ACC (Form HUD-53012 (ACC), assigned OMB control number 2577-0075), and restore the prior version of the ACC as the governing contractual agreement until such time as HUD has complied with all appropriate regulatory and process requirements for any future modifications to the ACC.

PHAs receive federal subsidy through the Public Housing Operating Fund and the Public Housing Capital Fund. Operating Fund dollars provide critical dollars to Public Housing Agencies that assist with the operation and maintenance of public housing properties, and the Capital Fund provides annual grants to PHAs for the development and modernization of public housing. In order for PHAs to access appropriated Operating and Capital Fund dollars, PHAs must adhere to an ACC that sets the terms and conditions that PHAs are bound to upon receiving federal subsidies. This contract is critical to the business relationship between HUD and PHAs and has existed in some form since the passing of the U.S. Housing Act of 1937.

Late in May, PHA Executive Directors and Chief Executive Officers received an unsigned, undated letter via email from HUD’s Office of Public and Indian Housing (PIH) that announced the availability of Capital Fund Program (CFP) formula funding for FY 2018. Attached to that letter was an announcement that the department would begin to use an amended ACC. Although the announcement stated that the amended ACC would only make “minor clarifications and updates...based on applicable statutes and regulations,” PHA staff and attorneys familiar with the public housing program noted significant substantive changes. These substantive changes included language regarding the definitions of HUD requirements, grant funding, program and operating receipts, HUD approvals for the release of records, PHA executive compensation, numerous changes to provisions related to mixed-finance developments, and requiring PHA’s to comply with HUD interpretations that have not gone through rulemaking procedures. As HUD unilaterally changed the existing ACC without input from PHAs while that ACC was still in effect, HUD failed to meet the terms of its contract with PHAs and failed to comply with Congress’s instructions in the U.S. Housing Act of 1937 that HUD contract with local housing agencies to operate public housing.

According to the letter HUD sent PHAs with the announcement of FY 18 CFP funding, PHAs would become “bound to the requirements” of the amended ACC once they drew down funds from their FY 2018 CFP formula grant through HUD’s Electronic Line of Credit Control System (eLOCCS). This meant that PHAs must either accept the amended ACC or forego critical CFP funding, used to improve the safety and security of public housing properties.

There are also significant concerns with HUD’s process in drafting and releasing the modified ACC as HUD failed to comply with the Paperwork Reduction Act’s requirements to accurately describe the nature of changes HUD proposed to make to the Annual Contributions Contract. The Paperwork Reduction Act requires HUD to issue 60-day and 30-day Notices of Proposed Information Collection on this amended ACC, and although HUD did issue these notices, neither Notice mentioned the scope to which HUD planned to change the existing contract.

Although the amended ACC contained numerous substantive changes, HUD also failed to comply with the Administrative Procedure Act requirements for notice, comment, and response when federal departments impose new or amended requirements on non-federal partners.
There are additional concerns that HUD’s procedure in executing the amended ACC ignores local and state governance and contracting requirements that require certain procedures and approvals by a PHA’s governing body before an agency obligates itself to contract terms. Those requirements, described in state law or in PHA Board of Commissioners bylaws, would not be met if a PHA automatically accepted the amended ACC by drawing down FY 2018 CFP funds.

In light of HUD’s failure to properly follow the Paperwork Reduction Act or the Administrative Procedure Act process, and HUD’s improper procedure regarding the execution of this amended ACC, and that certain provisions of this amended ACC will have larger substantive impacts on the future maintenance, operation, and preservation of public housing, we recommend that Congress require HUD to rescind and withdraw the amended ACC (Form HUD-53012 (ACC), assigned OMB control number 2577-0075), restore the prior version of the ACC as the governing contractual agreement, and comply with all appropriate process requirements for any future modifications to the ACC.

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