



U.S. Department of Housing and Urban Development

Public and Indian Housing

Special Attention of:

## Notice PIH 96-95 (HA)

HAs with Section 8 Moderate  
Rehabilitation; Secretary's  
Representatives; State and Area  
Office Directors of Public Housing;  
State Office Directors of Native  
American Programs

Issued: 12/24/96

Expires: **09/30/97**

Cross References:

**Subject:** Fiscal Year 1997 Renewal of Expiring Section 8 Moderate Rehabilitation (Mod Rehab) Housing Assistance Payments (HAP) Contracts.

- PURPOSE:** This Notice provides instructions for implementing Section 211 (b) of the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1997 (FY '97 Appropriations Act) governing the renewal of HAP contracts under the Section 8 Mod Rehab program.
- BACKGROUND:** Prior to FY '97, expiring Mod Rehab HAP contracts were not renewed. Instead, funding for replacement rental certificates (or rental vouchers; if approved by HUD) was provided for the tenants. The FY '97 Appropriations Act was enacted on September 26, 1996, as Public Law 104-204. Section 211 (b)(1) requires that upon the request of the owner of a multifamily housing project that is covered by an expiring contract, the Secretary shall renew the expiring contract as project-based assistance for a period of not more than 1 year at rent levels that are equal to those under the expiring contract as of the date of which the contract expires, provided those rent levels do not exceed 120 percent of the fair market rent for the market area in which the project is located.
- APPLICABILITY:** This Notice applies to all units in a multifamily housing project (including FHA-insured multifamily housing projects) under a Section 8 Mod Rehab Program HAP contract expiring during the period from October 1, 1996 through September 30, 1997. The term "multifamily housing project" means a property consisting of more than 4 dwelling units that is covered in whole or in part by a contract for project-based assistance under Section 8 of the United States Housing Act of 1937.

: Distribution:

HUD 21B (3-80)

4. **HA NOTIFICATION TO OWNERS:** HAs administering Mod Rehab programs must, immediately upon receipt of this Notice, notify owners of Mod Rehab units in multifamily housing projects with a HAP contract expiring from October 1, 1996 through September 30, 1997, that the owner may request a renewal of the expiring contract. The term of each renewal will be for one year.

5. **STAGED HAP CONTRACTS:** Many Mod Rehab HAP contracts were executed in stages. Each stage has a separate 15 year HAP contract term, and the individual stages of such HAP contracts will expire at different times. For staged HAP contracts, the term of the one year renewal for each stage commences on the date after expiration of the HAP contract for each stage.

6. **RENEWAL RENT LEVELS:** The Appropriations Act of 1997 requires that the renewal rents be set at the levels in effect on the date the HAP contract expires. However, the gross rents may not exceed 120 percent of the Section 8 existing housing program Fair Market Rents (FMRs) for the area in which the project is located, whichever is **lower**, with the exception of those projects mentioned below.

Section 211(b)(2) and section 211(b)(3) of the '97 Appropriations Act provide exemptions from the 120 percent of FMRs rent limitation for certain projects. The exemptions are for projects that are publicly financed or insured, for section 202 projects and for section 515 projects. At the request of the owners of such projects (and the public agency, in the case of Mod Rehab), the HA shall renew a Section 8 contract expiring in FY '97 for a period of not more than one year at rent levels that are equal to those under the expiring contract.

Renewal rents are **not** subject to rent comparability determinations. Units covered by HAP contract renewals are **not** eligible for annual rent adjustments, either at the time of renewal or at any other time during the one year HAP contract term extension.

7. **RENEWAL PROCEDURES:** HAs will renew HAP contracts by executing, with the owners, a renewal contract which extends the term of the original HAP contract for an additional 12 months. (See Attachments A and B).

Assisted families occupying units covered by renewed Mod Rehab HAP contracts are not entitled to rental certificates, and must continue to occupy their current Mod Rehab unit or lose federal rental assistance. (However, see paragraph 10 relating to possible exceptions for tenants residing in units with Mod Rehab HAP contracts expiring between October 1, 1996, and February 28, 1997).

An owner whose HAP contract is renewed for one year may not terminate the tenancy of any

Mod Rehab tenant on the basis that the current dwelling lease has expired. The owner may terminate the lease of a Mod Rehab tenant, either at the time of renewal or anytime during the one year renewal period, only for serious or repeated violation of the lease, violation of applicable federal, state, or local laws, or other good cause.

**8. OWNERS NOT ELIGIBLE FOR RENEWAL OF EXPIRING MOD REHAB HAP**

**CONTRACTS:** HAs administering Mod Rehab HAP contracts **should not renew** an expiring HAP contract if it is determined that the owner of the multifamily housing project is in material default under the HAP contract (including failure to comply with Housing Quality Standards). If an owner is determined to be in material default of the HAP contract, the HA must notify the owner, in writing, within a reasonable time, that a one year renewal of the Mod Rehab HAP contract will not be permitted. The HA must clearly cite the section of the contract upon which it has made its determination.

Owners with properties consisting of 4 or less dwelling units covered in whole or in part by a Mod Rehab contract are not eligible for HAP contract renewal. Families living in Mod Rehab units with HAP contracts expiring in FY 1997 in which the property consists of 4 or less units shall be issued Section 8 rental certificates by the HA administering the Mod Rehab HAP contract in accordance with notice PIH 95-71.

**9. STATUTORY OWNER NOTIFICATION REQUIREMENTS:** Section 8(c)(9) of the United States Housing Act of 1937 requires Section 8 Mod Rehab owners to provide written notice to HUD and each family not less than one year before the expiration of the HAP contract. The owner must send a copy of the notice to the appropriate HA. This notice is required to inform the project's residents of the impending HAP contract expiration.

If the HAP contract is not renewed, but if the owner has failed to provide the proper notice under Section 8(c)(9), the tenant is protected as if there were an assisted tenancy until one year from the time the owner actually provides the notice. The HA must issue a rental certificate to the family (if program eligible).

A. The owner and the family may agree to enter into a rental certificate tenancy for the unit, in accordance with all certificate program rules (including maximum certificate program rents).

B. The tenant may use the rental certificate to locate another unit, or may otherwise vacate the unit if the tenant so chooses.

C. If the tenant continues to occupy the unit in an unassisted tenancy, the owner must not, until at least 12 months have passed since the owner's Section 8(c)(9) notice, increase the tenant's rent above the level of the tenant payment (i.e. tenant rent) under the expiring HAP contract. The owner is not entitled to any Section 8 rental assistance payments. Also during this time, the owner cannot terminate the tenancy of the family other than for serious or repeated violation of the lease, violation of applicable federal, state, or local laws,

or for other good cause.

**10. PROCEDURES APPLICABLE TO UNITS WITH HAP CONTRACTS EXPIRING BETWEEN OCTOBER 1, 1996 AND FEBRUARY 28, 1997:** Upon receipt of this Notice, the HA must, within five business days, notify eligible owners of their right to request a one year renewal of their expiring Mod Rehab HAP contracts. Owners must request a renewal within 15 days of the date of the HA's notification. If the owner elects not to renew the expiring HAP contract, or if the owner fails to respond in accordance with the HA's instructions, the HA must immediately issue rental certificates to the affected Section 8 eligible families and the Mod Rehab HAP contract terminates.

For many of the units in this category, the families living in Mod Rehab projects will already have received rental certificates. Regardless of whether such a family has already submitted a request for lease approval, is still shopping, or has signed a lease, the family cannot be **required** to forfeit its certificate.

If the family and the former Mod Rehab owner have signed a lease for the family to remain in the unit under the rental certificate program, the unit is not eligible for Mod Rehab HAP contract renewal. Instead, the owner receives rents as provided in the rental certificate HAP contract.

If a family has received a rental certificate, but the family and the Mod Rehab owner have not signed a lease under the rental certificate program, the family may continue to reside in the unit as a Mod Rehab tenant, but would have to relinquish participation in the rental certificate program. If such a family chooses not to relinquish its rental certificate, and the owner elects to renew the Mod Rehab HAP contract, the family would have to move. If such a family chooses to relinquish the certificate, the renewal of the Mod Rehab contract shall be effective as of the date of the contract expiration.

Some Mod Rehab HAP contracts will have expired in October, November, and December before receipt of this notice. If the same family is living in the unit without rental assistance, (i.e., the owner and the family have not signed a lease under the rental certificate program), the family will only be responsible for its share of the rent and will not be held responsible for the housing assistance payment due the owner for October, November, and/or December. Instead, the HA will pay the owner the housing assistance payment for the months of October, November, and/or December if the owner requests an extension of the Mod Rehab HAP contract in accordance with this notice at a rent level to be determined in accordance with this notice.

If the Mod Rehab HAP contract is renewed, and the family has already received a rental certificate and is moving to a new unit under that program, the owner must occupy the Mod Rehab unit with a program eligible family referred by the HA from its waiting list. This will result in HUD and the HA paying two separate subsidies (i.e., one subsidy supporting the rental certificate of the former Mod Rehab family, and one supporting the new family moving into the Mod Rehab unit).

**11. PROCEDURES APPLICABLE TO UNITS WITH HAP CONTRACTS EXPIRING BETWEEN MARCH 1 AND SEPTEMBER 30, 1997:** HAs should require owners to request a renewal at least 75 days prior to the termination of the HAP contract. If the owner elects not to renew the expiring HAP contract, or if the owner fails to respond in accordance with the HA's instructions, the HA must issue rental certificates to the affected Section 8 eligible families at least 60 days prior to the expiration date of the Mod Rehab HAP contract. If the owner requests renewal of the HAP contract, and the HA renews the HAP contract in accordance with the procedures contained in this Notice, the assisted families occupying units covered by renewed Mod Rehab HAP contracts are not entitled to rental certificates. They must continue to occupy their current Mod Rehab unit or lose federal rental assistance.

**12. OTHER MATTERS:** This Notice does not address the procedures for extending Annual Contributions contracts (ACC), the source of funding the Mod Rehab HAP contract renewals, how to deal with the fact that certificate replacement funds have already been assigned/obligated for all Mod Rehab units expiring through 12-31-96, or other financial related matters. These will be addressed in a separate Notice.

If Mod Rehab project reserves are sufficient to cover HAPs for the one year extension, HUD state and area offices shall extend Mod Rehab ACCs for the one year renewal term. HUD will provide renewal funds to extend ACCs for those HAs where the Mod Rehab reserves are insufficient. Where Mod Rehab reserves are insufficient to cover renewal of Mod Rehab contracts, HUD state and area offices should contact HUD Headquarters Finance Division at (202) 708-2934.

/s/ Chris Hornig for  
Kevin Emanuel Marchman, Acting  
Assistant Secretary for Public  
and Indian Housing