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451 7th Street SW, Room 4176
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Subject: 60-Day Notice of Proposed Information Collection: Public Housing 5-Year and Annual PHA Plan and MTW Supplement to the PHA Plan
Docket No. FR-7006-N-12
OMB Approval Number: 2577-0226

To Whom This May Concern,

The Public Housing Authorities Directors Association (PHADA), representing the professional administrators of over 1,900 housing authorities (HAs) throughout the U.S., appreciates the opportunity to provide comments to the Department of Housing and Urban Development (HUD) related to a 60-Day Notice of Proposed Information Collection. The proposed information collection entitled, "Public Housing 5-Year and Annual PHA Plan and MTW Supplement to the PHA Plan," published in the Federal Register (FR) on October 9, 2018, is significant to each and every HA in the nation. As a result, modifications to the related forms could have notable implications to agencies and the residents that they serve. The information collection proposes to make modifications to the following forms, utilized by all housing authorities (HAs) annually:

- 5-Year PHA Plan (for all HAs)
- Streamlined Annual PHA Plan for Housing Choice Voucher (HCV) Only PHAs
- Streamlined Annual PHA Plan for High Performer PHAs
- Streamlined Annual PHA Plan for Small PHAs
- Annual PHA Plan for Standard PHAs and Troubled PHAs
- Civil Rights Certification for Qualified PHAs
- Certifications of Compliance with PHA Plan and Related Regulations for Small PHAs
- Certifications of Compliance with PHA Plan and Related Regulations for Standard, Troubled, HCV-Only, and High Performer PHAs
- Certification by State or Local Official of PHA Plans Consistency with the Consolidated Plan or State Consolidated Plan for All PHAs

Additionally, the Department has developed a new annual form and related appendix, which HUD proposes as a supplement to the Annual PHA Plan; the supplement would become a required form for the one hundred (100) Moving to Work (MTW) agencies added under the 2016 Consolidated Appropriations Act:

- Moving to Work (MTW) Supplement to the Annual PHA Plan
- Appendix – MTW Waivers

The 5-Year Plan was developed by the Department to describe a HA's mission, long-range goals, and objectives for achieving its mission over a five-year period. The Annual PHA Plan was created to be a guide to HA policies, programs, operations, and strategies for meeting local housing needs and goals. Per the Department, these plans are intended to inform HUD, residents, and the public of an agency's mission for serving the needs of low-income families and its strategy for addressing those needs in order to provide accountability to the local community for how agencies spend their funding and implement their policies. Further, according to the notice, the information collected within the forms, allows HUD to monitor the performance of programs and the performance of HAs that administer the programs.

Overall, the goals and purpose of the Annual and 5-Year PHA plans described above are laudable. Unfortunately, the forms have become unproductive and duplicative. It is well known that while HAs devote significant amounts of time gathering information and data, completing the forms, meeting and educating residents, elected officials, stakeholders, and the general public on the contents of the Annual and 5-Year Plans, it is highly unlikely that anyone at the Department will ever even review the submitted plans and accompanying documentation. Therefore, any efforts to increase burdens related to forms that have become generally duplicative reporting mechanisms and uninformative are misguided.

Moreover, the development of a new annual form, the MTW Supplement to the Annual PHA Plan is ill-advised. In general, existing MTW agencies have reported that one attractive outcome of the Moving to Work program is that MTW agencies no longer need to comply with HUD's check-off-the-box uninformative 5-Year PHA Plan and Annual PHA Plan requirements and forms. They have reported that HA staff, stakeholders and the general public have reported more satisfaction with MTW Plans and Reports that describe plans and outcomes in ways that are comprehensible and transparent.

PHADA believes it is very unfortunate that HUD has elected to return to its default practice of using check boxes and opaque, uninformative narratives to address planning requirements for agencies participating in the MTW expansion. In addition to completing the existing uninformative, duplicative Five Year PHA Plan and Annual PHA Plan forms which fail to apprise the public or stakeholders of actual HA plans, MTW expansion agencies must also

complete the new proposed 21-page MTW Supplement to the Annual PHA Plan. That supplement is no more informative or transparent than HUD's standard PHA plan forms. Lastly, PHADA wishes to express at the outset that it is very concerned that HUD continues to use the publication of forms and instructions to impose non-statutory, non-regulatory requirements on HAs. The process HUD has used is not legitimate and taking this kind of action undermines business relationships on which national deeply affordable housing assistance delivery is based and threatens the ability for HAs to efficiently and effectively operate affordable housing programs essential to millions of low-income families nationwide. A thorough review of the proposed modifications to existing forms and the new MTW supplemental form reveal a number of questions and concerns. PHADA's comments will be separated into sections, including comments focused on alterations to the existing forms in general, comments focused on the new MTW supplemental form, and comments focused on modifications to specific existing forms.

General Comments on Modifications to Existing Forms

- **Challenged Elements of a Plan**

- Each version of the 5-Year and Annual PHA Plans now include a new requirement entitled "Required Submission for HUD FO Review," to provide documentation of any elements of the plan that are challenged by residents and/or the public, including a description of any challenges to elements of the plan, the source of the challenge, and the HA's response to the public. HUD staff stated that this addition is a result of the regulatory requirements in 24 CFR Section 903. While the Association understands it is a regulatory requirement, PHADA is concerned about the implications of providing such information to the Department.
- The Department has little capacity to manage the existing annual and 5-year plans that are submitted to it, much less every challenge a HA receives from the public related to its plans. HUD or Field Offices (FOs) might feel compelled to act on the information included within the proposed forms related to public challenges of elements of a plan. For example, if elements of a HA's plan had been challenged by the public, considered, and dealt with appropriately at the local level, would the information necessitate, in the Department's opinion, a new obligation by the agency? PHADA is concerned that these actions could result in the imposition of non-statutory, non-regulatory requirements on HAs in an effort to pressure agencies to modify policies and/or procedures, among others.

- **Affirmatively Furthering Fair Housing**

- Each new version of the 5-Year and Annual PHA plan includes a section related to Affirmatively Furthering Fair Housing (AFFH). The section is only required to be completed by agencies that are required to submit an AFH. However, the form

clearly re-affirms an agency's requirement to continue to comply with existing, ongoing legal obligations to affirmatively further fair housing by examining their programs, identifying any impediments to fair housing choice within these programs, addressing those impediments in a reasonable manner in view of available resources, and maintaining records reflecting those actions. Given the current and on-going efforts to develop the structure and content of AFH tools to comply with AFFH, including multiple information collection notices and comment periods, related to submission tools, submission requirements, and submission timelines, the addition of this section could be unclear and cause confusion to some agencies related to their AFFH obligations, current and future.

Comments to Form HUD 50057-MTW – MTW Supplement to the Annual PHA Plan

PHADA has significant concerns related to the new document entitled MTW Supplement to the Annual PHA Plan. The notice states that the MTW Supplement does not replace the 5-Year and Annual PHA Plan. Agencies admitted to MTW under the 2016 Consolidated Appropriations Act must continue to submit the applicable plan template, in addition to the MTW supplement. Moreover, the notice states that existing MTW agencies that are not required to submit PHA Plans under the Housing and Economic Recovery Act of 2008 will be required to submit the MTW supplement on an annual basis. The supplement implements a more uniform, yet uninformative method of annual reporting for the one hundred agencies that will be awarded MTW status under the 2016 expansion, in replacement of the annual plans and reports currently submitted by the existing 37 agencies. PHADA questions HUD's authority to impose this requirement.

The Federal Register states that the burden hours of the collection will increase by 600 hours due to an estimated 6.0 hours needed per MTW Supplement applicable to the 100 new MTW agencies. In PHADA's opinion, a six hour completion time for the MTW Supplement is a gross underestimate of the time an HA will need to collect and analyze data, and then input it into the Department's duplicative and unwieldy reporting mechanism.

The following includes line-by-line comments on the proposed form.

- **General Comments**

- The form is in an 8-point font over 24 pages. The form is barely readable due to the small font size and the information collection is duplicative throughout and excessive.
- The magnitude of the check box approach taken on this form imposes unreasonable limitations on respondents.

- Through this form, HUD imposes a requirement to report on activities under waivers by program if the HA applies the waiver activity agency wide (e.g. Tenant Rent Policies. Income Bands (PH) AND Tenant Rent Policies. Income Bands (HCV)). Although the department must waive requirements by program, many MTW HAs have adopted policies under waivers that apply to all the housing assistance they manage. HUD's reporting form must provide for this alternative and for reporting aggregate outcomes rather than tracking outcomes by program.
- The form structure requires HAs to duplicate responses throughout the form for agency wide policies. HUD should not impose this kind of make work requirement on any HA, but in this instance particularly, not on MTW expansion agencies.
- **Section C.1 Tenant Rent Policies. Activity 1.a. Income Bands (PH)**
Many of the comments discussed below in relation to Section C.1 Activity 1a. are also applicable to other sections of the form with exact verbiage.
 - HUD asks for an assessment of any "cost implications," whether material or immaterial. The form indicates that any cost impacts must be tracked by program rather than agency wide. HUD must provide for reporting on financial outcomes based on an HA's implementation strategy rather than on the structure of a HUD form.
 - The form doesn't provide for an alternative income band rent policy that uses bands of different sizes. A reasonable alternative for HAs would be to use broader bands at lower rent and income levels and narrower bands at higher income levels. HUD's supplement doesn't allow for reporting in these circumstances.
 - Although HAs may use this and subsequent MTW Waivers without approval or justification, in asking how income bands were structured the form appears to require justification in this supplement.
 - The only choices of income on which to base assigning households to rents is gross income and adjusted income. HAs may elect to use other forms of income to set rents, such as AGI or taxable income, that the form fails to accommodate.
 - First, the form asks whether rent is established based on a percent of income, and then asks if rent is set on the middle of each band. These inquiries imply an internally inconsistent policy that isn't closely linked to incomes and then is.
 - The section first asked how rents were "set," and then how rents were "established." These are synonymous.
 - There are potentially 13 hardship provisions an agency may need to describe, each peculiar to a waiver activity. These will also be in addition to informal hearing and grievance policies agencies already have in place. The Operations Notice and this form must allow an HA to develop a hardship policy that may be used across waiver activities.

- **Section C.1 Tenant Rent Policies. Activity 1.c. Stepped Rent (PH)**
Many of the comments discussed below are also applicable to other sections of the form with exact verbiage.
 - HUD asks to know what the “minimum rent” is. PHADA believes HUD is asking about the lowest rent in a stepped rent system and leaves minimum rent waiver activities to the Minimum Rent MTW Waiver. PHADA does not understand why HUD is concerned with the lowest rent in a stepped rent system and not in an income bands system and believes treatment of minimum rents belong in the Minimum Rent section.
- **Section C.1 Tenant Rent Policies. Activity 1.e. Minimum Rent (PH)**
 - In its reporting requests, HUD must avoid terminological confusion by not using the term “minimum rent” to refer to any rent other than a minimum rent. An HA may elect not to collect any minimum rent, or may choose to retain existing minimum rent amounts, neither of which requires implementation of a Minimum Rent Waiver activity. An HA may also elect to combine a Minimum Rent Waiver activity with a rent structure either requiring use of an MTW Waiver, an Agency Specific Waiver, or a waiver of HUD’s non-regulatory Operations Notice safe harbor restrictions. Does the department wish reporting on these different approaches separately or not?
- **Section C.1 Tenant Rent Policies. Activity 1.g. Rent as a Percentage of Gross Income (PH)**
 - HUD asks about rents (and later TTPs) based on Gross Income and then asks how “gross rent” is defined. PHADA wonders if “gross rent” is rent, “based on gross income.” If so, it would be simpler to choose one term and use it consistently.
- **Section C.1. Tenant Rent Policies. Activity 1.r. Elimination of Deduction(s) (PH)**
 - HUD asks about two kinds of deductions. What about medical deductions? Although it may relate to the statutory and regulatory waivers required for implementation, PHADA does not believe it is useful to distinguish between eliminating deductions or using some standard deduction, and PHADA does not understand why HUD has not included alternative deductions in its list of MTW Waivers.
- **Section C.8 Term Limited Assistance. Activity 8a and 8b**
 - Under the “term limited assistance” sections and related questions, why doesn’t HUD simply ask agencies to report on the rent structure(s) it used in connection with term limits instead of the check-off-the-box approach it has used here?
- **Section C.9 Work Requirements. Activity 9.b. Work Requirements (HCV)**
 - Under the Work Requirements item, agencies must report whether those requirements apply to specific sites or are portfolio wide. HAs may choose to use this requirement in part of a property or exclude part of a property from the

policy. For the voucher inventory, an agency may choose to use work requirements for some properties and all tenant-based assistance.

- **Section C.12 Activity 12. Increase PBV Development Cap**
 - HUD asks what percentage of vouchers will be project-based. The policy change will permit the agency to project base more vouchers, and so the question is what proportion of vouchers may be project-based.
- **Section C.17 Local, Non-Traditional Activities. 17a. Rental Subsidy Programs**
 - HAs must report on units “added,” while under Housing Development Programs, agencies report on units “developed.” Different terminology may or may not have meaning. Using consistent terms would help clarify HUD’s expectations.
- **Section D.2 Agency Specific Waiver Requests for which HUD Approval has been Received**
 - PHADA does not understand the purpose of repeating the requested information each year with submission of the supplement when much of the information will not change. HUD should ask for reporting on any changes and not require agencies to duplicate prior year reports to satisfy the form’s requirements.
- **Section E. Public Housing Operating Subsidy Grant Reporting. E.1**
 - In this section, HUD makes an illegitimate attempt to impose new obligation and expenditure requirements on Operating Fund resources, citing an undesignated “Federal account closing law,” as authority for this change. In any case, the Department lacks authority to amend financial accounting practices through publication of a form and its attached instructions. The table and its related instructions must be deleted from the form, and HUD must cease its “under the radar” attempts to impose new requirements on any HAs through the publication of forms such as this MTW Supplement to the Annual PHA Plan or a new Consolidated Annual Contributions Contract. This behavior undermines a relationship of mutual respect and trust essential to the delivery of federally supported housing assistance to localities through local HAs.
- **Section F. Statutory Requirements**
 - PHADA observes that HUD stated the income targeting requirement correctly in the form, unlike the proposed Operations Notice. PHADA also believes that the statutory requirement covers an HA’s entire inventory. HUD should not apply the standard by program.
- **MTW Certifications of Compliance in General**
 - Most of the certifications that appear on the MTW Supplement to the Annual PHA Plan also appear on the various Annual Plan submission forms. There is no need for HUD to complicate this supplement with unnecessary, redundant and duplicative certifications.
- **MTW Certifications of Compliance Section 20**

- In this section, HUD makes an illegitimate attempt to impose new cash management requirements on Operating Fund resources, which have not been fully developed or presented to the public for public comment. Additional questions and concerns on this specific compliance can be found in the section on Certifications of Compliance with PHA Plan and Related Regulations on page 9.
- **MTW Certifications of Compliance Section 21**
 - HUD has preemptively eliminated the use of any inspection standards other than HQS and UPCS. Those standards are not required by statute and HUD’s Secretary has the authority to waive that standard and permit an agency to use an alternate.
- **Instructions for Preparation of Form HUD-50075-MTW**
 - In the instructions concerning MTW activities, HUD repeats the same instruction 17 times in C.1 through C.17. PHADA is certain that the department could find a way to state the instructions for certifications concerning activities under MTW Waivers one time instead of the repetition included in the current instructions.
 - HUD’s instructions announce a new requirement concerning obligation and expenditure of Operating Fund resources from a “Federal account closing law” in Section E. Public Housing Operating Subsidy Grant Reporting. First, HUD must reveal specific statutes it claims may authorize this requirement. Second, HUD must find ways to impose novel requirements other than including them in form revisions and using processes other than Paperwork Reduction Act Review. The department should strike these instructions and the related assessment element from the supplement.

Comments on Modifications to Certification Forms

The certification forms are modified more significantly than the 5-Year and Annual PHA Plan templates. PHADA has a number of concerns, particularly in light of recent changes to the Annual Contributions Contract (ACC) by the Department, which were misrepresented in Federal Register information collection notices and ultimately rescinded by HUD in October.

- **Certification by State or Local Official for PHA Plans Consistency with the Consolidated Plan or State Consolidated Plan**
 - The proposed version of the form includes the ability for any state or local official that determines it cannot certify to being fully compliant with the stated regulations and requirements. The official must sign and can voluntarily decide to “...state the reason for non-compliance and what actions will be taken to become compliant.” An explanation of non-compliance and the intended remedy is optional.
 - The Department states that this section was added in an effort to reduce delays to grant funding to HAs when a state or local official refused to sign the

certification. PHADA appreciates the effort to reduce delays in funding for agencies for reasons outside their control. However, The Association is concerned with the implications of this for HAs.

- Unfortunately, state and/or local officials often have marginal knowledge at best of an HA's Annual and/or 5-Year PHA Plan, let alone if it is consistent with a state consolidated plan. Agencies spend a great deal of effort encouraging public participation related to annual and 5-year plans, among residents, elected officials, etc. and educating key stakeholders on programs. However, often state and local officials continue to maintain a minimal understanding of housing programs, policies, and procedures. In PHADA's opinion, allowing a state or local official to check a box stating that it cannot certify to being fully compliant with the stated regulations and requirements and then offering the option to explain non-compliance places an HA in a vulnerable and unfair position.
- What actions will HUD take against an HA for alleged non-compliance? What if a state or local official's statement related to non-compliance is inaccurate or simply false? If the state or local official's statement is inaccurate or false, who bears the burden of proof (i.e. HUD, the state or local official, the HA)?
- The questions and uncertainties described above of the intended benefit of the proposed section may actually cause more harm than benefit for agencies.
- **Civil Rights Certification**
 - The proposed version of the form includes the ability for any HA that determines it cannot certify to being fully compliant with the stated regulations and requirements to provide an explanation for non-compliance and the intended remedy.
 - Given recent serious events related to HAs certifying compliance with regulation, when in fact, the agency was not in compliance with regulations and requirements, PHADA suspects this is in an effort to provide executive officers a mechanism to officially certify non-compliance and begin developing intended remedies.
 - This effort is well-intentioned. However, it is critical that if the mechanism has been provided to agencies, that HUD has the capacity to address the implications of this. PHADA questions HUD's capacity to review annual and 5-year plans thoroughly and to provide technical assistance where necessary, let alone address potential new non-compliance issues related to the proposed changes to this form.
- **Certifications of Compliance with PHA Plan and Related Regulations**
 - Section 19 states that "[t]he PHA will comply with the policies, guidelines, and requirements of 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Financial Assistance..."
 - PHADA presumes that this new section refers to a new cash management system for providing public housing operating funding to HAs, as this section of the CFR

addresses the timing of payments from federal agencies to non-federal entities, including HAs. The Association is aware that HUD officials are developing new rules that would institute substantial changes to the way public housing is funded and operated.

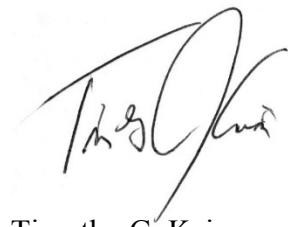
- Implementing such a system is problematic and unworkable for HAs – it runs counter to current law, existing regulations, and practice and it undermines Congressional directives. The existing Public Housing Operating Fund was developed by negotiated rulemaking between HUD and the industry, mandated by statute per Congress, and implemented through regulation by the Department. In addition, under current law Congress granted HAs the ability to accumulate reserves for larger capital projects. Similarly, HOTMA permits HAs the ability to utilize operating subsidy for capital purposes to improve housing conditions. All of these legal rights, and more, would be undermined under cash management.
- Implementing a new cash management system to determine funding for public housing through such sections and statements within certifications required to be executed by chief executive officers of HAs is illegitimate and frankly unfair to the assumed relationship of mutual respect and collaboration between HAs and the Department.
- The proposed version of the form also includes the ability for any HA that determines it cannot certify to being fully compliant with the stated regulations and requirements to provide an explanation for non-compliance and the intended remedy.
- This effort is well-intentioned. However, it is critical that if the mechanism has been provided to agencies, that HUD has the capacity to address the implications of this. PHADA questions HUD's capacity to review annual and 5-year plans thoroughly and to provide technical assistance where necessary, let alone address potential new non-compliance issues related to the proposed changes to this form.

To conclude, the Annual and 5-Year PHA Plans have, unfortunately, become unproductive and duplicative reporting instruments that neither serve agencies, particularly MTW agencies, nor residents. Modifications to the existing forms and the development of the new MTW Supplement do not resolve this reality and instead reveal a number of serious questions and concerns. Furthermore, the proposed information collection address the Department's lack of capacity to review 5-Year and Annual PHA Plans, nor how HUD could provide technical assistance and training to agencies, if necessary. The Association has received numerous comments from HA members over the years that PHA Plans are not reviewed in any meaningful way. For example, HUD was caught off guard when an agency in the Northeast implemented a policy throughout its programs which it had included in its PHA Plan, which had been approved, but that the Department had failed to notice was in conflict with regulations and statutes. Lastly, PHADA wishes to again express that it is very concerned that HUD continues to use the

publication of forms and instructions to impose non-statutory, non-regulatory requirements on HAs. Doing so is insincere and undermines business relationships on which national deeply affordable housing assistance delivery is based and threatens the ability for HAs to efficiently and effectively operate affordable housing programs essential to millions of low-income families nationwide.

PHADA is appreciative of the opportunity to comment on the proposed information collection notice and hopes to work closely with the Department in the future to address the many questions and concerns included in this comment letter. Please contact Crystal Wojciechowski via email at cwojciechowski@phada.org if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim G. Kaiser", is written over a faint, light blue rectangular background.

Timothy G. Kaiser
Executive Director