

## Rental Assistance Demonstration (RAD) Amendment to the Annual Plan

### A. Introduction

The Wilmington Housing Authority is amending its Annual PHA Plan because it was a successful applicant in the Rental Assistance Demonstration (RAD). As a result, the Wilmington Housing Authority will be converting to Project Based Vouchers under the guidelines of PIH Notice 2012-32, REV-1 and any successor Notices.

Upon conversion to Project Based Vouchers the Authority will adopt the resident rights, participation, waiting list and grievance procedures listed in Section 1.6.C & 1.6.D of PIH Notice 2012-32, REV-1. These resident rights, participation, waiting list and grievance procedures are appended to this Attachment.

Additionally, the Wilmington Housing Authority is currently compliant with all fair housing and civil rights requirements and is not under a Voluntary Compliance Agreement.

RAD was designed by HUD to assist in addressing the capital needs of public housing by providing Wilmington Housing Authority with access to private sources of capital to repair and preserve its affordable housing assets. Please be aware that upon conversion, the Authority's Capital Fund Budget will be reduced by the pro rata share of Public Housing Developments converted as part of the Demonstration, and that Wilmington Housing Authority may also borrow funds to address their capital needs.

The Wilmington Housing Authority will also be contributing Capital Funds in the form of RHF funds in the amount of \$2.1 million towards the conversion.

The Wilmington Housing Authority currently has debt under an Energy Performance Contract and will be working with Ameresco to address outstanding debt issues, which may result in additional reductions of capital or operating funds.

### B. Development Information

Below, please find specific information related to the Public Housing Development(s) selected for RAD:

Development #1

Name of Public Housing Development: Hillcrest	PIC Development ID: NCO01-005	Conversion Type: PBV	Transfer of Assistance: Yes, 40 units to 820 Dawson Street
Total Units: 40	Pre-RAD Unit Type: Family	Post-RAD Unit Type if different: Family	Capital Fund allocation of Development: <u>(Annual Capital Fund Grant divided by total number of PH units in PHA, multiplied by total number of units in project)</u> $(1,249,674/1028)*40 = \$48,625.44$
Bedroom Type	Number of Units Pre-Conversion	Number of Units Post-Conversion	Change in Number of Units per Bedroom Type and Why: (De Minimis Reduction,

			Transfer of assistance, Unit Reconfigurations, etc.)
Studio/Efficiency			
One Bedroom			
Two Bedroom	40	40	NA
Three Bedroom			
Four Bedroom			
Five Bedroom			
Six Bedroom			
If performing a Transfer of Assistance:	<p>Explain how transferring waiting list:  Everyone on the Hillcrest site-based waiting list will be given an opportunity to be placed on the waiting list for the new Dawson Street RAD units. They will be placed on the Waiting List in the date and time order they previously were placed on the Hillcrest development's Waiting List.</p>		

## Resident Rights, Participation, Waiting List and Grievance Procedures

### C. Resident Rights and Participation

1. **No Re-screening of Tenants upon Conversion.** Pursuant to the RAD statute, at conversion, current households are not subject to rescreening, income eligibility, or income targeting provisions. Consequently, current households will be grandfathered for conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR § 982.201, concerning eligibility and targeting, will not apply for current households. Once that remaining household moves out, the unit must be leased to an eligible family.
2. **Right to Return.** Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to an assisted unit at the development once rehabilitation or construction is completed. Where the transfer of assistance to a new site is warranted and approved (see Section 1.6.B.7 and Section 1.7.A.8 on conditions warranting a transfer of assistance), residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete. Residents of a development undergoing conversion of assistance may voluntarily accept a PHA or Owner's offer to permanently relocate to another assisted unit, and thereby waive their right to return to the development after rehabilitation or construction is completed.
3. **Renewal of Lease.** Under current regulations at 24 CFR § 983.257(b)(3), upon lease expiration, a PHA can choose not to renew the lease, without good cause. In such a case, the regulatory consequence is the loss of the assisted unit. Under RAD, the PHA must renew all leases upon lease expiration, unless cause exists. Consequently, 24 CFR § 983.257(b)(3) will not apply. This provision must be incorporated by the PBV owner into the tenant lease or tenancy addendum, as appropriate.

- 4. Phase-in of Tenant Rent Increases.** If a tenant's monthly rent increases by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over 3 or 5 years. To implement this provision, HUD is waiving section 3(a)(1) of the Act, as well as 24 CFR § 983.3 (definition of "total tenant payment" (TTP)) only to the extent necessary to allow for the phase-in of tenant rent increases. A PHA must create a policy setting the length of the phase in period at three years, five years or a combination depending on circumstances. For example, a PHA may create a policy that uses a three year phase-in for smaller increases in rent and a five year phase-in for larger increases in rent. This policy must be in place at conversion and may not be modified after conversion.

**WHA Policy:** If the tenant's monthly rent increases more than 10% or \$25 whichever is greater, a three (3) year phase in will be implemented according to the Three Year Phase-in scheduled below.

The below method explains the set percentage-based phase-in an owner must follow according to the phase-in period established. For purposes of this section "standard TTP" refers to the TTP calculated in accordance with regulations at 24 CFR §5.628 and the "most recently paid TTP" refers to the TTP recorded on line 9j of the family's most recent HUD Form 50058

Three Year Phase-in:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 33% of difference between most recently paid TTP and the standard TTP
- Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) prior to Year 3 AR – 66% of difference between most recently paid TTP and the standard TTP
- Year 3: Year 3 AR and all subsequent recertifications – Full standard TTP

Five Year Phase in:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 20% of difference between most recently paid TTP and the standard TTP
- Year 2: Year 2 AR and any IR prior to Year 3 AR – 40% of difference between most recently paid TTP and the standard TTP
- Year 3: Year 3 AR and any IR prior to Year 4 AR – 60% of difference between most recently paid TTP and the standard TTP
- Year 4: Year 4 AR and any IR prior to Year 5 AR – 80% of difference

between most recently paid TTP and the standard TTP

- Year 5 AR and all subsequent recertifications – Full standard TTP

*Please Note:* In either the three year phase-in or the five-year phase-in, once the standard TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full TTP from that point forward.

**5. Public Housing Family Self Sufficiency (PH FSS) and Resident Opportunities and Self Sufficiency Service Coordinator (ROSS-SC) programs.** Current PH FSS participants will continue to be eligible for FSS once their housing is converted under RAD, and PHAs will be allowed to use any PH FSS funds granted previously or pursuant to the FY 2013 PH FSS NOFA, to serve those FSS participants who live in units converted by RAD and who will as a result be moving to the HCV FSS program, subject to the following:

- a. If a PHA has an HCV FSS program, a PHA must convert the PH FSS program participants at the covered project to their HCV FSS program. Please see future FSS Notices of Funding Availability and other guidance for additional details, including FSS coordinator funding eligibility of PHAs under a RAD conversion.

**WHA Policy: WHA has an HCV FSS program therefore any PH FSS program participant in a unit that is converted under RAD will be transferred to the WHA HCV FSS program without loss of accumulated escrow.**

- b. If a PHA does not have an HCV FSS program, the PHA must establish an HCV FSS program and convert the PH FSS program participants at the covered project into their HCV FSS program. PHAs are not required to offer enrollment in FSS to residents in converting projects and other HCV participants, other than to residents in converting projects that were enrolled in the PH FSS program. Please see future FSS Notices of Funding Availability and other guidance for additional details, including FSS coordinator funding eligibility of PHAs under a RAD conversion.

**WHA Policy: WHA has an HCV FSS program and therefore this section is non-applicable.**

All PHAs will be required to administer the FSS program in accordance with FSS regulations at 24 CFR Part 984 and in accordance with the participants' contracts of participation. However, residents who were converted from the PH FSS program to the HCV FSS program through RAD may not be terminated from the HCV FSS program or have HCV assistance withheld due to the participant's failure to comply with the contract of participation. Consequently, 24 CFR 984.303(b)(5)(iii) does not apply to FSS participants in converted properties.

Current ROSS-SC grantees will be able to finish out their current ROSS-SC grants once their housing is converted under RAD. However, once the property is converted, it will no longer be eligible to be counted towards the unit count for future public housing ROSS-SC grants, nor will its residents be eligible to be served by future public housing ROSS-SC grants.

6. **Resident Participation and Funding.** In accordance with Attachment 1B, residents of covered projects converting assistance to PBVs will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding.
7. **Resident Procedural Rights.** The following items must be incorporated into both the Section 8 Administrative Plan and the owner's lease, which includes the required tenancy addendum, as appropriate. Evidence of such incorporation may be requested by HUD for purposes of monitoring the program.
  - a. **Termination Notification.** HUD is incorporating additional termination notification requirements to comply with section 6 of the Act for public housing projects that convert assistance under RAD. In addition to the regulations at 24 CFR § 983.257, related to owner termination of tenancy and eviction, as modified by the waiver in PIH Notice 2012-32 rev 1, Section 1.6(C)(3) above, the termination procedure for RAD conversions to PBV will require that PHAs provide adequate written notice of termination of the lease which shall not be less than:
    - i. A reasonable period of time, but not to exceed 30 days:
      - a. If the health or safety of other tenants, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or
      - b. In the event of any drug-related or violent criminal activity or any felony conviction;
      - c. conviction;
    - ii. 14 days in the case of nonpayment of rent; and
    - iii. 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply.
  - b. **Grievance Process.** HUD is incorporating additional procedural rights to comply with the requirements of section 6 of the Act.

For issues related to tenancy and termination of assistance, PBV program rules require the PHA to provide an opportunity for an informal hearing, as outlined in 24 CFR § 982.555. RAD will waive 24 CFR § 982.555(b) in part, which outlines when informal hearings are not required, and require that:

- i. In addition to reasons that require an opportunity for an informal hearing given in 24 CFR § 982.555(a)(1)(i)-(vi),<sup>31</sup> an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to a PHA (as owner) action in accordance with the individual's lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.
  - a. For any hearing required under 24 CFR § 982.555(a)(1)(i)-(vi), the contract administrator will perform the hearing, as is the current standard in the program.

- b. For any additional hearings required under RAD, the PHA (as owner) will perform the hearing.
- ii. An informal hearing will not be required for class grievances or to disputes between residents not involving the PHA (as owner) or contract administrator. This hearing requirement shall not apply to and is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the PHA (as owner) or contract administrator.
- iii. The PHA (as owner) give residents notice of their ability to request an informal hearing as outlined in 24 CFR § 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 CFR § 982.555(a)(1)(i)-(vi).
- iv. The PHA (as owner) provide opportunity for an informal hearing before an eviction.

Current PBV program rules require that hearing procedures must be outlined in the PHA's Section 8 Administrative Plan.

**WHA Policy:** The hearing procedures for PBV and PBV clients converted under RAD clients are outlined in Chapter 18 of the WHA HCV Administrative Plan.

- 8. Earned Income Disregard (EID).** Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the EID after conversion, in accordance with regulations at 24 CFR § 5.617. Upon the expiration of the EID for such families, the rent adjustment shall not be subject to rent phase-in, as described in Section 1.6.C.4; instead, the rent will automatically rise to the appropriate rent level based upon tenant income at that time.

Under the Housing Choice Voucher program, the EID exclusion is limited to only persons with disabilities (24 CFR § 5.617(b)). In order to allow all tenants (including non-disabled persons) who are employed and currently receiving the EID at the time of conversion to continue to benefit from this exclusion in the PBV project, the provision in section 5.617(b) limiting EID to only disabled persons is waived. The waiver and resulting alternative requirement only applies to tenants receiving the EID at the time of conversion. No other tenant (e.g., tenants who at one time received the EID but **are** not receiving the EID exclusion at the time of conversion (e.g., due to loss of employment); tenants that move into the property following conversion, etc.) is covered by this waiver.

- 9. Capital Fund Education and Training Community Facilities (CFCF) Program.** CFCF provides capital funding to PHAs for the construction, rehabilitation, or purchase of facilities to provide early childhood education, adult education, and job training programs for public housing residents based on an identified need. Where a community facility has been developed under CFCF in connection to or serving the residents of an existing public housing project converting its assistance under RAD, residents will continue to qualify as "PHA residents" for the purposes of CFCF program compliance. To the greatest extent possible the community facility should continue to be available to public housing residents

**WHA Policy:** WHA does not receive CFCF funding, therefore this section is not applicable.

#### **D. PBV: Other Miscellaneous Provisions**

- 1. Access to Records, Including Requests for Information Related to Evaluation of Demonstration.** PHAs must agree to any reasonable HUD request for data to support program evaluation, including but not limited to project financial statements, operating data, Choice-Mobility utilization, and rehabilitation work. Please see Appendix IV for reporting units in Form HUD-50058.
- 2. Additional Monitoring Requirement.** The PHA's Board must approve the operating budget for the covered project annually in accordance with HUD requirements.<sup>32</sup>
- 3. Davis-Bacon Act and Section 3 of the Housing and Urban Development Act of 1968 (Section 3).** Under existing PBV program rules, projects that qualify as "existing housing" under 24 CFR § 983.52(a) are not subject to Davis-Bacon (prevailing wages, the Contract Work Hours and Safety Standards Act, and other related regulations, rules, and requirements) or Section 3 (24 CFR Part 135). However, the Davis-Bacon Act and Section 3 shall apply to all initial repairs that are identified in the Financing Plan to the extent that such repairs qualify as construction or rehabilitation, regardless of whether the project qualifies as "existing housing." Developmental requirements under 24 CFR § 983.154 and fair housing provisions under 24 CFR § 983.152(c)(vi) continue to apply.<sup>33</sup>
- 4. Establishment of Waiting List.** In establishing the waiting list for the converted project, the PHA shall utilize the project-specific waiting list that existed at the time of conversion, unless the assistance is being transferred to another neighborhood. If a project-specific waiting list does exist, but the PHA is transferring the assistance to another neighborhood, the PHA must notify applicants on the wait-list of the transfer of assistance, and on how they can apply for residency at the new project site or other sites. Applicants on a project-specific waiting list for a project where the assistance is being transferred shall have priority on the newly formed waiting list for the new project site in accordance with the date and time of their application to the original project's waiting list. In addition, the waiting list must be established and maintained in accordance with PBV program requirements.

If a project-specific waiting list for the project does not exist, the PHA shall establish a waiting list in accordance 24 CFR § 903.7(b)(2)(ii)-(iv) to ensure that applicants on the PHA's public housing community-wide waiting list have been offered placement on the converted project's initial waiting list. For the purpose of establishing the initial waiting list, PHAs have the discretion to determine the most appropriate means of informing applicants on the public housing waiting list given the number of applicants, PHA resources, and community characteristics of the proposed conversion under RAD. Such activities should be pursuant to the PHA's policies for waiting list management, including the obligation to affirmatively further fair housing.

<sup>32</sup> For PBV conversions that are not FHA-insured, a future HUD notice will describe project financial data that may be required to be submitted by a PBV owner for purposes of the evaluation, given that PBV projects do not submit annual financial statements to HUD/REAC.

<sup>33</sup> Applicable to projects with nine or more units.

**WHA Policy:** WHA has a project-specific waiting list, therefore the above paragraph does not apply.

A PHA may consider contacting every applicant on the public housing waiting list via direct mailing; advertising the availability of housing to the population that is less likely to apply, both minority and non-minority groups, through various forms of media (e.g., radio stations, posters, newspapers) within the marketing area, informing local non-profit entities and advocacy groups (e.g., disability rights groups); and conducting other outreach as appropriate. Applicants on the agency's centralized public housing waiting list who wish to be placed onto the newly-established waiting list are done so in accordance with the date and time of their original application to the centralized public housing waiting list. Any activities to contact applicants on the public housing waiting list must be conducted accordance with the requirements for effective communication with persons with disabilities at 24 CFR § 8.6 and the obligation to provide meaningful access for persons with limited English proficiency (LEP).<sup>34</sup>

To implement this provision, HUD is waiving 24 CFR § 983.251(c)(2). However, after the initial waiting list has been established, the PHA shall administer its waiting list for the converted project in accordance with 24 CFR § 983.251(c).

5. **Mandatory Insurance Coverage.** The project shall maintain at all times commercially available property and liability insurance to protect the project from financial loss and, to the extent insurance proceeds permit, promptly restore, reconstruct, and/or repair any damaged or destroyed property of a project, except with the written approval of HUD to the contrary.
6. **Agreement Waiver.** For public housing conversions to PBV, there will be no Agreement to Enter into a Housing Assistance Payments (AHAP) contract. Therefore, all regulatory references to the Agreement (AHAP), including regulations under 24 CFR Part 983 Subpart D are waived.
7. **Future Refinancing.** Owners must receive HUD approval for any refinancing or restructuring of permanent debt within the HAP contract term to ensure the financing is consistent with long-term preservation. (Current lenders and investors are also likely to require review and approval of refinancing of the primary permanent debt.)
8. **Administrative Fees for Public Housing Conversions.** For the initial Calendar Year in which a project's assistance has been converted, RAD PBV projects will be funded with public housing money. Since the public housing funding will not have been transferred to the TBRA account and since this funding is not section 8 assistance the annual contributions contract (ACC) between the PHA and HUD will cover the project units, but be for zero dollars. For this transition period, the ACC will primarily serve as the basis for covering the units and requiring PHA compliance with HUD requirements, but it will not be (as it is in the regular PBV program) the funding vehicle for the PBV RAD vouchers. Given this, and given

<sup>34</sup> For more information on serving persons with LEP, please see HUD's Final guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (72 FR 2732), published on January 22, 2007.



the fact that PHAs will be receiving full public housing funding for the PBV units during this transition period, PHAs will not receive ongoing section 8 administrative fee funding during this time.

Generally, PHAs receive ongoing administrative fees for units under a HAP contract, consistent with recent appropriation act references to "section 8(q) of the [United States Housing Act of 1937] and related appropriations act provisions in effect immediately before the Quality Housing and Responsibility Act of 1998" and 24 CFR 982.152(b). During the transition period mentioned in the preceding paragraph, these provisions are waived, and PHAs will not receive section 8 ongoing administrative fees for PBV RAD units. After this transition period, the ACC will be amended to include section 8 funding that corresponds to the units covered by the ACC. At that time, the regular section 8 administrative fee funding provisions will apply.

### **E. Site Selection and Neighborhood Standards Review**

The new site for the 40 Hillcrest RAD units is located at 820 Dawson Street, less than a mile from the current Hillcrest development and adjacent to the Jervay HOPE VI site. The 820 Dawson Street location is in the same census tract as the Hillcrest Development and is still in the Southside's Dry Pond Neighborhood. Being adjacent to a HOPE VI development, the Dawson Street site, it is less densely populated and is a mix of tax credit and home ownership units. This provides for a more diverse mix of income levels of the neighborhood. This area is one of minority concentration however, as part of the identified WHA Choice Neighborhood Planning grant and WHA's CN Implementation grant application it is an integral part of an overall local strategy for the preservation and restoration of the immediate neighborhood. The area is within 3 blocks of the Castle Street Arts District which is experiencing significant private investment and economic growth. The Hillcrest development, the Jervay HOPE VI project, and the site for the RAD units are all a part of the neighborhood outlined as WHA's Choice Neighborhood. Therefore, moving the Hillcrest RAD units will not exclude them from improvements that are being planned for the neighborhood.

### **F. Relocation Plans**

If relocating residents, please append the Accessibility and Relocation Plan Checklist here. *If relocation plans have not been developed yet, please fill out the Accessibility and Relocation Checklist and submit with the Financing Plan.*

**WHA Policy:** Tenants of the 40 units converted to RAD will be moved into the newly constructed units upon completion. The newly constructed units are within the neighborhood and in the same census tract. Relocation of tenants will be done once at the time of completion of the newly constructed units following WHA's Relocation Handbook and the Uniform Relocation Assistance (URA) Act of 1970.

### **G. Significant Amendment Definition**

As part of the Rental Assistance Demonstration (RAD), the Wilmington Housing Authority is redefining the definition of a substantial deviation from the PHA Plan to exclude the following RAD-specific items:

- a.** Changes to the Capital Fund Budget produced as a result of each approved RAD Conversion, regardless of whether the proposed conversion will include use of additional Capital Funds;
- b.** Changes to the construction and rehabilitation plan for each approved RAD conversion; and
- c.** Changes to the financing structure for each approved RAD conversion.