

## **PBRA QUESTIONS**

### **April 27, 2004**

If you have already had PBRA questions answered, please read this advisory and this set of questions, answers **and revised answers** for further guidance.

For LIHTC units with government PBRA that are not claiming points under 4(B) or 4(D), the rent may go as high as the HUD or USDA payment standard so long as the tenant portion of the rent does not exceed 30% of 60% of AMI for 60% LIHTC units and 30% of 50% of AMI for 50% LIHTC units. If the HOME program is utilized in addition to the LIHTC program, the rents are not restricted to the HOME rents, but the HUD payment standard (or any other governmental or state rental assistance) may be accepted, as long as the tenant pays no more than 30% of their adjusted annual income.

Please be advised that, based on conversations, with the U.S. Dept of HUD, PBRA agreements generally do not set rents as a percentage of AMI. Therefore, since the calculation of points for Very Low Income and Very Very Low Income are based on both rent and income restrictions, points for PBRA should only be claimed under PBRA. If an applicant desires to claim points for PBRA units under Very Low Income or Very Very Low Income, the PBRA agreement must specifically reflect the appropriate rent and income restrictions. The total rent collected in this case must be set at 50% or 30% of AMI, respectively, for the longer of the compliance period or the period of affordability. By restricting rents in this manner, the owner is foregoing his right to accept rental increases from the PBRA provider. In addition, points cannot be claimed for PBRA for these same units.

For applicants proposing projects with HUD administered PBRA, please be advised that HAP contracts executed prior to October 1, 1981 have income limits up to 80% AMI. Applicants should be careful to reflect units that will be occupied by individuals with incomes above 60% but equal to or less than 80% in the PBRA / Non LIHTC portion of the rent chart. These units are not LIHTC units, nor are they eligible for points under 4F (Mixed Income). HUD-administered PBRA contracts executed after October 1, 1981 have income limits up to 50% of AMI.

**1.** Under HOME regulations, if you are receiving HOME funds from DCA and according to regulations, you set aside 40% of the units at 50% of AMI, it is our understanding that if some of these units were PHA, their rents would be limited to 50% of AMI rents, even if these units had project based Section 8 and the Section 8 payment standard was higher. However, it is also our understanding that this requirement only applies to DCA HOME funds. If one were to receive HOME funds from a local government then PHA units could receive the Section 8 payment?

**A.** If a project has DCA or other HOME funds and there are PBRA units within the project, then rents for such units are not capped by HOME maximums. The higher HUD payment standard can be accepted so long as the tenant does not pay more than 30% of their annual adjusted income. These PBRA units would count towards the 40/50 setaside as long as the units are restricted to individuals with gross incomes at or below 50% of AMI.

**2.** We have structured a cash flow loan with a local government with a 40-year term and 40 year amortization. In order to maintain a 1.15 DCR throughout the 30-year period, it requires us to pay off the HOME loan in a shorter period. In previous years, this was permissible. We would like confirmation that this is still permissible.

A. DCA cannot state with certainty what would be allowed before the financials are reviewed during project feasibility. While prepayment is not prohibited under the QAP, please note that the HOME loan must be structured as both a construction and permanent loan. In addition, the affordability restrictions will remain in place even if the HOME loan is paid off early.

3. We assume under Section 4. Additional Rent and Income Elections D. Very Very Low Income and Rent Restrictions that we will receive 6 points for 10% or greater at 30%. (March 4, 2004 fax)

A. 6 points for the seven PBRA units listed on the rent chart could be claimed under PBRA or 6 points could be claimed under Very Very Low Income for 4D if the PBRA agreement set the rents for 30% AMI with the units reserved for occupancy by Very Very Low income families earning 30% of AMI or less. Please note that your Project Summary by Unit Rent Type listed 14 units under 30 % rents, which is inconsistent with the numbers in the Rent Schedule.

4. We assume under Section 4C Project Based Rental Assistance, Non-Governmental Project Based Rental Assistance that we will receive points for greater than 10% receiving Non-governmental project based rental assistance for a minimum of 5 years for a least 10% of the total units.

A. See above. You can choose one or the other, but you cannot double count.

5. Since the 7 PBRA units, which represent 10% or greater units, are set aside for 30% very, and very low income, would we get 6 points for these two categories for a total of 12 points?

A. See above. You can choose one or the other, but you cannot double count.

6. Please verify the following scenario:

25 Units (>20%) at market	4 points
72 Units (57.6%) at 60% AMI	0 points
13 Units (>10%) at 50% AMI	4 points
13 Units (>10%) at 30% AMI	6 points

125 Total Units

Under this scoring scenario, could we claim an additional 12 points for 90% of the units having PBRA distributed among the 30%, 50%, 60% and market rate units as long as the rents charged are no greater than the maximum allowable rents at each set aside? Or could we claim only 8 points for having 57.6% of the units under PBRA on the 60% AMI units since we are not claiming any other points on those units?

A. On its face, the scenario appears to be scored correctly. However, in the narrative that follows the scenario, you indicated that 90% of the units have PBRA distributed among the 30%, 50%, 60% and market rate units. Your PBRA units greater than 60% of AMI and less than or equal to 80% of AMI, and which are reflected as market rate units, cannot claim points under Mixed Income. Therefore, the 4 points for 25 units at market would be wrong based on the information in your narrative. As to your question whether you could claim points for PBRA and points for Very Low and Very Very Low for the same units, the answer is no – there is no double counting of units.

**7.** Based on the above scenario, if we are allowed to receive PBRA on units that are restricted to 30% AMI, what happens when a tenant's required payment under the PBRA (30% of their income) rises above the maximum rent at 30% AMI? Would we have to displace that tenant or would the 140% rule apply as it does in the case of 60% AMI rents?

**A.** With respect to the displacement issue, these answers may be different based on your credit election, lower targeting for points and the source of the PBRA. Generally speaking the tenant would not be displaced.

**NOTE:** LIHTC/PBRA units restricted to households with incomes at or below 30% AMI may only claim points under PBRA. In order to claim points under Very Very Low, these units would also need to have rent set at 30% AMI.

**8.** Again, based on the scenario in number 6 above, can we accept Fair Market Rents on the 30% AMI units that would receive PBRA, which would be higher than the rent that would be affordable to households at 30% AMI without the vouchers under the assumption that the tenant paid portion of rent must be no more than what is affordable to families at 30% AMI?

**A.** FMR can be accepted as long as no points were claimed in 4D.

**9.** If HOME funds were associated with this property, could we accept maximum Fair market Rents if the tenant paid portion of the rent does not exceed 30% of AMI?

**A.** If HOME funds are associated with a property, the FMR could be accepted as long as the tenant's portion does not exceed 30% of their annual adjusted income.

**10.** If a project is 100% PBRA, it is my understanding that as long as the tenant portion of the rent is below the 60% tax credit rent, then the PBRA rent can be above the 60% tax credit rent level. If HOME funds are involved in a 100% PBRA deal then 40% of the units have to be rented to tenants below 50% of AMI and the rents are restricted to the 50% level. Are we OK if the tenant portion of the rents are below the 50% rents but the PBRA rents are above the 50% rents? If not, why do you only require the tenant portion to be below 60% rents in a regular tax credit deal and not apply the same reasoning when HOME funds are requested?

**A.** PBRA rents for a LIHTC/HOME project may exceed the 50% rent and go up to the HUD maximum rent as long as the tenant pays no more than 30% of their adjusted income toward rent. These units can count toward the 40/50 setaside so long as the tenant's income does not exceed 50% of AMI.

**11.** We have a project that is 100% PBRA. The PBRA rents for each unit type is below the 50% tax credit rents. Can we take the full 12 points for 100% PBRA and an additional 6 points for the very low set aside of 41 % at 50%.

**A.** No – this would be considered double counting. However, be advised that even though the rents are currently below the 50% LIHTC rents, the Very Low Income points require the rents to be SET AT 50% AMI.

### Previous Q & A's To Be Corrected:

**12.** We understand that when we have a HOME and LIHTC project we need to set 40% of AMI. We also intend for 30% of our units to be designated as PHA; based on our understanding from the tax credit workshop those PHA units can be within the 40% at 50% of AMI HOME requirement and still claim 15 points under the Public Housing Authority Development and Rental Subsidy category. Please verify.

**Previous Answer.** Yes, we are interpreting your question to mean whether or not the PHA units that points are being claimed for under the PHA section can count towards your minimum set aside for the 40/50 HOME Program Requirements. The answer is that they can so long as those PHA units have rents set at 50% of AMI and are reserved for occupancy to tenants with incomes at or greater than 30 or less than or equal to 50% AMI.

**Revised Answer.** Yes, you can claim points for the PHA units under Public Housing Authority Development and Rental Subsidy (assuming documentation requirements are met) while using these PHA units to meet the 40/50 Home/Tax Credit set-aside requirements as long as these PHA units are reserved for occupancy to tenants with annual income not exceeding 50% AMI.

**13.** If we are receiving PBRA for this and we do not claim points under the Project Based Rental Assistance or the Very Low Income categories, it is our understanding that we can set our rents as high as the payment standards given by the Housing Authority, even though the payment standard exceeds the 50% of AMI rent. Please confirm.

**Previous Answer.** Yes, but they still need to meet the 40/50 set aside with other units.

**Revised Answer.** You can claim points under PBRA and exceed the HOME rent maximum as long as the tenant does not pay more than 30% of their annual adjusted income towards rent. If points were claimed for Very Low Income, the rents would be restricted to 50% AMI.

**14.** It is my understanding that in a tax credit only project, it doesn't matter if the subsidy portion of the rent exceeds the tax credit limit as long as the tenant paid portion of the rent was below the rent limits. However, if HOME funds enter the picture, both the tenant paid and the subsidy paid portion of the rent have to be below the rent limit (the HOME limits weren't on what the tenant paid, but on what the project received) i.e., the proposed rent cannot exceed the maximum program rent. Is that correct?

**Previous Answer.** Yes. On the PBRA chart, the proposed rent can only exceed the maximum program rent if the project is a tax credit only project. It cannot exceed the maximum program rent if HOME funds are utilized. PBRA rents on a HOME / LIHTC can exceed the HOME maximum rent as long as the tenant paid portion doesn't exceed 30% income.

**Revised Answer.** PBRA rents on a HOME/LIHTC project can exceed the HOME maximum rent as long as the tenant-paid portion does not exceed 30% of their annual adjusted income.

**15.** If a HOME and Tax Credit deal has the minimum 40% at 50%, and then an additional 40% at 50% for 5 points, and then 20% PBRA assisted for 7 points, can some or all of the PBRA units include some of the original 40% at 50% (minimum HOME/tax credit set-aside) since they're technically not the ones receiving the very low income points?

**Previous Answer.** Yes.

**Revised Answer.** Yes, as long as the PBRA units have tenants with incomes equal to or less than 50% of AMI. Note: Some PBRA units are income restricted to 80% AMI.