December 9, 2019

SUBMITTED ELECTRONICALLY

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

Re: 30-Day Notice of Proposed Information Collection: Comment Request: Moving to Work Amendment To Consolidated Annual Contributions Contract [FR-7011-N-49]

To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments in response to the notice titled “30-Day Notice of Proposed Information Collection: Comment Request: Moving to Work Amendment To Consolidated Annual Contributions Contract” published in the Federal Register on November 8, 2019.

Formed in 1933, NAHRO represents over 20,000 housing and community development individuals and agencies. Collectively, our members manage over 970,000 public housing units, 1.7 million Housing Choice Vouchers (HCVs), and receive over $1.5 billion in Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Program funding to use in their communities. NAHRO has the unique ability to represent public housing agencies, local redevelopment agencies, and other HUD grantees of all sizes and geography, including Moving to Work (MTW) agencies.

The Operations Notice for the Expansion of the MTW demonstration program establishes the requirements for the implementation and continued operations of the MTW demonstration program pursuant to the 2016 MTW Expansion Statute which authorized HUD to expand the MTW demonstration program by adding an additional 100 high-performing PHAs over a period of seven years. The Act requires agencies to be added to the MTW demonstration by cohort and
that HUD direct one specific policy change to be implemented per cohort to facilitate the evaluation of that policy. HUD released a draft of the MTW Operations Notice in October 2018.

HUD is moving forward with formalizing an agency’s participation in the MTW Expansion by an amendment to the PHA’s Consolidated Annual Contributions Contract (ACC) through the MTW ACC Amendment. Through the amendment, the PHA “agrees to abide by the program structure, flexibilities, and terms and conditions detailed in the Operations Notice for the term of the agency’s participation in [the] MTW demonstration.”

The Department is requesting feedback on changes to the Moving to Work Amendment to the Consolidated Annual Contributions Contract (ACC). NAHR O’s comments are in three sections. The first section focuses on NAHRO’s concerns with HUD’s process relating to current proposed revisions to the Annual Contributions Contract (ACC) and all related amendments included in the ACC. The second section focuses on the Operations Notice, and the last section discusses NAHRO’s specific concerns with the amendment form itself.

1. Process Concerns

NAHRO is concerned that the agreement formalizing an agency’s participation in the MTW expansion is an amendment to the Annual Contributions Contract (ACC). Public Housing Agencies (PHAs) receive federal subsidies through the Public Housing Operating Fund and the Public Housing Capital Fund. The Operating Fund provides critical subsidy to PHAs that assists 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. The ACC sets the terms and conditions that PHAs are bound to upon receiving those subsidies.

On December 27, 2018, HUD published a revised ACC in the Federal Register through a 60-Day Notice of Proposed Information Collection via the Paperwork Reduction Act (PRA). HUD then posted a 30-Day Notice of Proposed Information Collection via the PRA for the latest revision of the ACC on November 8, 2019.

As NAHRO has noted before, we do not believe that revising the ACC through the PRA is appropriate. Language in Section 23 of the 1995 ACC states that any amendment to the contract must be made by “mutual agreement of the parties to this ACC.” As such, NAHRO does not believe HUD is permitted to make substantive changes to the ACC through the PRA process. Although the PRA process allows for PHAs to submit comments on proposed revisions to the ACC, it does not ensure nor guarantee that there is mutual agreement by both parties. If HUD opts to use the PRA to align the ACC with Office of Management and Budget (OMB) requirements, then there should no substantive changes in the ACC.

Although HUD is required to respond to comments on a Notice of Proposed Information Collection through the PRA, there is no requirement that HUD must accept or agree to any of the comments or suggestions. Furthermore, NAHRO worries that there is no certainty that HUD will provide the same level of engagement in the future if the ACC is changed or updated again through the PRA. This is an especially pertinent concern considering HUD’s initial efforts to revise the ACC in 2017, wherein HUD posted a Notice of Information Collection that did not include the revised ACC and made it appear as though there were no substantive changes included in the revision, which was not the case.
Although this is concerning for a multitude of reasons, it is especially concerning for agencies joining the MTW expansion. NAHRO does not believe that HUD has the authority to unilaterally change the ACC or any amendments to the ACC, however, past actions by the Department prove HUD believes otherwise. As such, NAHRO fears HUD may unilaterally change the MTW ACC Amendment without MTW agency input or that HUD could terminate the MTW ACC Amendment through the ACC unilaterally. Agencies that agree to enter the current MTW expansion have no guarantee that their funding formula will remain the same and have no guarantees that the flexibilities granted in the Operations Notice will remain if HUD can unilaterally change the ACC.

NAHRO recommends that HUD create a standalone standard contract between HUD and the MTW Expansion agencies that formalizes an agency’s participation in the MTW expansion and can only be modified during the 12-year term of participation if both parties agree to the modifications. Through this standalone agreement, PHAs will still “agree to abide by the program structure, flexibilities, and terms and conditions detailed in the [specific, finalized] Operations Notice for the term of the agency’s participation in [the] MTW demonstration.” The standalone contract could reference the final Operations notice by incorporation. The new contract should incorporate this specific Operations Notice to ensure that any modifications to the Operations Notices are made with transparency and undergo the proper participatory process and receive stakeholder input.

2. Operations Notice

The MTW ACC Amendment requires PHAs to operate under the MTW Operations Notice and its respective MTW cohort selection notice. NAHRO greatly appreciates HUD’s efforts to improve and streamline the MTW Operations Notice and their continued outreach to industry partners and agencies while drafting the document. However, as the Operations Notice (which is not final) is a Notice, and not a Standard Agreement, HUD has the ability to unilaterally change the document as they see fit in the future. As agencies that sign the MTW ACC Amendment will be tied to the requirements in the Operations Notice for the implementation and the continued operations of the MTW Expansion, NAHRO strongly recommends HUD continue to receive feedback from the public and impacted stakeholders before implementing any changes to the Operations Notice. Public listening sessions and public comment periods will help ensure the MTW Operations Notice remains viable to agencies entering the MTW Expansion moving forward. In relation to the Operations Notice, HUD has thus far proven adept at this, and we hope they continue to do so moving forward.

3. Conclusion

As always, NAHRO appreciates the opportunity to comment on this important Amendment. NAHRO has long called for meaningful expansion of the MTW demonstration and is deeply supportive of Congress’s efforts to authorize the expansion. Although NAHRO is supportive of a legal document that formalizes and agency’s participation in the MTW Expansion, we are concerned about attaching this document to the ACC. NAHRO remains deeply troubled by HUD’s efforts to unilaterally revise the ACC and feel HUD’s actions weaken the formality of the MTW CACC Amendment. As such, NAHRO recommends that HUD create a standalone standard contract between the MTW Expansion agencies that formalizes an agency’s
participation in the MTW expansion and can only be modified if both parties agree to the modifications.

Thank you,

[Signature]

Eric Oberdorfer
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