

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7006-N-21]

30-Day Notice of Proposed Information Collection:

Moving to Work Amendment to Consolidated Annual Contributions Contract

30-Day Notice of Proposed Information Collection: Moving to Work Amendment to Consolidated Annual Contributions Contract (ACC)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the information collection described below to the Office of Management and Budget (OMB) for review and approval, in accordance with the Paperwork Reduction Act. HUD has revised the *Moving to Work Amendment to the Consolidated Annual Contributions Contract (ACC)* (“MTW ACC Amendment”) in response to public comments received during the public comment period provided for by the 60-Day Notice of Proposed Information Collection. These revisions are more thoroughly described below. This publication is to provide notice to PHAs of the revisions and to give PHAs the opportunity to comment on such revisions. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: Comments Due Date: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Addresses: Interested persons are invited to submit comments regarding this proposal.

Comments should refer to the proposal by name and/or OMB Control Number and should be

sent to: HUD Desk Officer, Officer of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806; email: OIRA_Submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202-402-3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The Federal Register notice that solicited public comment on the information collection for a period of 60 days was published on December 27, 2018 at 83 Fed. Reg. 66738.

A. Background

In order to implement the expanded MTW program under division L, title II of the Consolidated Appropriations Act, 2016 (Public Law 114-113, December 18, 2015), HUD issued the first Operations Notice of the Expansion of the Moving to Work Demonstration Program Solicitation of Comment (82 FR 8056, January 23, 2017) (Operations Notice), and solicited public comment. This notice established requirements for the implementation and continued operation of the expansion of the MTW demonstration program pursuant to the 2016 MTW Expansion Statute and certain pre-approved waivers to establish program flexibility for participants. These waivers will be available to MTW PHAs when the revised MTW ACC

Amendment is executed. The Operations Notice also provided that the 100 PHAs would be selected in cohorts, with applications for each cohort to be sought via a Selection Notice.

This initial Operations Notice was followed by subsequent Federal Register notices. On May 4, 2017, HUD published the Operations Notice for the Expansion of the Moving to Work Demonstration Program Solicitation of Comment; Waiver Revision and Reopening of Comment Period.” On October 5, 2018, HUD published a further Operations Notice (83 FR 50387)(a correction and extension of the comment period was published on October 11, 2018 (83 FR 51474)). This notice made changes as a result of the prior public comments, and again solicited public comments. HUD plans to issue the final MTW Operations Notice separately.

On December 27, 2018, HUD issued for public comment the 60-day notice for the Moving to Work Amendment to the Consolidated Annual Contributions Contract (the “MTW ACC Amendment”) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (83 FR 66738). The MTW ACC Amendment has been revised in response to public comments received under the 60-day Notice. The formal title has also been changed to the “Moving to Work Amendment to the Annual Contributions Contract(s).” The revised MTW ACC Amendment will govern the 100 new PHAs’ participation in the MTW demonstration pursuant to the 2016 legislation. It will allow the PHAs to exercise the flexibilities provided by the MTW Operations Notice and their respective Selection Notice and require compliance with the terms and conditions of each Notice respectively. This notice follows the 60-day notice.

B. Overview of Information Collection

Title of Information Collection: Moving to Work Amendment to Consolidated Annual Contributions Contract.

OMB Approval Number: Pending OMB approval.

Type of Request: New collection.

Form Number: HUD-50166

Description of the need for the information and proposed use: The proposed Moving to Work (MTW) Amendment to the Annual Contributions Contract(s), signed by HUD and the selected Public Housing Authority (PHA), is necessary for HUD to implement the expansion of the Moving to Work program enacted by Congress in the Consolidated Appropriations Act, 2016 (Public Law 114-113, approved December 18, 2015)(2016 Appropriation). It establishes the basic terms and conditions that will apply to 100 new PHAs participating in the MTW demonstration pursuant to the 2016 Appropriation. Specifically, the MTW ACC Amendment amends any ACCs for the public housing or housing choice voucher programs in effect between the PHA and HUD to establish the PHA's designation as an MTW agency and to operate in accordance with the requirements of the MTW demonstration program, as amended by Public Law 114-113. The MTW ACC Amendment establishes the terms of participation in MTW, including the requirement that the PHA follow the MTW Operations Notice and its respective Selection Notice. The PHAs remain subject to the applicable ACCs when the provisions are not otherwise waived by the Operations Notice or the applicable MTW Selection Notice. Additionally, the MTW ACC Amendment outlines PHA transition out of the demonstration and HUD termination rights upon PHA default. A copy of the proposed MTW ACC Amendment is published at the end of this notice. Please note that the 30-Day Notice of Proposed Information Collection for the *Public Housing Annual Contributions Contract for Capital and Operating Grant Funds (Public Housing ACC)* is published elsewhere in this issue of the Federal Register.

This 30-Day Notice of Proposed Information Collection provides PHAs with notice of revisions to the proposed MTW ACC Amendment published on December 27, 2018 in the 60-Day Notice of Proposed Information Collection at 83 FR 66738. The MTW ACC Amendment published in this notice revises several provisions published in the 60-Day Notice in response to public comments received. These revisions are summarized in Section E of this notice.

Additionally, HUD has summarized public comments and provided responses to those comments in Section F of this notice.

Respondents: Public housing agencies.

Total Estimated Burdens: The burden costs associated with this collection are as follows:

Information Collection	Number of Respondents	Frequency of Response	Responses Per Annum	Burden Hour Per Response	Annual Burden Hours	Hourly Cost Per Response	Cost
HUD-50166 MTW ACC Amendment	100	1 each	0	1.00	0	\$52.88	\$5,288

The burden costs shown represent burden associated with a one-time execution of the MTW ACC Amendment for 100 PHAs to be designated as MTW pursuant to the FY2016 Appropriations Statute. Previously, in the 60-Day PRA Notice published on December 27, 2018, HUD under-estimated the estimated burden hours associated with the execution of the MTW ACC Amendment. The burden hours did not account for the review time associated with the one-time execution of the MTW ACC Amendment.

C. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

- (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) The accuracy of the agency's estimate of the burden of the proposed collection of information;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

D. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

E. Overview of Significant Changes Made to the MTW ACC Amendment

The following represents the most notable changes to the MTW ACC Amendment. However, other changes have also been made which may not be identified below because they are editorial or non-material and minor changes. The MTW ACC Amendment should be reviewed in its entirety to determine the exact nature and scope of these revisions. A copy of the revised MTW ACC Amendment is published at the end of this notice.

- HUD changed the title of the document from the Moving to Work Amendment to the Consolidated Annual Contributions Contract(s) (MTW CACC Amendment) to the Moving to Work Annual Contributions Contract(s) (MTW ACC Amendment) in

conjunction with changes made to the Public Housing ACC. The document continues to amend any ACC in effect between the PHA and HUD for the public housing or housing choice voucher programs (including the “Consolidated Annual Contributions Contract for the Rental Certificate and Rental Voucher programs”).

- HUD amended Section 4 of the amendment and extended the term of this amendment from 12 to 20 years, and to clarify that the effective date of the amendment is at the start of the first full PHA fiscal year after execution of the amendment by the PHA and HUD.
- HUD deleted Section 10 of the amendment as a result of the changes to Section 4, which rendered it superfluous.
- HUD amended Section 5(C) of the Amendment to clarify that exemptions from statutory and regulatory requirements pursuant to the MTW Operations Notice extend to the implementing subregulatory requirements in response to public comments.
- HUD amended Section 6 of the Amendment in response to public comments to clarify that a transition plan is not needed a year prior to termination of the MTW ACC Amendment if the PHA’s participation in the MTW demonstration program is extended in advance of the final year of the term of the MTW ACC Amendment. HUD also made changes to this section to clarify submission and approval process for the transition plan and to clarify that a subsequent amendment to the ACC may be needed to allow continuation of MTW authority necessary to continue some activities under the transition plan after the term of the amendment.
- HUD amended Section 7(B) of the Amendment in response to public comments to remove remedies related to suspending, reducing, or offsetting funding, which are covered by the ACC.

- HUD amended Section 8 of the Amendment for clarity.
- HUD added a severability clause in Section 9 to ensure that the Amendment remains in effect allowing for the continued administration of the MTW demonstration program in the event of litigation affecting one of the Amendment provisions.

F. Summary of MTW ACC Amendment Comments and HUD Responses

Comment: Commenters felt that the Standard MTW Agreement was necessary to ensure that new MTW agencies would be part of the same program as the existing 39 MTW PHAs, consistent with the intent of Congress in expanding the MTW demonstration program.

HUD Response: A fundamental goal of the MTW expansion is to provide MTW expansion PHAs with many of the same flexibilities that the existing agencies have. For that reason, the framework of the MTW expansion was drafted with the intent to provide generally the same flexibilities of the existing MTW agencies (after consideration of the legal authority provided by the MTW statute and continued necessity given changes in law and regulations) in a framework that is simplified for both HUD and MTW PHAs and ensures resident protections. Through the MTW Operations Notice, HUD is creating a simpler and streamlined structure for new MTW PHAs and for HUD. The MTW Operations Notice makes it clear what statutory or regulatory provisions the authorization is waiving and what activities can be implemented without further HUD approval. This is important for scalability, monitoring, and allowing the same flexibilities with simplified administrative oversight. Further, in the event a 1937 Act statutory or regulatory provision is not included within the MTW Operations Notice, an MTW expansion agency may use its MTW authority to request to waive the statute or regulation, as long as it does not conflict with a cohort study or is not one of the statutory provisions restricted by Congress.

Additionally, operating the demonstration program via the MTW Operations Notice, effectuated for each agency via execution of the MTW ACC Amendment, rather than by using individual MTW Agreements allows for consistency of interpretation and administration of provisions such as the MTW funding formula (rather than having various individual formulae), avoiding the potential for misinterpretations and inconsistent treatment among PHAs. The MTW ACC amendment is necessary to allow the agency to exercise the flexibilities provided by the MTW Operations Notice and to require compliance with the terms thereof. This programmatic structure is essential for scalability of the MTW demonstration program; administration of over 100 individual MTW Agreements is not feasible for HUD.

Comment: Commenters expressed concerns, that unlike an MTW agreement, the MTW Operations Notice implemented through the MTW ACC Amendment could be unilaterally changed by HUD. Commenters also stated that substantive changes to the Notice affecting the terms of an MTW agency's participation in the demonstration should be subject to notice and comment procedures.

HUD Response: To improve scalability and allow for ease of adding additional flexibilities to the demonstration, PIH looked to the Rental Assistance Demonstration (RAD) program and its implementation through HUD notices. Using RAD's model, HUD will be able to revise the MTW Operations Notice as it learns from and develops the demonstration, whereas it is much more difficult to amend over 100 contracts. The MTW Operations Notice states that any significant updates to the Operations Notice by HUD will be preceded by a public comment period.

Comment: Commenters were concerned about HUD's ability to discontinue an agency's activity and felt that the reasons for which HUD would do this were unclear.

HUD Response: Language about discontinuation of activities has been removed from the MTW ACC Amendment in response to public comments. The final MTW Operations Notice will provide additional information on the factors HUD will evaluate when considering requiring a PHA to discontinue an activity.

Comment: Commenters expressed concern that the language making the PHA subject to all HUD requirements other than those statutory and regulatory provisions waived pursuant to the MTW Operations Notice would void all MTW flexibilities because of the potential for conflicting requirements in subregulatory guidance.

HUD Response: HUD has added language to clarify that exemptions from statutory and regulatory requirements pursuant to the MTW Operations Notice extend to subregulatory guidance to the extent that that subregulatory guidance implements statutory and regulatory requirements waived by the MTW Operations Notice in response to these concerns.

Comment: Commenters expressed concern over the mechanisms surrounding the end of the 12-year term of participation and an MTW PHA's ability to retain waivers to continue successful activities.

HUD Response: HUD has amended Section 6 of the ACC to acknowledge that, in the event of an ACC amendment extension, the transition plan would not be due at the end of the initial term but at the end of the extension(s). HUD has also clarified the process by which an agency can request continued use of certain MTW flexibilities if/when its term of participation expires. HUD also extended the term of participation to 20 years in Section 4.

Comment: Some commenters felt that the termination and default remedies authorized to HUD were excessive and redundant of remedies provided by the ACC.

HUD Response: HUD has removed remedies related to suspending, reducing, or offsetting funding, in Section 7, as this language is covered in the ACC(s).

Comment: Some commenters stated that language in the MTW ACC Amendment appeared to reflect an attempt by HUD to protect itself from future lawsuits similar to ones it has lost with existing MTW agencies.

HUD Response:

As HUD has stated in the responses to comments on the Public Housing ACC published elsewhere in this issue, these changes were not proposed in response to litigation, but HUD is aware of litigation surrounding the ACC. HUD makes clear in the current version of the ACC that HUD has never contemplated money damages for action or inaction by HUD with respect to the ACC. This is also true of the MTW ACC Amendment. Nothing in the revised ACC or MTW ACC Amendment forecloses avenues for judicial relief from any HUD action that is arbitrary, capricious or contrary to law.

Comment: Some commenters objected to issuance of the MTW ACC Amendment through the Paperwork Reduction Act (“PRA”) rather than the notice and comment rulemaking process required by the Administrative Procedures Act (the “APA”). Commenters stated that the PRA standards for public comments do not satisfy APA requirements.

HUD response: The MTW ACC Amendment is an information collection under the definitions in 5 CFR 1320.3(c)(1), which states that a collection of information may be in any form or format, including a contract or an agreement. The ACC is a form with an OMB form number, therefore, review and public comment under the PRA are appropriate.

Contrary to statements made by commenters, the PRA process does require solicitation of and response to public comments (see 5 CFR 1320.5(a)(1)(F) (requiring “A summary of the public comments received under §1320.8(d), including actions taken by the agency in response to the comments”). HUD received public comments from several public housing industry groups and existing MTW agencies and is responding to the issues raised with this notice.

Date: _____

R. Hunter Kurtz

Assistant Secretary for Public and Indian Housing.

MOVING TO WORK AMENDMENT TO ANNUAL CONTRIBUTIONS CONTRACT(S)

Section 1. This Moving to Work (MTW) Amendment to the Annual Contributions Contract(s) (MTW ACC Amendment) is entered into between the United States Department of Housing and Urban Development (“HUD”) and _____ (the “Public Housing Agency, “PHA”).

Section 2. This MTW ACC Amendment is an amendment to any Annual Contributions Contract (“ACC”) or Annual Contributions Terms and Conditions (“ACC”) in effect between the PHA and HUD for the Public Housing and Housing Choice Voucher programs.

Section 3. The ACC is amended in connection with the PHA’s designation as a participant in the expansion of the MTW demonstration pursuant to Section 239 of the Consolidated Appropriations Act, 2016, P.L. 114-113; 129 Stat. 2897 (2016 MTW Expansion Statute) and Section 204 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996, P.L. 104-134; 110 Stat. 1321-281 (1996 MTW statute). The PHA’s participation in the expansion of the MTW demonstration shall be governed by the MTW Operations Notice for the Expansion of the Moving to Work Demonstration as it is issued as it and may be amended in the future, or any successor notice issued by HUD, (“the MTW Operations Notice).

Section 4. The term of this amendment shall be for 20 years from the beginning of the PHA’s first full fiscal year following execution by the PHA and HUD; or, until termination of this amendment, whichever is sooner.

Section 5. Requirements and Covenants

(A) As a participant in the MTW demonstration, the PHA must operate in accordance with the express terms and conditions set forth in the MTW Operations Notice. The MTW Operations Notice may be superseded or amended by HUD at any time during the twenty-year MTW term.

(B) The PHA will cooperate fully with HUD and its contractors for the duration of the HUD-sponsored evaluation of the cohort of the MTW Expansion for which the PHA was selected and shall comply with all aspects of its Cohort Study as outlined in the selection notice under which the PHA was designated.

(C) The PHA is exempted from specific provisions of the Housing Act of 1937 (“the Act”) and its implementing regulations as specified in the Operations Notice. Each such exemption also extends to subregulatory guidance to the extent that the subregulatory guidance implements the provisions of the Act or its implementing regulations exempted pursuant to the Operations Notice. Notwithstanding any exemptions pursuant to this MTW ACC amendment and the MTW Operations Notice, the PHA remains subject to all other HUD Requirements (which include the Public Housing Requirements), as they may

be amended in the future. Accordingly, if any HUD Requirement, other than the exempted provisions of the Act and its implementing regulatory requirements or subregulatory guidance, conflicts with any authorization granted by this MTW ACC Amendment, the MTW Agency remains subject to that HUD Requirement.

Section 6. At least one year prior to expiration of this MTW ACC Amendment¹, the PHA shall submit a transition plan to HUD. It is the PHA's responsibility to be able to end all MTW activities that it has implemented through its MTW Supplement to the PHA Plan upon expiration of this MTW ACC Amendment. The transition plan shall describe plans for phasing out such activities. The plan may also include any proposals of authorizations/features of the ACC Amendment and the MTW Operations Notice that the PHA wishes to continue beyond the expiration of the MTW ACC Amendment. The PHA shall specify the proposed duration and shall provide justification for extension of such authorization/features. HUD will review and respond to timely-submitted transition plans from the PHA in writing within 75-days or they are deemed approved. Only authorizations/features specifically approved for extension shall continue beyond the term of the MTW ACC Amendment. The extended features shall remain in effect only for the duration and in the manner specified in the approved transition plan and be subject to any necessary ACC Amendments as required by HUD.

Section 7. Termination and Default

(A) If the PHA violates or fails to comply with any requirement or provision of the ACC, including this amendment, HUD is authorized to take any corrective or remedial action described in this Section 7 for PHA default or any other right or remedy existing under applicable law, or available at equity. HUD will give the PHA written notice of any default, which shall identify with specificity the measures, which the PHA must take to cure the default and provide a specific time frame for the PHA to cure the default, taking into consideration the nature of the default. The PHA will have the opportunity to cure such default within the specified period after the date of said notice, or to demonstrate within 10 days after the date of said notice, by submitting substantial evidence satisfactory to HUD, that it is not in default. However, in cases involving clear and apparent fraud, serious criminal behavior, or emergency conditions that pose an imminent threat to life, health, or safety, if HUD, in its sole discretion, determines that immediate action is necessary it may institute the remedies under Section 7(B) of this MTW ACC Amendment without giving the PHA the opportunity to cure.

(B) If the PHA is in default of this MTW ACC Amendment and/or the MTW Operations Notice and the default has not been cured, HUD may, undertake any one or all remedies available by law, including but not limited to the following:

- i. Require additional reporting by the PHA on the deficient areas and the steps being taken to address the deficiencies;

¹ Should the PHA receive an extension(s) of its MTW participation (e.g. by extension or replacement of its MTW ACC Amendment) the transition plan will be due one year prior to the end of the extension(s).

- ii. Require the PHA to prepare and follow a HUD-approved schedule of actions and/or a management plan for properly completing the activities approved under this MTW ACC Amendment;
- iii. Suspend the MTW waiver authorization for the affected activities;
- iv. Require reimbursement by the PHA to HUD for amounts used in violation of this MTW ACC Amendment;
- v. Terminate this MTW ACC Amendment and require the PHA to transition out of MTW;
- vi. Restrict a PHA's ability to use its MTW funding flexibly; and/or
- vii. Take any other corrective or remedial action legally available.

(C) The PHA may choose to terminate this MTW ACC Amendment at any time. Upon HUD's receipt of written notification from the PHA and a copy of a resolution approving termination from its governing board, termination will be effective. The PHA will then begin to transition out of MTW and will work with HUD to establish an orderly phase-out of MTW activities, consistent with Section 6 of this MTW ACC Amendment.

(D) Nothing contained in this ACC amendment shall prohibit or limit HUD from the exercise of any other right or remedy existing under any ACC or available under applicable law. HUD's exercise or non-exercise of any right or remedy under this amendment shall not be construed as a waiver of HUD's right to exercise that or any other right or remedy at any time.

Section 8. Notwithstanding any provision set forth in this MTW ACC Amendment, any future law that conflicts with any provision of this ACC Amendment, as determined by HUD, shall not be deemed to be a breach of this ACC Amendment. Nor shall HUD's execution of any future law be deemed a breach of this ACC Amendment. Any future laws affecting the PHA's funding, even if that future law causes a decrease in the PHA's funding, shall not be deemed a breach of this ACC Amendment. No future law or HUD's execution thereof shall serve as a basis for a breach of contract claim in any court.

Section 9. If any clause, or portion of a clause, in this Agreement is considered invalid under the rule of law, it shall be regarded as stricken while the remainder of this Agreement shall continue to be in full effect.

In consideration of the foregoing covenants, the parties do hereby execute this MTW ACC Amendment:

PHA

By: _____

Its: _____

Date: _____

UNITED STATES DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

By: _____

Its: _____

Date: _____