



U.S. Department of Housing and Urban Development

Public and Indian Housing

Special Attention of:

Notice PIH 2001-13 (HA)

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

Issued: 4/6/01

Expires: 9/30/02

Subject: Fiscal Year 2001 and 2002 Renewal of Expiring Section 8 Moderate Rehabilitation (Mod Rehab) Housing Assistance Payments (HAP) Contracts.

1. **PURPOSE:** This Notice provides instructions for implementing Section 524 (b)(3) of the Multifamily Assisted Housing Reform and Affordability Act of 1997, Pub. L. 106-74, (MAHRA). The original statutory provisions governing Section 8 Mod Rehab contract renewals were codified at Section 524(a)(2) of MAHRA, Pub. L. 105-65. Section 531 of HUD's Fiscal Year 2000 Appropriations Act, Pub. L. 106-74, however, amended Section 524(a)(2), in part by creating a new Section 524(b)(3), the implementation of which is the subject of this Notice.

2. **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, 2000. This Notice is not applicable to the Section 8 Moderate Rehabilitation Single Room Occupancy Program.

3. **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.

4. **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 unless an owner elects to combine the stages.

A. COMBINING STAGES OR MULTIPLE HAP CONTRACTS

i. Stages

For HAP contracts expiring on or after October 1, 2001 (fiscal year 2002), at the owner's request, HAP contracts with multiple stages may be combined into one renewal HAP contract. The PHA must:

- a. provide an owner with a short-term renewal of the earliest expiring stage from the date of expiration through the day prior to the expiration of the latest expiring stage. Only stages expiring in the same fiscal year (e.g. October 1, 2001 through September 30, 2002) may be combined;
- b. pro-rate the Operating Cost Adjustment Factor (OCAF) when calculating the renewal rents for short term renewals. The entire factor will be used to calculate rents at the time the one year renewal HAP contract is executed. To calculate a pro-rated OCAF, the PHA must:

Take the full OCAF, divide it by 12 and multiply that number by the number of months needed for the short-term renewal.

Example:

Full OCAF: 2.0%

Months in Year: 12

Term of Short-term contract: 4 months

$2.0 \text{ divided by } 12 = .17 \times 4 = 0.68$

The pro-rated OCAF to apply to the short-term renewal is .68%.

ii Multiple HAP Contracts for Units on the Same Property

In some cases, individual HAP contracts with the same expiration date were executed for individual dwelling units on the same property. In such cases, effective October 1, 2001, for HAP contracts expiring in fiscal year 2002, the PHA and owner may agree to combine all units under one renewal HAP contract to help ease the administrative burden of dealing with multiple HAP contracts. However, only contracts with expirations in the same fiscal year may be combined.

5. 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 final rule 24 CFR 401 titled Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark -to-Market) published in the March 22, 2000, Federal Register Volume 65, Number 56 (final rule), as corrected in the September 6, 2000 Federal Register Volume 65, Number 173 (final rule; correction).

6. 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 the March 22, 2000 final rule. The Multifamily Program Center will forward the request to the Office of Multifamily Housing Assistance Restructuring in Headquarters, who will assign the property to a Participating Administrative Entity (PAE) for review. Contract administration responsibility will remain with the PHA during the PAE's reviews.

Section 514(c) of MAHRA authorizes the extension of Section 8 HAP contracts eligible for restructuring at existing rent levels for a period sufficient to facilitate the implementation of a mortgage restructuring plan. The PHA must execute a 514(c) Interim (Full) Mark-to-Market Renewal Contract at existing rents; the Interim HAP contract is Attachment 15 of the Section 8 Renewal Policy Guidebook issued by the

Office of Multifamily Housing. The Guidebook can be found at the following website: <http://www.hud.gov/fha/mfh/mfhsec8.html>. In accordance with the final rule, the PAE will determine whether reduced rents (at the lesser of the three criteria defined in paragraph 8.B. below) 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.

7. MOD REHAB HAP CONTRACTS WITH MORTGAGES INSURED OR HELD BY HUD WHERE OWNER REQUESTS A SECTION 8 CONTRACT RENEWAL AS PART OF A RESTRUCTURING PLAN:

A Mod Rehab property eligible for restructuring is defined as a multifamily housing project with a mortgage insured or held by HUD under the National Housing Act with project-based Section 8 assistance expiring on or after October 1, 1998, and with rents for assisted units in excess of comparable market rents. If an owner of an eligible property requests a restructuring plan and a Section 8 HAP contract renewal in accordance with Section 401.600 of the final rule, the contract administration will remain with the PHA during the restructuring analysis and negotiation.

A. PHA ACTION:

The PHA must determine the amount of annual budget authority that will be necessary to renew the Mod Rehab HAP contract for a 12 month period and submit the request to the appropriate HUD Office of Public Housing Hub Director or Program Center Coordinator. A Section 514(c) Interim (Full) Mark-to-Market HAP contract must be executed by the PHA and the Mod Rehab owner at existing rent levels for a period sufficient to facilitate the implementation of a mortgage restructuring plan. The initial term of the HAP contract renewal shall begin on the first day following expiration of the original HAP contract and shall terminate upon the date that is the earliest of: (1). twelve months from the date specified in Section 2a of the contract; (2). the last day of the month of closing under the Restructuring Commitment; (3). upon a final decision that results in the discontinuance of the Restructuring process; or (4). upon determination that the Owner is in default under the Renewal Contract and that such event of default is continuing beyond any notice and cure periods under HUD requirements, if any.

The PHA must send a copy of the HAP contract to the appropriate Public Housing Hub Director or Program Center Coordinator within five calendar days of contract execution. The Interim Mark-to-Market Renewal HAP contract can be found in the Section 8 Renewal Policy Guidebook issued by the Office of Multifamily housing. The Guidebook can be found at the following website:

<http://www.hud.gov/fha/mfh/mfhsec8.html>

If the negotiations and analysis render an affirmative result, the administration of the renewal is transferred to the PAE with jurisdiction over the project.

B. HUD FIELD OFFICE ACTION:

The HUD Office of Public Housing Hub Director or Program Center Coordinator must forward a copy of the executed Interim (Full) Mark-to-Market Renewal Contract to the Director of the Multifamily Hub or Program Center. The Office of Public Housing Hub or Program Center staff must review the request for annual budget authority sent by the PHA, calculate the total amount of funding required for the 12-month renewal and the number of units that will be renewed. The information must then be forwarded to the Financial Management Center (FMC).

C. FMC ACTION:

The FMC must follow procedures on fund reservation and HUDCAPS input.

8. RENEWAL RENT LEVELS:

A. RENEWAL RENT LEVELS APPLICABLE TO UNITS WITH HAP CONTRACTS EXPIRING BETWEEN OCTOBER 1, 2000 AND SEPTEMBER 30, 2001

For Mod Rehab HAP contracts with expiration dates between October 1, 2000 and September 30, 2002 renewal HAP contracts will be executed pursuant to Section 524(b)(3) of MAHRA at rent levels equal to the lesser of:

- (i). existing contract rents, adjusted by an Operating Cost Adjustment Factor (OCAF);
- (ii). the mod rehab fair market rents (i.e., 120% of the existing fair market rents) less any amounts allowed for tenant-purchased utilities; or
- (iii). comparable market rents for the market area.

B. RENT POLICY CHANGE

Section 524(b)(3) of MAHRA requires that Mod Rehab renewal rents equal the lesser of; (i). existing contract rents, adjusted by an OCAF; (ii). ***fair market rents*** (FMRs) (emphasis added) (less any amounts allowed for tenant-purchased utilities); or (iii). comparable market rents for the market area. The statute does not specify whether the fair market rent that must be used in determining Mod Rehab renewal rents is the published existing housing FMR or the Mod Rehab FMR (120% of the published existing housing FMR). HUD has determined that the Mod Rehab FMRs apply if that amount represents the lowest of the three amounts stated above.

This policy change is prospective for FY 2001 expirations and may not be

applied retroactively to prior years renewals. If the FY 2001 Mod Rehab renewal is a subsequent renewal, (i.e. the HAP contract has been renewed in a previous fiscal year), the existing rent for the purpose of a FY 2001 renewal is the existing rent under the current HAP contract and not the rent that existed at the time of the original expiration of the HAP contract.

C. OPERATING COST ADJUSTMENT FACTORS

Operating Cost Adjustment Factors are published annually in the Federal Register. When applying the OCAF to the existing contract rent, PHAs must use the most recently published factors available. Fiscal Year 2001 OCAFs can be found in the January 18, 2001 Federal Register, Volume 66 Number 12. OCAFs can also be found on the hudweb at the following address:

<http://www.hud.gov/fha/mfh/ocaf.pdf>

D. DETERMINING RENEWAL RENTS

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).

RENT ANALYSIS #1			
# of Bedrooms	# of Units	Contract Rent x OCAF	Adjusted Rent Per Unit
2	25	\$600 x 2.6%	\$616
2	15	\$650 x 2.6%	\$667
3	60	\$750 x 2.6%	\$770
RENT ANALYSIS # 2			
# of Bedrooms	# of Units	120% of FMR - Utility Allowance	FMR less Utility Allowance Per Unit
2	25	\$675 - \$50	\$625
2	15	\$675 - \$65	\$610
3	60	\$780 - \$75	\$705
RENT ANALYSIS #3			
# of Bedrooms	# of Units		Comparable Rent Per Unit
2	25		\$620
2	15		\$605
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. **Rent Reasonableness** determinations for other Section 8 units in the area.
- K. **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 owner's comparability analysis.

10. GENERAL RENEWAL PROCEDURES: PHAs will renew HAP contracts by executing, with owners, a renewal contract which extends the term of the original HAP contract, or the FY 2000 renewal HAP contract, for an additional 12 months. (See Attachment A). The Mod Rehab HAP contract must be made effective the first day after the original or renewal Mod Rehab HAP contract expiration date. (The FY 2002 Renewal HAP contract will be published separately at a later date).

Assisted families occupying units covered by renewed Mod Rehab HAP contracts are not entitled to housing choice vouchers, and must continue to occupy their current Mod Rehab unit or lose federal rental assistance.

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:

A. Four or Less Dwelling Units:

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 units with expiring HAP contracts and there are 4 or less units on the property, must be issued housing choice vouchers by the PHA administering the Mod Rehab HAP contract. HUD will provide PHAs with housing choice 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 vouchers will include Mod Rehab units converted to certificates or housing choice vouchers during the term of the Mod Rehab HAP contract.

Assisted families residing in Mod Rehab units covered by an expiring Mod Rehab HAP contract where four or less units are located on the property must be provided with housing choice 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 housing choice 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 housing choice voucher program. If the family chooses to use its voucher at the current Mod Rehab unit, and the owner agrees to rent the unit to the family under the housing choice voucher program, the unit must meet all requirements of the program before a PHA may grant tenancy approval and execute a housing choice voucher HAP contract on the unit. Where the family chooses to use its voucher at the current Mod Rehab unit, the voucher assistance will not be enhanced as provided in paragraph 12) below. Only families residing in multi-family units (see paragraph 3 for definition) are eligible for enhanced voucher assistance.

If the former Mod Rehab family is no longer eligible for rental assistance, the housing choice voucher must be provided to the next eligible family on the PHA's waiting list.

B. Material Adverse Financial or Managerial Actions or Omissions:

PHAs administering Mod Rehab HAP contracts **shall not** renew an expiring contract if the PHA or HUD 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:

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

1. NOTICE:

If an owner of a Mod Rehab property is determined to be ineligible for HAP contract renewal, the PHA must notify the owner in writing of the non-renewal and state the reasons for its decision.

2. OWNER DISPUTE OF REJECTION:

After receipt of the PHA's notification of non-renewal, an owner will have 30 calendar days to provide written objections to the PHA or to cure the underlying basis for the objections if the rejection is based on a curable item. If the owner does not submit written objections during the 30-day period, the decision will become a final determination under Section 516(c) of MAHRA and is not subject to judicial review.

3. FINAL DECISION:

If an owner submits written objections or asserts that the underlying basis for the objections is cured, after consideration of the matter, the PHA will send the owner, within 10 calendar days of receipt of the owner's objections, a final determination affirming, modifying, or reversing the rejection and setting forth the rationale for the final decision.

4. APPEAL PROCEDURES:

An owner may submit a written appeal to the HUD Public Housing Hub or Program Center with jurisdiction over the PHA that rendered the decision within 10 calendar days of receipt of written notice of the final decision, contesting the decision and requesting a conference with HUD. At the conference, the owner may submit, in person, in writing, or through a representative, its reason for appealing the decision. A representative of the PHA that issued the decision under appeal may participate in the conference and submit in person, in writing, or through a representative, the basis for the original decision.

Within 20 calendar days after the conference, or 20 days after the agreed upon extension of time for submission of additional materials by or on behalf of the owner, HUD will advise the owner in writing of the decision to terminate, modify, or affirm the original decision.

12. **ENHANCED VOUCHERS:** Section 538 of the FY 2000 appropriations act amended Section 8 of the USHA to add Section (t) to enable the Department to make enhanced vouchers available in order to, among other things, limit the displacement of families living in project-based assisted units when an owner chooses not to renew the Section 8 Mod Rehab HAP contract. Commencing in FY 2000, when an owner chooses not to renew the Section 8 Mod Rehab HAP contract and the family wishes to continue to reside in the Mod Rehab unit after HAP contract expiration, if the family chooses to remain in the unit, and meets all program requirements under the housing choice voucher program, the PHA will issue the family an enhanced voucher to remain in the previous Mod Rehab unit.

A. Right to Remain

Families that receive enhanced vouchers have the right to remain in their units as long as the units are used for rental housing. Owners may not terminate the tenancy of a family that exercises its right to remain except for cause under Federal, State or local law. If an owner refuses to honor the family's right to remain, the family's remedy is dependent upon that available under State and/or local law.

B. Payment Standard

The payment standard for enhanced vouchers is the owner's gross rent provided the PHA determines the rent is reasonable. For information on enhanced voucher subsidy calculations, see PIH Notice 2000-09.

C. Fiscal Year 2000 and 2001 Protection

PIH Notice 2000-09 provided instructions to PHAs on a family's right to an enhanced voucher. Beginning in fiscal year 2000, families residing in Mod Rehab units eligible for renewal, but where the owner chose not to renew the HAP contract and instead executed a voucher HAP contract with the PHA for the unit must be afforded the protection of an enhancement. If the gross rent for the unit exceeded the payment standard at the time of contract expiration and the family was not afforded the protection of an enhancement, the PHA must recalculate the families subsidy amount and reimburse the family for any amount paid above total tenant payment.

D. Non-Renewal Resulting From Owner Adverse Actions or Omissions

If the PHA declines to renew a HAP contract in accordance with paragraph 11.B above, HUD does not expect the PHA to continue to do business with the owner under the housing choice voucher program (see 24 CFR section 982.306(c)(1) and (4)).

13. **STATUTORY OWNER NOTIFICATION REQUIREMENTS:** Section 8(c)(8)(A) of the USHA of 1937 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 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.

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 a statement that:

if the Congress makes funds available, the owner and the **(insert name of PHA)** may agree to a renewal of the contract, thus avoiding termination, and that in the event of termination, HUD will provide tenant-based rental assistance to all eligible residents, enabling them to choose the place they wish to rent, that is likely to include the dwelling unit in which they currently reside. Any contract covered by Section 8(c)(8)(A) of the USHA of 1937 that is renewed may be renewed for a period of up to 1 year, with payments subject to the availability of appropriations for any year.

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 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);
- (iii). The owner is not eligible for a renewal (property has less than four units);

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. If the HAP contract is not renewed because of the reason stated in subparagraph B(i) or (ii), 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 paragraph 8 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 housing choice voucher tenancy for the unit, in accordance with all housing choice voucher program rules. If this option is selected the voucher will be enhanced ; but only if the reason for non-renewal falls under either subparagraph B(i) or B(ii) (when non-renewal falls under subparagraph B(ii), see caveat stated in paragraph 12.D above).
- b. The tenant may use the housing choice 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 housing 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, 2000 AND APRIL 30, 2001: 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, in writing, 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 housing choice vouchers to the affected Section 8 eligible families and the Mod Rehab HAP contract terminates and provide families who choose to move elsewhere using their housing choice voucher assistance in expeditiously locating a replacement unit..

For many of the units in this category, the families living in Mod Rehab projects will already have received housing choice vouchers. Regardless of whether such a family has already submitted a request for tenancy approval, is still shopping, or has signed a lease, the family cannot be **required** to forfeit its housing choice voucher. If the family and the former Mod Rehab owner have signed a lease for the family to remain in the unit under the housing choice voucher program, the unit is not eligible for Mod Rehab HAP contract renewal. Instead, the owner receives the rent as provided in the housing choice voucher HAP contract. In such a case, for future rent increase purposes, the voucher is considered enhanced. If a former Mod Rehab family and owner entered into a housing choice voucher HAP contract prior to issuance of this Notice, and the voucher was not enhanced, the family shall be held harmless (see discussion in paragraph 12.C above). The PHA must re-calculate the family's subsidy amount if the lower value of the non-enhanced housing choice voucher requires the family to pay more than its total tenant payment. The re-calculation and corrected payment amounts must reflect the enhanced value of the housing choice voucher from the date the non-enhanced housing choice voucher HAP contract was executed (for guidance on enhanced subsidy calculations, see PIH Notice 2000-9).

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 housing choice voucher 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, December, January and, or February. Instead, the PHA will pay the owner the housing assistance payment for the month of October, November, December January and, or February 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 housing choice voucher, but the family and the Mod Rehab owner have not signed a lease

under the housing choice voucher program, the family may continue to reside in the unit as a Mod Rehab tenant, but would have to relinquish participation in the housing choice voucher program. If such a family chooses not to relinquish its housing choice voucher, 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 voucher, the renewal of the Mod Rehab HAP contract shall be made effective the day following the date of the Mod Rehab HAP contract expiration.

If the Mod Rehab HAP contract is renewed, and the family has already received a housing choice voucher 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 housing choice voucher of the former Mod Rehab family, and one supporting the new family moving into the Mod Rehab unit).

If the Mod Rehab HAP contract was renewed using fiscal year 2000 procedures as outlined in PIH Notice 98-62 and the results of the rent analysis conducted in accordance with that Notice yielded results that indicated the least of three rents to be the existing FMR, the PHA must within 60 days of receipt of this Notice re-compute the rent in accordance with paragraph 8 of this Notice. If the new analysis yields a higher rent amount, the PHA must forward that information, in writing, to the local HUD Program Center or Hub for verification. The PHA will be notified of the results of their review and provide instructions on re-calculation of rents and the proper funding source for any retroactive payments owed the owner.

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 housing choice voucher and has chosen to exercise its right to use its housing choice voucher elsewhere, the PHA may allow a vacancy payment for an additional month if the owner is unable to re-occupy the unit the next month after the month following the vacancy.

Example: a Mod Rehab HAP contract expired December 15, 2000 and some of the units have **remained** vacant since the former Mod Rehab families vacated the units on December 15, 2000. The owner was notified of the right to a Mod Rehab HAP contract renewal on March 15, 2001 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 December as the units were vacant and 80% of the contract rent for the month of January prorated for the time the units remain vacant. If the units continue to remain vacant during the month of February, the PHA may provide an additional vacancy payment in the amount of 80% of the contract rent

for the month of February 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 re-occupies 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 MAY 1 AND SEPTEMBER 30, 2002 PHAs must require owners to request a renewal in writing 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 housing choice 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 housing choice vouchers. The families must continue to occupy their current Mod Rehab unit or lose federal housing 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. 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 2002, and if, and when the Mod Rehab HAP contract ends, eligible families will be offered housing choice vouchers.

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 housing choice voucher replacement funds have already been assigned/obligated for all Mod Rehab units expiring through September 30, 2001, or other financial related matters. These issues will be addressed in a separate Notice. HUD will, however, provide renewal funds to extend ACCs.

/s/

Gloria Cousar, Acting General Deputy
Assistant Secretary for Public and
Indian Housing

Attachments