



Berkeley Housing Authority

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Item 7C

NEW BUSINESS

February 10, 2022

Office of the Executive Director

To: Honorable Chair and Members of the Berkeley Housing Authority Board

From: Rachel Gonzales-Levine, Acting Executive Director

Subject: Move To Work (MTW) Update

Background

As recently reported to the Board, BHA was accepted into the MTW Landlord Incentives Cohort, a very exciting opportunity for our agency to engage in programmatic and fiscal flexibilities, leading to a continued strengthening of our impact and ability to house low income households in Berkeley. The main focus will be engaging with landlords, including providing new incentives to entice them to participate with us in housing our program participants, whom without a voucher would not be able to afford living here. Secondly, but not least important, some of the flexibilities we will be able to implement will impact our ability to expand the project-based voucher program, and allow AHB to acquire property/land in a streamlined fashion.

In terms of fiscal flexibility, MTW status allows participating agencies to engage in “fungible” budgeting, meaning the ability to produce a budget that can move funds from operations to HAP and vice versa. The Board will help guide BHA’s MTW planning, both programmatic and fiscal; the Board has reviewed our application submission in October, which identifies agreed upon waivers/ideas we would like to test (there is a strong HUD evaluation component/requirement as an MTW agency). The MTW designation lasts for 20 years.

It is important to note that with MTW designation comes a whole new body of work for staff, in addition to the other recent exciting but additional efforts we have made in new special voucher allocations (EHV; Mainstream; VASH); helping to facilitate the forward momentum of AHB; and the myriad of additional work product like opening of the HCV Waitlist; a PBV RFP; online Portals for our landlords and clients; etc. Staff would like to engage with Board (or a subset) in discussions around “right sizing” the agency, and how the ability to utilize fungibility could strengthen our staffing capacity, including for consideration a potential new landlord liaison position, and/or other possibilities such as a Deputy Director.

Next Steps

Please see Attachment 1 which spells out the seven steps required to be able to implement the MTW flexibilities. These steps, as suggested by HUD, will take a year plus to implement. Staff will be working as efficiently as possible on these MTW tasks, while continuing our ongoing day to day operations and program management, collaborations, and special projects. We will work on producing an internal timeline for handling each of these steps and will continue to keep the Board apprised on our MTW implementation actions.

In the meantime, HUD has scheduled eight MTW onboarding/training webinars about the steps and requirements needed in order to begin implementing our MTW flexibilities, between February and May 2022 which appropriate staff are attending, and Rachel attending them all.

Attachment 2 is a draft Annual Contributions Contract Amendment (ACC). As you know, the ACC is signed each year and contractualizes BHA's relationship with HUD-including the funding for HAP expenditures. The MTW ACC Amendment is the first step identified by HUD in the implementation process (as you will see in Attachment 1). It spells out requirements and covenants; a transition plan at Year 19; terminations and defaults; and placeholder for future laws that may impact the MTW program. This MTW ACC Amendment is required in order to provide for fiscal flexibilities. This draft ACC Amendment, utilizing HUD's template, is provided for Board review this month; in March staff will bring this back for a resolution approving the MTW ACC Amendment.

MTW Activities

As a refresher, below are the MTW activities (regulatory flexibilities) BHA included in our application; this list was vetted and commented upon by our RAB during the required public meetings, and by the Board, prior to submission of our approved application:

- Payment Standards – Fair Market Rents (FMR): The PHA may establish payment standards at 120% of the FMR.
- Signing Bonus: for landlords without any HCV tenants, the PHA may provide up to one-month contract rent.
- Unit Cleaning Fee—Death of Resident: BHA will pay one-month HAP for the month following the month of death of the sole remaining resident for cleaning a unit, or allowing the family members of the deceased, to remove belongings, provided that the landlord leases up another household utilizing a voucher for the unit upon turnover.
- Disabled Unit Modifications: BHA will provide grants to landlords, up to \$500 to allow for modifications to a unit to allow physically disabled households to safely live in units. Costs could include lowering countertops, installing grab bars, etc. Note: this grant will only be provided in cases where the Center for Independent Living (CIL) is not already engaged in making modifications via its Residential Access Program.
- Ability to increase the amount of PBVs BHA can allocate – rather than up to 30% of units, increase to a figure above 30% of HAP Budget/Voucher allocation, provided there are supporting HAP funds available in the HAP budget.
- Acquisition of property without HUD approval. to make more efficient the process by which BHA and/or AHB, our non-profit affiliate, may acquire property.
- Cap on the number of required FSS program participants to 27: because BHA has never been able to qualify for NOFA funding for FSS Coordinator, we will cap the number of FSS participants. We have 24 FSS participants currently enrolled, with 3 graduates.

Attachments

1. MTW Implementation Steps
2. Draft MTW Annual Contributions Contract Amendment

MTW Implementation: HUD-Required Steps*

Step 1: Complete & Execute the MTW ACC Amendment

- Review the MTW ACC Amendment with PHA Board
- Receive PHA Board approval, sign, and submit the MTW ACC Amendment to HUD
- HUD will review, sign (aka execute) and date the MTW ACC Amendment and return it to the PHA.

Remember: Execution of the MTW ACC Amendment by HUD will be the PHA's official entry date to the MTW Demonstration Program

Step 2: Prepare your Agency's Finances

- Remember, that the PHA cannot use funds flexibly until the *1st of the month, following* the date that MTW ACC Amendment is executed by HUD.
- MTW PHAs are subject to 2 CFR Part 200 requirements.

Step 3: Conduct Public Process and Complete Development of your PHA's MTW Supplement to the Annual PHA Plan

- Develop and complete the initial research for the MTW Activities that the PHA has determined it intends to implement.
- Hold the Public Hearing(s) regarding the Supplement, discuss potential MTW activities with program participants, gather public feedback and finalize the PHA's program.

Step 4: Submit the MTW Supplement

- Complete and submit the PHA MTW Supplement at the same time as the PHA's Annual Plan is submitted to the Field Office.

Remember: The MTW Supplement is submitted via the on-line system.

Step 5: Migrate HUD-50058 and building and unit data to within the new IMS/PIC Modernization system

- Examine and ensure all active households are in the current IMS/PIC System with the most recent action
- Examine building and unit data, to ensure all is correct

Step 6: Coordinate with PD&R and the Evaluation Team on Research

- Attend Meetings with PD&R and the Evaluator and set up research on MTW Activities

Step 7: Receive Approval of MTW Supplement from HUD Field Office

...Begin Implementation!

*Implementation steps could take as few as 12 months up to 18 months.

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 Berkeley Housing Authority (the “Public Housing Agency, “PHA”).

Section 2. This MTW ACC Amendment is an amendment to any Annual Contributions Contract(s) (“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 only exempted from specific provisions of the Housing Act of 1937 (“the Act”) and its implementing regulations as specified in the MTW 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 MTW Operations Notice. The PHA remains

subject to all other applicable requirements including, but not limited to, those in Title 24 of the Code of Federal Regulations and Title 42 of the U.S. Code, Appropriations Acts, Annual Contributions Contracts, notices of funding availability under which the PHA has received funds, and the applicable requirements listed in the MTW Operations Notice (collectively, “the Requirements”), as they may be amended or implemented in the future. Accordingly, if any Requirement, other than the provisions of the Act and its implementing regulatory requirements or subregulatory guidance exempted pursuant to this MTW ACC Amendment and the MTW Operations Notice, conflicts with any exemption or authorization granted by this MTW ACC Amendment, the MTW Agency remains subject to that 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

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).

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;
 - 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: _____