

## PRESERVATION PROJECTS (*LIPHRA and ELIHPA*)

### Section 7-5

When Owners entered into long-term use agreements with HUD under the Preservation Program, HUD agreed to certain items which were outlined in the Preservation property's approved Plan of Action (POA).

In a majority of Preservation contracts, the POA allows for either a budget-based rent adjustment or an Annual Adjustment Factor (AAF) rent adjustment. Initially, MAHRA limited rent adjustments to OCAF for all preservation projects and in many cases required a renewal under 524(a) that would have resulted in rent reductions for the contract. As a result, some Preservation Owners would have been denied the benefits called for in the POA. Legislation in FY2000 provided a means for rectifying this situation.

- A. Renew a Preservation contract according to the provisions outlined in the project's POA. Preservation contracts *cannot* be renewed under any option other than Option 5.
- B. Corrections. There are instances where some contracts of Preservation projects were renewed under terms different than the terms in the approved POA. In these cases PM/CA's should calculate the rent as it would have been if the contract(s) had been renewed under terms consistent with the POA. This is the "current rent" that should be used as the basis for determining the renewal rent. There is no reimbursement for income lost due to past renewals.
- C. Opt-Outs/Prepayments. In general, POA's do not permit the Owner to opt-out of the Section 8 contract. However, if a Preservation project Owner believes they have the authority to opt-out of the Section 8 contract or prepay:
  1. **Plan**. The Owner must submit a detailed plan to the PM/CA that indicates how they intend to honor their obligations under the Use Agreement to maintain the project as affordable housing.
    - a. This plan should detail how the Owner intends to maintain the appropriate income mix.
    - b. Owners must be made aware that should they elect to opt-out or prepay, they are not released from their obligations set forth under the long-term Use Agreement to provide affordable housing.

2. **Local HUD.** The Hub or Program Center (or Contract Administrators) should take the following steps:
  - a. The PM/CA should review the POA to determine if it provides the right for the Owner to opt-out of the Section 8 contract. In general, opt-outs were precluded, but each Preservation POA was structured differently, and as a result, the PM/CA must review each POA and Use Agreement to determine whether or not the project is eligible to opt-out of the Section 8 contract.
  - b. If the POA does not allow the Owner to opt-out, the PM/CA should advise the Owner that they must renew the Section 8 contract.
  - c. If the POA allows the Owner to opt-out, the owner must provide the standard one year notification to the tenants. Eligible families will be issued enhanced vouchers.
3. **Plan Submission to HQ:** If after review of the Owner's plan, the PM/CA agrees that the Owner is allowed to prepay and opt-out, the PM/CA forwards a copy of the plan to Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Headquarters.

D. Conflicting Documents. The Use Agreement was recorded to implement the terms of the POA. However, there may be instances where the terms of the POA and the Use Agreement conflict.

1. Since the Use Agreement is a recorded instrument, binding on all third parties, in the event of a discrepancy between the Use Agreement and the POA, the Use Agreement prevails, and is binding on all third parties.
2. POAs are far more extensive and cover many more items than are covered in a Use Agreement. As a result, in cases where there are items contained in the POA that are not addressed in the Use Agreement, the terms of the POA, as they relate to the specific item, are binding on all parties.

## Owner Submission for Preservation Projects

### Section 7-7

- A. A multiyear contract, not to exceed the lesser of 20 years or the remaining term of the recorded Use Agreement are now available to Preservation projects.

- B. The only renewal option available to an Owner of a preservation project is Option 5.
- C. The Owner must submit, at least 120 days before contract expiration, the Contract Renewal Request Form and, if applicable, the OCAF Worksheet.