



U.S. Department of Housing and Urban Development

Public and Indian Housing

Special Attention of:

## Notice PIH 98-62 (HA)

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

Issued: 12/15/98

Expires: 09/30/99

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**Subject:** Fiscal Year 1999 Renewal of Expiring Section 8 Moderate Rehabilitation (Mod Rehab) Housing Assistance Payments (HAP) Contracts.

1. **PURPOSE:** This Notice provides instructions for implementing Sections 524 (a)(1) and (2) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), as amended by Section 597 of the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999 (FY '99 Appropriations Act).

2. **BACKGROUND:** Sections 524(a)(1) and (2) of MAHRA are the non-Mark-to-Market renewal provisions for Section 8 project-based HAP contracts expiring during FY '99.

The FY '99 Appropriations Act was enacted on October 21, 1998, as Public Law 105-276. Section 597(b)(2) of the FY '99 Appropriations Act amends Section 524 (a)(2) of MAHRA as it relates to regular Section 8 Mod Rehab HAP contracts expiring during FY '99. All references to MAHRA henceforth mean MAHRA as amended by the FY '99 Appropriations Act.

3. **APPLICABILITY:** This Notice applies to all units in a multifamily housing project under a Section 8 Mod Rehab HAP contract expiring on or after October 1, 1998. This Notice is not applicable to the Section 8 Moderate Rehabilitation Single Room Occupancy Program.

4. **ELIGIBLE PROJECTS:** 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 (USHA). HUD will only offer to renew HAP contracts for Mod Rehab units that are located in properties with five or more units.

**Example:** An owner owns a property with five dwelling units that qualifies under the statutory definition of a multi-family housing project. The owner of the property has a Mod Rehab HAP contract which covers three of the 5 dwelling units on his property. The project is eligible (if all other requirements are met) for a one-year HAP contract renewal.

In this example, the owner is eligible because the owner owns a multi-family housing project (a property consisting of more than 4 dwelling units) and the property is covered in part by a contract for project-based assistance under Section 8 of the USHA of 1937.

The definition of a multi-family housing project also includes a property that is either on a single site or a property that has multiple structures on the same site with less than five units in each, but with a total of at least five units on the site.

**Example:** A property consists of four separate buildings that are all located on the same common site and part of a single apartment complex. There are four units in each building and some or all of the units are covered by an expiring Mod Rehab HAP contract. Any of the sixteen units covered by an expiring Mod Rehab HAP contract are eligible for a one-year Mod Rehab HAP contract renewal (if all other requirements are met). The apartment complex is considered one property and the property consists of more than four units.

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 first day after expiration of the HAP contract term for each stage.

6. **MOD REHAB PROJECTS ELIGIBLE FOR MORTGAGE RESTRUCTURING:** Public Housing Agencies (PHAs) administering Mod Rehab HAP contracts on projects that are eligible for a mortgage restructuring (i.e., a multifamily housing project that is covered in whole or in part by a contract for project-based assistance and financed by a mortgage insured or held by HUD under the National Housing Act with rent levels that exceed the rents of comparable properties) should refer these owners to the interim rule titled Multifamily Housing Mortgage and Housing Assistance Restructuring Program and Renewal of Expiring Section 8 Project-Based Assistance Contracts published in the September 11, 1998, Federal Register Volume 63, Number 176 (interim rule).

7. **MOD REHAB RENEWAL CATEGORIES:**

**A. MOD REHAB HAP CONTRACTS WITH MORTGAGES INSURED OR HELD BY HUD:**

**(i) PROJECT RENTS ABOVE COMPARABLES:**

Section 401.99(a) of the interim rule allows for the renewal of a section 8 project-based HAP contract as part of a restructuring plan if by at least three months before the expiration date, or as soon as practicable if the contract will expire before January 13, 1999, the owner requests a Section 8 contract renewal as part of a restructuring plan. The owner must certify to HUD that to the best of the owner's knowledge: (a) project rents are above comparable market rents; and (b) neither the owner nor any affiliate is suspended or debarred, or, if so, a voluntary sale transfer of the property is proposed in accordance with section 401.480 of the interim rule. The certification must be sent to the Director of the Multifamily Program Center or HUB that has jurisdiction over that project.

**ii. PROJECT RENTS BELOW COMPARABLES:**

A multifamily housing project that is covered in whole or in part by a Section 8 contract for project-based assistance and financed by a mortgage insured or held by HUD under the National Housing Act with rent levels that do not exceed the rents of comparable properties, is not eligible for mortgage restructuring and if the owner wishes to renew the Section 8 Mod Rehab HAP contract, the owner must request a renewal in accordance with procedures outlined in this notice.

**B. MOD REHAB HAP CONTRACTS WITH HUD-INSURED OR HUD-HELD MORTGAGES THAT ARE ELIGIBLE FOR MORTGAGE RESTRUCTURING BUT OWNER WISHES TO RENEW WITHOUT MORTGAGE**

**RESTRUCTURING:** Mod Rehab owners with HAP contracts on units located on properties with mortgages eligible for restructuring, that wish to renew the Section 8 Mod Rehab HAP contract without restructuring must submit their requests for a renewal to the Multifamily Program Center or HUB that has jurisdiction over that project in accordance with Section 401.99(b) of the interim rule. The Multifamily Program Center will forward the request to the Participating Administrative Entity (PAE) for review. (A PAE is a public agency, a nonprofit organization, or any other entity that meets the requirements outlined in Section 513 of MAHRA. HUD will enter into portfolio restructuring agreements with PAEs for the implementation of mortgage restructuring and rental assistance sufficiency plans to restructure multifamily housing mortgages insured or held by HUD under the National Housing Act). The PAE, in accordance with the interim rule, will determine whether reduced rents will be sufficient to maintain adequate debt service coverage on the HUD insured or HUD held mortgage and necessary replacement reserves to ensure the long-term physical integrity of the project. If the PAE determines that the owner may renew the Section 8 HAP contract without restructuring, administration of the renewal HAP contract will remain with the PHA administering the HAP contract at the time of expiration.

**C. MOD REHAB HAP CONTRACTS WITHOUT HUD-INSURANCE OR HUD-**

**HELD MORTGAGES:** Mod Rehab projects expiring during FY '99 that are neither HUD-insured nor HUD held shall be renewed upon an owner's request at rent levels outlined below provided the project is eligible for and the owner requests a renewal from the PHA administering the Mod Rehab HAP contract.

## 8. **RENEWAL RENT LEVELS:**

### **A. RENEWAL RENT LEVELS APPLICABLE TO UNITS WITH HAP CONTRACTS EXPIRING BETWEEN OCTOBER 1, 1998 AND OCTOBER 20, 1998:**

Section 597(c) of the FY '99 Appropriations Act states that the amendment to Section 524(a)(2) of MAHRA shall take effect on the date of the enactment of the Appropriations Act. In an effort to treat all expiring Mod Rehab projects eligible for renewal during FY '99 in a similar manner, the Department will renew Mod Rehab HAP contracts that expired between October 1, 1998 and October 20, 1998 under Section 524(a)(1) of MAHRA rather than under section 524(a)(2) of MAHRA. Prior to the amendment, Section 524(a)(2) of MAHRA, provided for the renewal of Mod Rehab HAP contracts ineligible for mortgage restructuring at rent levels equal to the base rent adjusted by an operating cost adjustment factor (OCAF). Section 524(a)(1) gives HUD the discretion to renew expiring project-based HAP contracts at rent levels that do not exceed comparables. The law further provides that assistance shall be provided in accordance with terms and conditions prescribed by HUD. HUD will therefore renew all Mod Rehab HAP contracts at rent levels outlined in Section 597(b)(2) of the FY '99 Appropriations Act.

For Mod Rehab HAP contracts with expiration dates between October 1, 1998 and October 20, 1998, renewal HAP contracts will be executed pursuant to Section 524(a)(1) of MAHRA at rent levels equal to the lesser of:

- (i). existing contract rents, adjusted by an OCAF (see Attachment D);
- (ii). existing fair market rents (FMRs) (less any amounts allowed for tenant-purchased utilities); or
- (iii). comparable market rents for the market area.

\*(Attachment B Renewal HAP contract form must be used for Mod Rehab HAP contracts with expiration dates between October 1, 1998 and October 20, 1998).

### **B. RENEWAL RENT LEVELS APPLICABLE TO UNITS WITH HAP CONTRACTS EXPIRING BETWEEN OCTOBER 21, 1998 AND SEPTEMBER 30, 1999:**

For Mod Rehab HAP contracts with expirations dates between October 21, 1998 and September 30, 1998, renewal HAP contracts will be executed pursuant to Section 524(a)(2) of MAHRA at rent levels equal to the lesser of:

- (i). existing contract rents, adjusted by an OCAF (see Attachment D);
- (ii). existing FMRs (less any amounts allowed for tenant-purchased utilities); or
- (iii). comparable market rents for the market area.

\*(Attachment A Renewal HAP contract form must be used for Mod Rehab HAP contracts with expiration dates between October 21, 1998 and September 30, 1999).

In determining the correct renewal rent level, rents must be reviewed by PHAs on a unit size-by-unit size basis. If the HAP contract consists of units of the same size with different contract rents, the PHA must review those rents separately to determine the correct renewal rent amount. Once the PHA determines the rent levels under which the HAP contract shall be renewed, those rent levels represent the new contract rent amounts.

Example: A Mod Rehab HAP contract consists of 40 two-bedroom units, and 60 three-bedroom units. The contract rent on 25 of the two-bedroom units equals \$600. The contract rent on 15 of the two bedroom units equals \$650. The contract rent on the three bedroom units equals \$750. (\*\*The information contained in the following table is for illustrative purposes only).

<b><u>RENT ANALYSIS #1</u></b>			
<b># of Bedrooms</b>	<b># of Units</b>	<b>Contract Rent x OCAF</b>	<b>Adjusted Rent Per Unit</b>
2	25	\$600 x 2.6%	<b>\$616</b>
2	15	\$650 x 2.6%	\$667
3	60	\$750 x 2.6%	\$770
<b><u>RENT ANALYSIS # 2</u></b>			
<b># of Bedrooms</b>	<b># of Units</b>	<b>FMR - Utility Allowance</b>	<b>FMR less Utility Allowance Per Unit</b>
2	25	\$675 - \$50	\$625
2	15	\$675 - \$65	\$610
3	60	\$780 - \$75	<b>\$705</b>
<b><u>RENT ANALYSIS #3</u></b>			

# of Bedrooms	# of Units		Comparable Rent Per Unit
2	25		\$620
2	15		<b>\$605</b>
3	60		\$725

The new contract rent for each unit size must be set at the lower of the three rent analyses. The renewal rent for the 25 two-bedroom units must be set at - \$616; the renewal rent for the 15 two-bedroom units must be set at - \$605; and the renewal rent for the 60 three-bedroom units must be set at - \$705.

9. **DETERMINING COMPARABLE MARKET RENTS:** In order to determine the appropriate renewal rent level, the law requires that PHAs determine comparability. Comparability is determined by comparing rents charged for similar unassisted units with rents charged for units assisted under the Mod Rehab program. The PHA must have an overall knowledge of the rental market within its jurisdiction and data on the rents being charged for specific units. In order to assess comparable rents, the PHA will have to conduct either telephone surveys, site visits after telephoning, or more extensive market surveys of available rental units. The survey must include the information listed below on the comparable unit being surveyed to serve as the basis for comparison. In the case of apartment complexes, only one unit of each size and type needs to be examined for survey purposes.

- A. **Location** - of the unit within the community, including whether the unit is located in a transitional neighborhood where rentals may be higher or lower than usual, and the availability and accessibility of public transportation to schools, stores and medical facilities.
- B. **Unit Size** - including number of bedrooms, bathrooms, and square feet of living space.
- C. **Unit Type** - such as garden apartment, elevator building, or townhouse.
- D. **Quality and Condition** - the extent to which the unit meets or exceeds the Housing Quality Standards or variations proposed by the PHA and approved by HUD including the overall condition of appliances, fixtures, etc.
- E. **Accessibility to persons with disabilities**
- F. **Amenities** - including air conditioning, dishwasher, washer/dryer connections, garbage disposal, location of the unit within the building, etc.

- G. **Facilities** - including availability of playgrounds, storage, parking, etc.
- H. **Management and Maintenance Services Provided** - such as frequency of unit and grounds upkeep, availability of on-site resident manager and services, etc.
- I. **Age** - date unit was available for occupancy after construction or substantial rehabilitation.

In addition, for purposes of determining comparable rents, PHAs should consider the following:

- J. **Market rent information** obtained from the city, or real estate agents.
- K. **Rent Reasonableness** determinations for other Section 8 units in the area.
- L. **Rental information** obtained from classified advertisements in newspapers.

If the owner disagrees with the PHA's comparability analysis, the owner may, at its own expense, obtain an independent verification of the PHA's determination. During the period that an independent analysis is being conducted, rents shall be set at those determined by the PHA. The PHA is not bound by any independent determination, however, the PHA must objectively review the information submitted for consideration and provide a response to the owner as to its findings within thirty days of receipt of the owners comparability analysis.

10. **GENERAL RENEWAL PROCEDURES:** PHAs will renew HAP contracts by executing, with the owners, a renewal contract which extends the term of the original HAP contract, or the FY '98 renewal HAP contract, for an additional 12 months. (See Attachments A and B). The Mod Rehab HAP contract must be made effective the first day after the original or renewal Mod Rehab HAP contract expiration date.

Assisted families occupying units covered by renewed Mod Rehab HAP contracts are not entitled to rental vouchers, and must continue to occupy their current Mod Rehab unit or lose federal rental assistance. (However, see paragraph 13 relating to possible exceptions for tenants residing in units with Mod Rehab HAP contracts expiring between October 1, 1998, and December 31, 1998).

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.

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

**CONTRACTS:** PHAs administering Mod Rehab HAP contracts **shall not** renew an expiring contract if the PHA determines that the owner of the multifamily housing project has engaged in material adverse financial or managerial actions or omissions with regard to the project (or with regard to other projects of such owner that are federally assisted or financed with a loan from, or mortgage insured or guaranteed by, an agency of the Federal Government).

Material adverse financial or managerial actions or omissions include:

- A. materially violating any Federal, State or local law or regulation with regard to the project or any other federally assisted project, after receipt of notice and an opportunity to cure;
- B. materially breaching a contract for assistance under Section 8 of the United States Housing Act of 1937, after receipt of notice and opportunity to cure;
- C. materially violating any applicable regulatory or other agreement with HUD, after receipt of notice and opportunity to cure;
- D. materially failing to maintain the property according to housing quality standards after receipt of notice and a reasonable opportunity to cure;
- E. repeatedly and materially violating any Federal, State, or local law or regulation with regard to the project or any other federally assisted project;
- F. repeatedly and materially breaching a contact for assistance under Section 8 of the United States Housing Act of 1937;
- G. repeatedly and materially violating any applicable regulatory or other agreement with HUD;
- H. repeatedly failing to make mortgage payments at times when project income was sufficient to maintain and operate the property; or
- I. committing any actions or omissions that would warrant suspension or debarment by HUD;

A PHA shall **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 or has committed material adverse financial or managerial actions or omissions. If an owner is

determined to be in material default of the HAP contract or has committed material adverse financial or managerial actions or omissions under paragraphs 11.A through 11.D, the PHA 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 and give the owner the opportunity to cure. The PHA must clearly state the basis upon which it has made its determination. Owners who have committed material adverse financial or managerial actions or omissions under paragraphs 11.E through 11.I are not entitled to a renewal under Section 516(a)(2) of MAHRA. PHAs are not required to provide notice of the adverse action or omission nor are PHAs required to give the owner the opportunity to cure the adverse action or omission.

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 a HAP contract renewal. Families living in Mod Rehab properties with 4 or less units and the HAP contract is expiring in FY '99 must be issued Section 8 rental vouchers by the PHA administering the Mod Rehab HAP contract. HUD will provide HAs with rental vouchers, on a one-for-one basis, for all units under a Mod Rehab HAP contract that are located on a property that is not eligible for renewal at the time the HAP contract expires. The replacement rental vouchers will include Mod Rehab units converted to Mod Rehab rental certificates during the term of the Mod Rehab HAP contract. Assisted families residing in Mod Rehab units covered by an expiring Mod Rehab HAP contract must be provided with rental vouchers at least 60 days prior to expiration of the Mod Rehab HAP contract. The PHA must also notify owners 60 days prior to HAP contract expiration that assisted families will be issued rental vouchers and that families may either locate an eligible unit of their choice on the private rental market or remain in their current Mod Rehab unit if the owner agrees to rent the unit to the family under the rental voucher program. If the family chooses to use its rental voucher at the current Mod Rehab unit, and the owner agrees to rent the unit to the family under the rental voucher program, the unit must meet all requirements of the Section 8 rental voucher program before a PHA may grant lease approval and execute a rental voucher HAP contract on the unit. If the former Mod Rehab family is no longer eligible for rental assistance, the rental voucher must be provided to the next eligible family on the PHA's waiting list.

12. **RENTAL VOUCHERS:** In previous fiscal years, when an owner was not eligible for a renewal or chose not to renew the Mod Rehab HAP contract, families living in those units were issued Section 8 rental certificates to locate housing elsewhere or remain in the former Mod Rehab unit if the owner wished to participate in the Section 8 rental certificate program. The FY '99 Appropriations Act amends the USHA of 1937 to merge the Section 8 rental certificate and rental voucher programs. The unified program will consist of a single form of subsidy in the style of a rental voucher. While the Department does not anticipate implementing the unified program until sometime later this fiscal year, to assist in the transition, HUD will begin to issue rental vouchers in lieu of rental certificates when replacing project-based assistance.

13. **STATUTORY OWNER NOTIFICATION REQUIREMENTS:** Section 549 of the FY

'99 Appropriations Act amends section 8(c)(9) of the USHA of 1937 which required owners to provide written notice to HUD and each family at least 180 days before the expiration of a Section 8 HAP contract. Section 8(c)(8)(A) of the USHA of 1937, as amended, requires that not less than one year before the termination or expiration of the Section 8 Mod Rehab HAP contract, the owner must provide written notice to tenants assisted under the Mod Rehab HAP contract. This notice is required to inform the project's residents of the impending HAP contract expiration. The law also requires that the owner submit the notice to HUD; however, since local PHAs administer the Mod Rehab program, the owner shall submit the notice to the appropriate PHA instead of HUD. Section 8(c)(8)(A) became effective on the date of enactment of the FY '99 Appropriations Act (October 21, 1998).

**A. IF OWNER HAS REQUESTED A RENEWAL:**

In the case of an owner who has requested, or intends to request, a renewal of the Section 8 Mod Rehab HAP contract, the owner's notice to the tenants shall include statements that:

- (i). the owner currently has a contract with the local PHA that provides rental assistance to families by means of a housing assistance payment and the date on which the contract will expire;
- (ii). the owner intends to renew the contract for another year;
- (iii). renewal of the contract may depend upon the Congress making funds available for such renewal;
- (iv). The owner is required by law to notify tenants of the possibility that the contract may not be renewed if Congress does not provide funding for such renewals;
- (v). in the event of non-renewal, the Department of Housing and Urban Development will provide rental vouchers to all eligible residents, enabling them to choose the place they wish to rent; and
- (vi). the notice itself does not indicate an intent to terminate the contract by either the owner or the PHA administering the HAP contract, provided there is Congressional approval of funding availability.

**B. IF PROPER NOTICE WAS NOT GIVEN:**

If the HAP contract is not renewed because:

- (i). the owner declined the offer of a one-year renewal;
- (ii). the property is not eligible for a renewal;
- (iii). the owner has been found to have engaged in material adverse financial or managerial actions or omissions with regard to the project (including material default under the HAP contract),

and the owner has failed to provide the proper notice under Section 8(c)(8)(A) of the USHA of 1937, the tenant is protected as if there were an assisted tenancy until one year from the time the owner actually provides the notice. The PHA must give the owner the option of extending the Mod Rehab HAP contract for such period of time necessary to meet the statutory notice requirement. The rent level for this short term renewal HAP contract must be set in accordance with paragraphs 8.A or 8.B. above. If the owner does not give the proper notice and if the owner does not wish to execute a short term renewal HAP contract during the period of time necessary to meet the statutory notice requirement, one of the following options may be chosen:

- a. The owner and the family may agree to enter into a rental voucher tenancy for the unit, in accordance with all rental voucher program rules.
- b. The tenant may use the rental voucher to locate another unit, or may otherwise vacate the unit if the tenant so chooses.
- c. The tenant may continue to occupy the unit in an unassisted tenancy, and the owner must not, until at least one year has passed since the owner's Section 8(c)(8)(A) 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.

**14. PROCEDURES APPLICABLE TO UNITS WITH HAP CONTRACTS EXPIRING BETWEEN OCTOBER 1, 1998 AND JANUARY 31, 1999:**

Upon receipt of this Notice, the PHA 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 PHA's notification. If the owner elects not to renew the expiring HAP contract, or if the owner fails to respond in accordance with the PHA's instructions, the PHA must immediately issue rental vouchers 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 pursuant to HUD instructions. 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 the rent as provided in the rental certificate HAP contract.

For those Mod Rehab HAP contracts that expired on or after October 1 and before receipt of this notice, where 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 Section 8 rental certificate program), the family is only responsible for its share of the rent and shall not be held responsible for the housing assistance payment due the owner for the months of October, November and or the month of December. Instead, the PHA will pay the owner the housing assistance payment for the month of October, November and, or December retroactively, 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.

In cases where Mod Rehab HAP contracts expired prior to receipt of this Notice and where owners have leased former Mod Rehab units to market rate tenants or Section 8 income eligible tenants prior to the execution of the Mod Rehab renewal contract, such units are not eligible for a Mod Rehab HAP contract renewal. The PHA must not include these units in the renewal HAP contract.

If a family formerly assisted under the Mod Rehab program has received a rental certificate, but the family and the Mod Rehab owner have not signed a lease under the Section 8 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 Section 8 rental certificate program. If such a family chooses not to relinquish its Section 8 rental certificate, and the owner elects to renew the Mod Rehab HAP contract, the family would be required to move. If such a family chooses to relinquish the certificate, the renewal of the Mod Rehab contract shall be made effective the day following the date of the Mod Rehab contract expiration.

If the Mod Rehab HAP contract is renewed, and the family has already received a Section 8 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 PHA from its waiting list. This will result in HUD and the PHA 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).

15. **VACANCY PAYMENTS:** In some cases, Mod Rehab HAP contracts expired prior to the issuance of this Notice. In cases where a Mod Rehab HAP contract expired prior to the PHA's notification to the owner of the right to a one year HAP contract renewal, and where some or all of the former Mod Rehab units are vacant at the time the owner notifies the PHA of the owner's intention to renew in accordance with this notice, the owner is entitled to vacancy payments, if requested in accordance with 24 CFR section 882.411(b). For owners who have experienced vacancies as a result of HUD's delay in issuing this notice and because a former Mod Rehab family has been issued a rental certificate and has chosen to exercise its right to use its rental certificate elsewhere, the PHA may allow a vacancy payment for an additional month if the owner is unable to reoccupy the unit the next month after the month following the vacancy.

**Example:** a Mod Rehab HAP contract expired October 15, 1998 and some of the units have **remained** vacant since the former Mod Rehab families vacated the units on October 15, 1998. The owner was notified of the right to a Mod Rehab HAP contract renewal on November 15, 1998 and the owner has informed the PHA of the owner's decision to renew. If the owner requests, the owner is entitled to the HAP on the vacant units for as much of the month of October as the units were vacant and 80% of the contract rent for the month of November prorated for the time the units remain vacant. If the units continue to remain vacant during the month of December, the PHA may provide an additional vacancy payment in the amount of 80% of the contract rent for the month of December prorated for the time the unit remains vacant. In a case such as the one described above, the requirement contained in §882.411(b)(i) that requires the owner to immediately notify the PHA of the vacancy in order to be entitled to a vacancy payment does not apply.

If the owner reoccupies the former Mod Rehab unit before the Mod Rehab renewal contract has been executed, the owner is not entitled to a vacancy payment on that unit.

16. **PROCEDURES APPLICABLE TO UNITS WITH HAP CONTRACTS EXPIRING BETWEEN FEBRUARY 1 AND SEPTEMBER 30, 1999:** PHAs must 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 PHA's instructions, the PHA must issue rental vouchers 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

PHA 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 vouchers. The families must continue to occupy their current Mod Rehab unit or lose federal rental assistance.

**17. UNITS THAT BECOME VACANT DURING THE ONE-YEAR HAP CONTRACT**

**RENEWAL TERM:** Owners may fill units covered by the Mod Rehab renewal HAP contract that become vacant during the one-year renewal term with eligible tenants referred by the PHA. The lease must terminate on the date the Mod Rehab renewal HAP contract expires. Owners that desire to sign a lease for less than 12 months must seek a waiver from HUD through the PHA until such time as a regulatory change is published. At the Section 8 briefing, the PHA must inform a family that chooses to rent a Mod Rehab unit with a HAP contract that will expire in less than one year that the project-based assistance will end if the HAP contract is not renewed in FY 2000, and if, and when the Mod Rehab HAP contract ends, eligible families will be offered Section 8 tenant-based rental assistance.

**18. 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 December 31, 1998, or other financial related matters. These issues will be addressed in a separate Notice. HUD will, however, provide renewal funds to extend ACCs.

/s/

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Harold Lucas, Assistant Secretary  
for Public and Indian Housing

Attachment A  
Attachment B  
Attachment C  
Attachment D